

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

(2) Defending that person's dwelling place as authorized under section 104, subsections 3 and 4.

See title page for effective date.

CHAPTER 265

S.P. 521 - L.D. 1505

An Act To Amend the Sentencing Laws

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners was established by the Legislature to examine the factors leading to prison overcrowding, the impact of current sentencing laws, the use of alternative sentences and means to reduce recidivism, in particular recidivism caused by mental illness and substance abuse; and

Whereas, the commission's recommendations to create sentencing alternatives for certain classes of offenses were enacted; however, greater judicial discretion is necessary to deter future criminal conduct and for the safety of victims of crime; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 17-A MRSA §1152, sub-§2, ¶G, as amended by PL 1995, c. 136, §1, is further amended to read:

G. A fine as authorized by chapter 53. Such a fine may be imposed in addition to the sentencing alternatives in paragraphs B, D, E ~~and~~ F, H, I, L and M;

Sec. 2. 17-A MRSA §1152, sub-§2, ¶¶K and L, as enacted by PL 2003, c. 711, Pt. A, §9, are amended to read:

K. A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 54-G; ~~or~~

L. A suspended term of imprisonment with administrative release as authorized by chapter 54-G; ~~or~~

Sec. 3. 17-A MRSA §1152, sub-§2, ¶M is enacted to read:

M. A split sentence of imprisonment with administrative release as authorized by chapter 54-G.

Sec. 4. 17-A MRSA §1172, sub-§1, ¶¶A, B, D and E, as enacted by PL 1995, c. 680, §5, are amended to read:

A. The details of a plea agreement, including a deferred disposition, before it is submitted to the court;

B. The right to comment on ~~the~~ a plea agreement, including a deferred disposition, pursuant to section 1173;

D. The time and place of sentencing; ~~and~~

E. The right to participate at sentencing pursuant to section 1174; ~~and~~

Sec. 5. 17-A MRSA §1172, sub-§1, ¶F is enacted to read:

F. The right to comment on the proposed early termination of probation, early termination of administrative release or conversion of probation to administrative release, pursuant to section 1174-A.

Sec. 6. 17-A MRSA §1174-A is enacted to read:

§1174-A. Termination or conversion procedure

When the attorney for the State receives notice of a motion seeking early termination of probation or early termination of administrative release or seeking to convert probation to administrative release, the attorney for the State shall disclose to the court any attempts made to notify each victim of the motion to terminate or convert and any objection to the motion by a victim. If a hearing is held on the motion by the court and the victim is present in court, the victim may address the court at that time.

Sec. 7. 17-A MRSA §1201, sub-§1, ¶A-1, as enacted by PL 2003, c. 711, Pt. A, §10, is amended to read:

A-1. The conviction is for a Class D or Class E crime other than ~~any Class D crime committed against a family or household member under chapter 9 or 13 or section 506-B, 554, 555 or 758; any Class D or Class E crime in chapter 11~~

~~or 12; a Class D or Class E crime under section 556, 854, excluding subsection 1, paragraph A, subparagraph (1), or 855; and the Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B. As used in this paragraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4;~~

(1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode and, as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;

(2) A Class D crime committed against a family or household member under chapter 9 or 13 or section 506-B, 554, 555 or 758. As used in this subparagraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4;

(3) A Class D or Class E crime in chapter 11 or 12;

(4) A Class D crime under section 210-A;

(5) A Class D or Class E crime under section 556, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;

(6) A Class D crime in chapter 45 relating to a schedule W drug; or

(7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B.

Sec. 8. 17-A MRSA §1202, sub-§2, as amended by PL 1997, c. 421, Pt. B, §1, is further amended to read:

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation or the person's probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed by the court or a community reparations board, add further requirements authorized

by section 1204; or relieve the person on probation of any requirement imposed by the court or a community reparations board that, in its opinion, imposes on the person an unreasonable burden. If the person on probation cannot meet a requirement imposed by the court or a community reparations board, the person shall bring a motion under this subsection.

Notwithstanding this subsection, the court may grant, ex parte, a motion brought by the probation officer to add further requirements if the requirements are immediately necessary to protect the safety of an individual or the public and if all reasonable efforts have been made to give written or oral notice to the person on probation. Any requirements added pursuant to an ex parte motion do not take effect until written notice of the requirements, along with written notice of the scheduled date, time and place when the court shall hold a hearing on the added requirements, is given to the person on probation.

Sec. 9. 17-A MRSA §1202, sub-§2-A, as enacted by PL 2003, c. 711, Pt. A, §13, is amended to read:

2-A. Once the period of probation has commenced, on ~~application~~ motion of the probation officer, or of the person on probation, or on the court's own motion, the court may convert at any time a period of probation for a Class D or Class E crime ~~or a Class C crime under Title 29-A, section 2557~~ to a period of administrative release. A conversion to administrative release may not be ordered ~~upon the motion of the person on probation~~ unless notice of the motion is given to the probation officer ~~by the person on probation and the attorney for the State.~~ The provisions of chapter 54-G apply when probation is converted to administrative release. Conversion to administrative release serves to relieve the person on probation of any obligations imposed by the probation conditions.

Sec. 10. 17-A MRSA §1202, sub-§3, as amended by PL 2003, c. 711, Pt. A, §14, is further amended to read:

3. Once the period of probation has commenced, on ~~application~~ motion of the probation officer, or of the person on probation, or on its own motion, the court may terminate at any time a period of probation and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. A termination and discharge may not be ordered ~~upon the motion of the person on probation~~ unless notice of the motion is given to the probation officer ~~by the person on probation and the attorney for the State.~~ Such termination and discharge serves to relieve the person on probation of any obligations imposed by the sentence of probation.

Sec. 11. 17-A MRSA §1348-A, sub-§3 is enacted to read:

3. During the period of deferment, if the person cannot meet a deferment requirement imposed by the court, the person shall bring a motion pursuant to subsection 2.

Sec. 12. 17-A MRSA §1348-B, sub-§§1, 2 and 5, as enacted by PL 2003, c. 711, Pt. A, §19, are amended to read:

1. Unless a court hearing is sooner held under subsection 2, at the conclusion of the period of deferment, after notice, a person who was granted deferred disposition pursuant to section 1348-A shall return to court for a hearing on final disposition. ~~If the court finds person demonstrates by a preponderance of the evidence that the person has complied with the court-imposed deferment requirements, the court shall impose a sentence of unconditional discharge under section 1346 sentencing alternative authorized for the crime to which the person pled guilty and consented to in writing at the time sentencing was deferred or as amended by agreement of the parties in writing prior to sentencing, unless the attorney for the State, prior to sentence imposition, moves the court to allow the person to withdraw the plea of guilty. Except over the objection of the defendant, the court shall grant the State's motion. Following the granting of the State's motion, the attorney for the State shall dismiss the pending charging instrument with prejudice. If the court finds that the person has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty.~~

2. If during the period of deferment the attorney for the State has probable cause to believe that a person who was granted deferred disposition pursuant to section 1348-A has violated a court-imposed deferment requirement, the attorney for the State may move the court to terminate the remainder of the period of deferment and impose sentence. Following notice and hearing, ~~if the court finds attorney for the State proves~~ by a preponderance of the evidence that the person has inexcusably failed to comply with a court-imposed deferment requirement, the court may continue the running of the period of deferment with the requirements unchanged, modify the requirements, add further requirements or terminate the running of the period of deferment and impose a sentencing alternative authorized for the crime to which the person pled guilty. If the court finds that the person has not inexcusably failed to comply with a court-imposed deferment requirement, the court may order that the running of the period of deferment continue or, after notice and hearing, take any other action permitted under this chapter.

5. A summons ~~must~~ may be used to order a person who was granted deferred disposition pursuant to section 1348-A to appear for a hearing under this section. ~~If the person can be located and served with a summons, the attorney for the State may not commence a hearing under this section by having the person arrested, except that a person who fails to appear as required may be arrested pursuant to a bench warrant or an order of after having been served with a summons, the court may issue a warrant for the arrest of the person.~~

Sec. 13. 17-A MRSA §1348-B, sub-§6, as enacted by PL 2003, c. 711, Pt. A, §19, is repealed.

Sec. 14. 17-A MRSA §1348-B, sub-§7 is enacted to read:

7. If during the period of deferment the attorney for the State has probable cause to believe that a person who was granted deferred disposition pursuant to section 1348-A has violated a court-imposed deferment requirement, the attorney for the State may apply for a warrant for the arrest of the person.

Sec. 15. 17-A MRSA §1349, sub-§1, as corrected by RR 2003, c. 2, §28, is amended to read:

1. A person who has been convicted of a Class D or Class E crime ~~or a Class C crime under Title 29-A, section 2557~~ may be sentenced to a sentence alternative under section 1152 that includes a period of administrative release, unless:

A. The statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized therein;

B. The court sentences the person to a sentencing alternative under section 1152 that includes a period of probation; or

C. The court finds that such a sentence would diminish the gravity of the crime for which that person was convicted.

Sec. 16. 17-A MRSA §1349-A, sub-§2-A is enacted to read:

2-A. During the period of administrative release, if the person cannot meet a requirement of administrative release imposed by the court, the person shall bring a motion pursuant to subsection 2.

Sec. 17. 17-A MRSA §1349-B, sub-§1, as enacted by PL 2003, c. 711, Pt. A, §19, is amended to read:

1. The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the Class D or Class E crime or the Class C crime under Title 29-A, section 2557, suspend the ~~entire~~ term of imprisonment in whole or in part and accompany the suspension with a period of administrative release not to exceed the one year authorized under section 1349-A, subsection 1.

Sec. 18. 17-A MRSA §1349-D, as enacted by PL 2003, c. 711, Pt. A, §19, is amended to read:

§1349-D. Commencement of administrative release revocation proceeding

1. If during the period of administrative release the attorney for the State has probable cause to believe that the person placed on administrative release has violated a requirement of administrative release, the attorney for the State may file a motion with the court seeking to revoke administrative release ~~and cause a summons to be delivered to the person placed on administrative release ordering that person to appear for a court hearing on the alleged violation~~. The motion must set forth the facts underlying the alleged violation. ~~The summons must be in the same form as a summons under section 1205-B, subsection 2 except that the summons must include the signature of a law enforcement officer other than a probation officer.~~

1-A. A summons may be used to order a person who was placed on administrative release to appear on a motion to revoke that person's administrative release.

2. A person placed on administrative release appearing on a motion to revoke administrative release pursuant to a summons must be afforded an initial appearance as provided in section 1205-C, subsection 4.

3. If the person placed on administrative release fails to appear in court after having been served with a summons, the court may issue a warrant for the arrest of the person. After arrest of the person, the court shall afford the person ~~a preliminary hearing~~ an initial appearance as provided in section ~~1205~~ 1205-C, subsection 4, and, if retained in custody, section 1205-C, subsection 3 applies.

~~4. If the person placed on administrative release can be located and served a summons, the attorney for the State may not commence the administrative release proceeding by having the person arrested. However, if the person can not, with due diligence, be located, the attorney for the State shall file a written notice of this fact with the court and obtain a warrant of arrest under Rule 41 of the Maine Rules of Criminal Procedure. If during the period of administrative release the attorney for the State has probable cause to believe that the person placed on administrative release has violated a requirement of administrative release, the attorney for~~

the State may apply for a warrant for the arrest of the person. Unless sooner released, the court shall provide the person with an initial appearance on the revocation of administrative release within 14 days after arrest. A copy of the motion must be furnished to the person prior to or at the initial appearance. The initial appearance is as provided in section 1205-C, subsection 4. Bail is as provided in section 1205-C, subsections 5 and 6.

Sec. 19. 19-A MRSA §4002, sub-§4, as amended by PL 2003, c. 672, §16, is further amended to read:

4. Family or household members. "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of this chapter and Title 17-A, sections 1201, 1202 and 1253 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

Sec. 20. 34-A MRSA §5402, sub-§3, ¶¶B and C, as amended by PL 1995, c. 502, Pt. F, §34, are further amended to read:

B. Obtain psychiatric, psychological and other necessary services; ~~and~~

C. Sign documents, including warrants and extradition papers, for the board when so instructed by the board; and

Sec. 21. 34-A MRSA §5402, sub-§3, ¶F is enacted to read:

F. Provide for necessary assessment and supervision procedures and direct the use of adult probation resources and staff to the management of adult probationers with a high risk of reoffending.

Sec. 22. 34-A MRSA §5404, sub-§3, ¶A, as amended by PL 1989, c. 127, §14, is further amended to read:

A. Supervise the probation, parole or intensive supervision of each person placed under the officer's supervision to ensure that departmental re-

sources are directed to the management of persons with a high risk of reoffending;

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective May 31, 2005.

CHAPTER 266

H.P. 1155 - L.D. 1637

An Act To Implement the Fund for the Efficient Delivery of Local and Regional Services

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

Sec. 1. 30-A MRSA §5681, sub-§3, as amended by IB 2003, c. 2, §2, is further amended to read:

3. Revenue-sharing funds. To strengthen the state-municipal fiscal relationship pursuant to the findings and objectives of subsection 1, there is established the Local Government Fund. To provide additional support for municipalities experiencing a higher-than-average property tax burden, there is established the Disproportionate Tax Burden Fund. To assist those municipalities that collaborate with other municipalities, counties or state agencies to obtain savings in the cost of delivering local and regional governmental services there is established the Fund for the Efficient Delivery of Local and Regional Services, which is administered pursuant to chapter 231.

Sec. 2. 30-A MRSA c. 231 is enacted to read:

CHAPTER 231

FUND FOR THE EFFICIENT DELIVERY OF LOCAL AND REGIONAL SERVICES

§6201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Administrative and Financial Services.

2. Cooperative services grant. "Cooperative services grant" means a grant award from the fund pursuant to section 6208 to cover eligible costs of a qualifying project.

3. Department. "Department" means the Department of Administrative and Financial Services.

4. Eligible applicant. "Eligible applicant" means a municipality, county or regional government subdivision.

5. Eligible costs. "Eligible costs" means the actual and direct expenses incurred in implementing a cooperative services grant or a planning grant awarded under section 6208, including expenses incurred in connection with the following activities for cooperative services grants and planning grants.

A. Eligible costs for a planning grant include the expense of:

(1) Studies to examine alternative methods of achieving collaboration, including those adopted by other municipalities;

(2) Cost-benefit studies; and

(3) Facilitation of community meetings and public outreach and education.

B. Eligible costs for a cooperative services grant includes the expense of:

(1) Execution and implementation of an interlocal agreement under chapter 115, a tax base sharing arrangement or another regional government mechanism for achieving collaboration;

(2) Joint strategic planning or comprehensive or capital investment planning;

(3) Public outreach and education;

(4) Collaboration or consolidation of offices or services;

(5) Professional services, such as those provided by attorneys, consultants, facilitators and architects; and

(6) Administrative services and costs, such as photocopying, printing, telephone service and travel costs.

Administrative and other costs of ongoing operations that would otherwise be budgeted by a municipality, county or regional government subdivision are not eligible costs.

6. Fund. "Fund" means the Fund for the Efficient Delivery of Local and Regional Services established by section 5681, subsection 3.

7. Planning grant. "Planning grant" means a grant award from the fund pursuant to section 6208 to