

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST SPECIAL SESSION
September 27, 2011

SECOND REGULAR SESSION
January 4, 2012 to May 31, 2012

THE EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
LAWS IS
SEPTEMBER 28, 2011

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 30, 2012

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

Augusta, Maine
2012

imposed by this State, any political subdivision of this State or any intergovernmental agency.

E. If the prepaid wireless fee is amended by rule or law, the new amount of the prepaid wireless fee must take effect at the beginning of the next calendar quarter that is at least 60 days after adoption or enactment of the change. The commission and the State Tax Assessor shall provide not less than 30 days' advance notice of the adoption or enactment of any change to the prepaid wireless fee amount on both the commission's publicly accessible website and the State Tax Assessor's publicly accessible website.

F. Prepaid wireless fees collected by sellers must be remitted to the State Tax Assessor. Prepaid wireless fees must be remitted at the times and in the manner provided for the remittance of sales tax under Title 36, section 1951-A and rules adopted pursuant to that section for the remittance of sales tax on an other than monthly basis. The State Tax Assessor shall establish registration and payment procedures that substantially coincide with registration and payment procedures as provided in Title 36, section 1754-B and related provisions.

G. A seller who is not a prepaid wireless telecommunications service provider may deduct and retain 3% of the prepaid wireless fee that is collected by the seller from a prepaid wireless consumer.

H. The State Tax Assessor shall establish procedures by which a seller may document that a sale is not a retail transaction. Procedures established under this paragraph must substantially coincide with the procedures for documenting a sale as a retail transaction as provided in Title 36, section 1754-B.

I. The State Tax Assessor shall remit the total prepaid wireless fees collected pursuant to this subsection to the commission. The commission shall deposit the total fees into the prepaid wireless fee fund established in subsection 3 and shall ensure that, within 30 days of receipt:

- (1) The portion of the remitted prepaid wireless fees attributable to the E-9-1-1 surcharge imposed by Title 25, section 2927, subsection 1-H is deposited in a separate account;
- (2) The portion of the remitted prepaid wireless fees attributable to the fee imposed under section 7104, subsection 3-A is deposited in the state universal service fund established pursuant to section 7104, subsection 3; and
- (3) The portion of the remitted prepaid wireless fees attributable to the fee imposed under section 7104-B, subsection 2-A is deposited

in the telecommunications education access fund established under section 7104-B, subsection 2.

3. Fund established. The prepaid wireless fee fund is established within the commission for the purposes of collecting and distributing funds pursuant to subsection 2, paragraph 1.

Sec. 8. Rulemaking. The Public Utilities Commission shall determine by rule the amount of the fee to be collected from prepaid wireless telecommunications service consumers pursuant to the Maine Revised Statutes, Title 35-A, section 7104, subsection 3-A and section 7104-B, subsection 2-A no later than October 1, 2012. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC UTILITIES COMMISSION

Public Utilities - Administrative Division 0184

Initiative: Establishes the prepaid wireless fee fund for the purposes of collecting and distributing prepaid wireless fees. The fees will be collected by the State Tax Assessor and credited to the Public Utilities Commission. The commission will transfer the funds to the state universal service fund and the telecommunications education access fund.

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	\$0	\$500,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$500,000

Sec. 10. Effective date. This Act takes effect January 1, 2013, except that that section that requires the Public Utilities Commission to adopt rules by October 1, 2012 takes effect 90 days after adjournment of the Second Regular Session of the 125th Legislature.

Effective January 1, 2013, unless otherwise indicated.

CHAPTER 601

H.P. 1378 - L.D. 1861

An Act To Amend Statutory Post-conviction Review

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

Sec. 1. 15 MRSA §2121, sub-§1, as amended by PL 1995, c. 286, §2, is further amended to read:

1. Criminal judgment. "Criminal judgment" means a judgment of conviction of a crime, the orders of adjudication and disposition in a juvenile case and a judgment of not criminally responsible by reason of ~~mental disease or defect~~ insanity.

Sec. 2. 15 MRSA §2121, sub-§1-A, as amended by PL 2003, c. 29, §1, is further amended to read:

1-A. Assigned justice or judge. "Assigned justice or judge" means the Justice or Active Retired Justice of the Supreme Judicial Court, the Justice or Active Retired Justice of the Superior Court or the judge authorized to sit in the Superior Court on post-conviction review cases who is assigned the post-conviction review proceeding when a special assignment has been made. It means any justice, active retired justice or authorized judge attending to the regular criminal calendar when the post-conviction review proceeding is assigned to the regular criminal calendar.

Sec. 3. 15 MRSA §2121, sub-§2, as amended by PL 1997, c. 464, §1, is further 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 that affects whether there is incarceration or its length, including revocation of parole, failure to grant parole, an error of law in the computation of a sentence including administrative calculations of deductions relative to time detained pursuant to Title 17-A, section 1253, subsection 2 and default in payment of a fine or restitution. It does not include the following Title 17-A, Part 3 court proceedings: revocation of probation, revocation of intensive supervision, revocation of supervised release for sex offenders or revocation of administrative release. It does not include administrative the following administrative actions: calculations of good time and meritorious good time credits pursuant to Title 17-A, section 1253, subsections 3, 3-B, 4, 5 and 7 or similar deductions under Title 17-A, section 1253, subsections 8, 9 and 10; disciplinary proceedings resulting in a withdrawal of good-time credits or similar deductions; revocation of probation, under Title 17-A, section 1253, subsections 6, 8, 9 and 10; cancellation of furlough or other rehabilitative programs authorized under Title 30-A, sections 1556, 1605 and 1606 or Title 34-A, section 3035; cancellation of a supervised community confinement or aftercare status of a juvenile or proceedings before the Appellate Division of the Supreme Judicial Court program granted pursuant to Title 34-A, section 3036-A; cancellation of a community confinement monitoring program granted pursuant to Title 30-A, section 1659-A; or cancellation of place-

ment on community reintegration status granted pursuant to Title 34-A, section 3810 or 4112.

Sec. 4. 15 MRSA §2122, as amended by PL 1997, c. 399, §1, is further amended to read:

§2122. Purpose

This chapter provides a comprehensive and, except for direct appeals from a criminal judgment, ~~the~~ exclusive method of review of those criminal judgments and of post-sentencing proceedings occurring during the course of sentences. It is a remedy for illegal restraint and other impediments specified in section 2124 that have occurred directly or indirectly as a result of an illegal criminal judgment or post-sentencing proceeding. It replaces the remedies available pursuant to post-conviction habeas corpus, to the extent that review of a criminal conviction or proceedings ~~are~~ were reviewable, the remedies available pursuant to common law habeas corpus, including habeas corpus as recognized in Title 14, sections 5501 and 5509 to 5546, coram nobis, audita querela, writ of error, declaratory judgment and any other previous common law or statutory method of review, except appeal of a judgment of conviction or juvenile adjudication and remedies that are incidental to proceedings in the trial court. The substantive extent of the remedy of post-conviction review is defined in this chapter and not defined in the remedies that it replaces; provided that this chapter provides and is construed to provide relief for those persons required to use this chapter as required by the Constitution of Maine, Article I, Section 10.

Sec. 5. 15 MRSA §2123, sub-§2, as amended by PL 1983, c. 816, Pt. B, §4, is further amended to read:

2. Venue. Venue ~~shall~~ must be in the county in which the criminal judgment was entered. Venue may be transferred by the assigned justice or judge at his that assigned justice or judge's discretion.

Sec. 6. 15 MRSA §2123-A is enacted to read:

§2123-A. Method of review for administrative actions not included in the definition of "post-sentencing proceeding"

Remedial relief from administrative actions occurring during the course of and pursuant to the operation of a sentence that affects whether there is incarceration or its length that are not included in the definition of "post-sentencing proceeding" in section 2121, subsection 2 is exclusively provided by Title 5, chapter 375, subchapter 7.

Sec. 7. 15 MRSA §2124, as amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §7, is further amended to read:

§2124. Jurisdictional prerequisites of restraint or impediment

An action for post-conviction review of a criminal judgment of this State or of a post-sentencing proceeding following the criminal judgment may be brought if the person seeking relief demonstrates that the challenged criminal judgment or post-sentencing proceeding is causing a present restraint or other specified impediment as described in subsections 1 to 3:

1. Present restraint or impediment by criminal judgment being challenged. Present restraint or impediment as a direct result of the challenged criminal judgment:

A. Incarceration ~~pursuant to the sentence imposed as a result of by the challenged criminal judgment which is challenged;~~

B. Other restraint, including probation, parole, or other conditional release ~~or a juvenile disposition other than incarceration or probation, imposed as a result of the sentence for by the challenged criminal judgment which is challenged;~~

C. ~~A sentence of unconditional~~ Unconditional discharge ~~resulting from a imposed by the challenged criminal judgment, for a period of 2 years following the date of sentence;~~

C-1. Incarceration imposed by the challenged criminal judgment that is wholly satisfied at the time of sentence imposition due to detention time credits earned under Title 17-A, section 1253, subsection 2;

D. Incarceration, other restraint or an impediment specified in paragraphs A, ~~and B and C~~ which that is to be served in the future, although the convicted or adjudicated person is not in execution of the sentence either because of release on bail pending appeal of the criminal judgment or because another sentence must be served first; ~~or~~

E. A fine imposed by the challenged criminal judgment ~~which that~~ has not been paid and in a case when a person has not inexcusably violated Title 17-A, section 1303-B or inexcusably defaulted in payment of any portion. A fine includes any imposed monetary fees, surcharges and assessments, however designated;

F. Restitution imposed by the challenged criminal judgment that has not been paid and in a case when a person has not inexcusably violated Title 17-A, section 1328-A or inexcusably defaulted in payment of any portion. Any challenge as to the amount of restitution ordered is further limited by Title 17-A, section 1330-A; or

G. Any other juvenile disposition imposed by the challenged criminal judgment;

1-A. Present or future restraint by commitment to the Commissioner of Health and Human Services. Present restraint or impediment as a direct result of commitment to the custody of the Commissioner of Health and Human Services pursuant to section 103 imposed as a result of being found not criminally responsible by reason of ~~mental disease or defect, insanity~~ that is challenged, or future restraint or impediment as a result of such an order of commitment that is challenged when a sentence involving imprisonment is or will be served first.

A claim for postconviction review is not allowed under this subsection relative to any court proceeding or administrative action that affects release or discharge pursuant to section 104-A;

2. Post-sentencing proceeding. Incarceration or increased incarceration imposed pursuant to a post-sentencing proceeding following a criminal judgment, although the criminal judgment itself is not challenged; or

3. Present indirect impediment. Present restraint or impediment resulting indirectly from the challenged criminal judgment of this State:

A. Incarceration ~~pursuant to a sentence imposed in this State, in another state or in a Federal Court pursuant to a sentence for a subsequent criminal judgment~~ for a crime punishable by incarceration for a year or more, if the length of the incarceration ~~being~~ is greater than it would otherwise have been in the absence of the challenged criminal judgment of this State. The prior criminal judgment ~~which that~~ is challenged must be for a crime punishable by incarceration for a year or more. This requirement is not satisfied by a showing only that the court imposing the present sentence was aware of the challenged criminal judgment or if it appears from the length or seriousness of the person's total criminal record that the challenged criminal judgment, taking into account its seriousness and date, could have little or no effect on the length of incarceration under the subsequent sentence;

~~B. A pending trial or incarceration pursuant to a sentence following a criminal judgment in this State, in another state or in a Federal Court for a crime, the degree of which or the potential penalty of which is increased as a result of the challenged criminal judgment of this State. This requirement is not satisfied unless:~~

(1) ~~The subsequent crime, as enhanced, is, in the case of a crime in this State, punishable by incarceration of one year or more or, in the case of a crime in another jurisdiction, is a felony or an infamous crime; and~~

(2) ~~If a sentence for the subsequent crime has been imposed, the length of that sentence ac-~~

~~tually exceeds the amount of incarceration which could have been imposed for the subsequent crime had its potential penalty not been enhanced by the challenged criminal judgment; or~~

~~C. A pending trial or any of the restraints or impediments specified in subsection 1 following a criminal judgment in this State, another state or in a Federal Court for a crime for which proof of the criminal judgment of this State that is challenged constitutes an element of the subsequent crime.~~

~~D. Incarceration pursuant to a sentence imposed in this State, in another state or in a Federal Court for a crime for which proof of the criminal judgment of this State that is challenged is an element of, or must constitutionally be treated as an element of, the new crime. This requirement is not satisfied unless the new crime is, in the case of a crime in this State, punishable by incarceration of one year or more or, in the case of a crime in another jurisdiction, a felony or an infamous crime; or~~

~~E. A criminal judgment in this State pursuant to a plea of guilty or nolo contendere accepted by a trial court on or after March 31, 2010 by a represented defendant who is not a United States citizen and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding.~~

Sec. 8. 15 MRSA §2125, as amended by PL 1981, c. 238, §2, is further 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~~ proceeding 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 or 2128.

Sec. 9. 15 MRSA §2128, as amended by PL 1997, c. 399, §§3 and 4 and affected by §5, is further amended to read:

§2128. Waiver of grounds for relief

A person under restraint or impediment specified in section 2124 shall demonstrate that any ground of relief is has not unavailable on the basis of waiver as described in subsections 1 to 5 been waived. The bases of waiver are as follows.

1. Errors claimable on direct appeal. Errors at the trial ~~which~~ that have been or could have been raised on a direct appeal, whether or not such an appeal was taken, may not be raised in an action for post-

conviction review under this chapter; ~~provided, except~~ that if the failure of the convicted or adjudicated person to take an appeal or to raise certain issues on appeal is excusable and the errors not appealed may result in reversal of the criminal judgment, the court may order that an appeal be taken as provided in section 2130.

~~**2. Errors claimable in federal habeas corpus.** The assertion of a right under the Constitution of the United States shall not be held waived by its nonassertion at trial or on appeal if the assertion of the right would be held not waived in a federal habeas corpus proceeding brought by the convicted or adjudicated person, pursuant to the United States Code, Title 28, sections 2241 to 2254.~~

3. Waiver of grounds not raised in prior post-conviction review action. All grounds for relief from a criminal judgment or from a post-sentencing proceeding ~~shall~~ must be raised in a single post-conviction review action and any grounds not so raised are waived unless the ~~State or Federal~~ Constitution of Maine or the Constitution of the United States otherwise ~~require~~ requires or unless the court determines that the ground could not reasonably have been raised in an earlier action.

4. Prior challenges. A person who has previously challenged a criminal judgment or a post-sentencing proceeding under former Title 14, sections 5502 to 5508 or its predecessors ~~shall~~ may not challenge the criminal judgment or post-sentencing proceeding by post-conviction review unless the court determines that a ground claimed in the action for post-conviction review could not reasonably have been raised in the earlier action.

~~**5. Filing deadline for direct impediment.** A one year period of limitation applies to initiating a petition for post conviction review seeking relief from a criminal judgment under section 2124, subsection 1 or 1 A. The limitation period runs from the latest of the following:~~

~~A. The date of final disposition of the direct appeal from the underlying criminal judgment or the expiration of the time for seeking the appeal;~~

~~B. The date on which the constitutional right, state or federal, asserted was initially recognized by the Law Court or the Supreme Court of the United States, if the right has been newly recognized by that highest court and made retroactively applicable to cases on collateral review; or~~

~~C. The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.~~

~~The time during which a properly filed petition for writ of certiorari to the Supreme Court of the United States with respect to the same criminal judgment is~~

pending is not counted toward any period of limitation under this subsection.

6. Filing deadline for indirect impediment. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3. The limitation period runs from the date of imposition of a sentence for the new crime resulting in the indirect impediment.

Sec. 10. 15 MRSA §2128-A is enacted to read:

§2128-A. Exceptions to waiver

The assertion of a right under the Constitution of the United States may not be held waived by its nonassertion at trial or on appeal if the assertion of the right would be held not waived in a federal habeas corpus proceeding brought by the convicted or adjudicated person pursuant to 28 United States Code, Sections 2241 to 2254.

Sec. 11. 15 MRSA §2128-B is enacted to read:

§2128-B. Time for filing

The following filing deadlines apply.

1. Filing deadline for direct impediment. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 1 or 1-A. The limitation period runs from the latest of the following:

A. The date of final disposition of the direct appeal from the underlying criminal judgment or the expiration of the time for seeking the appeal;

B. The date on which the constitutional right, state or federal, asserted was initially recognized by the Law Court or the Supreme Court of the United States if the right has been newly recognized by that highest court and made retroactively applicable to cases on collateral review; or

C. The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

The time during which a properly filed petition for writ of certiorari to the Supreme Court of the United States with respect to the same criminal judgment is pending is not counted toward any period of limitation under this subsection.

2. Filing deadline for post-sentencing proceedings. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a post-sentencing proceeding under section 2124, subsection 2. The limitation period runs from the later of the following:

A. The date of filing of the final judgment in the court proceeding occurring during the course of and pursuant to the operation of the underlying sentence that results in incarceration or increased incarceration; or

B. The date of the final administrative action occurring during the course of and pursuant to the operation of the underlying sentence that results in incarceration or increased incarceration.

3. Filing deadline for indirect impediment. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraphs A and D. The one-year limitation period runs from the date of imposition of a sentence for the new crime resulting in the indirect impediment. A 60-day period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraph E. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.

Sec. 12. 15 MRSA §2129, sub-§4, as repealed and replaced by PL 1981, c. 238, §5, is amended to read:

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

Sec. 13. 15 MRSA §2138, sub-§12, as enacted by PL 2001, c. 469, §1, is amended to read:

12. Exhaustion. A person who has taken a direct appeal from the judgment of conviction is not precluded from utilizing the remedy of this chapter while the appeal is pending, provided that as long as the resolution of the motion is automatically stayed pending final disposition of the direct appeal unless the Supreme Judicial Court, sitting as the Law Court, on motion otherwise directs.

A person who has initiated a collateral attack upon the judgment of conviction under chapter 305-A is not precluded from utilizing the remedy of this chapter while that post-conviction review proceeding is pending, provided that as long as resolution of the motion is automatically stayed pending final disposition of the post-conviction review proceeding unless the assigned justice or judge in the post-conviction review proceeding otherwise directs.

Sec. 14. Application. If the date of the filing of the final judgment in the court proceeding or administrative action under the Maine Revised Statutes, Title 15, section 2124, subsection 2 occurred prior to

the effective date of this Act, the one-year limitation period under Title 15, section 2128-B, subsection 3 runs from the effective date of this Act.

Sec. 15. Application. If the date a noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against that noncitizen is on or after March 31, 2010, but prior to the effective date of this Act, the 60-day limitation period under the Maine Revised Statutes, Title 15, section 2128-B, subsection 3 runs from the effective date of this Act.

See title page for effective date.

CHAPTER 602

H.P. 1342 - L.D. 1820

An Act To Implement Recommendations To Provide Additional Flexibility for Funding Infrastructure Improvements for Water Utilities

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

Sec. 1. 35-A MRSA §6105, sub-§4, ¶E, as amended by PL 2003, c. 529, §1, is further amended to read:

E. To provide for a contingency allowance as provided in section 6112; ~~and~~

Sec. 2. 35-A MRSA §6105, sub-§4, ¶F, as enacted by PL 1989, c. 59, §3, is amended to read:

F. To provide for rate adjustments to reflect the cost of anticipated construction of plants or facilities required by the 1986 amendments to the United States Safe Drinking Water Act, Public Law 93-523, or related projects, ~~provided except that rates established under this paragraph shall are~~ not be subject to section 6104-; ~~and~~

Sec. 3. 35-A MRSA §6105, sub-§4, ¶G is enacted to read:

G. To provide for recovery of the amounts necessary to fund the replacement of water system infrastructure. Those funds must be deposited in a capital reserve account and used in accordance with section 6107-A.

Sec. 4. 35-A MRSA §6107-A is enacted to read:

§6107-A. Funding for infrastructure improvements for water utilities

Notwithstanding chapter 3, a water utility may fund future infrastructure improvements through recovery in rates and fund completed infrastructure replacement or repairs through the establishment of a surcharge in accordance with this section and rules adopted by the commission. Nothing in this section may be construed to exempt any expenditure by a water utility from review by the commission in accordance with this Title.

1. Recovery in rates. A water utility may recover in rates the amounts necessary to fund the future replacement of water system infrastructure. Those funds must be deposited in a capital reserve account.

2. Commission review of capital reserve account. A water utility shall provide to the commission an annual accounting of all revenues deposited into and expenditures made from the water utility's capital reserve account. Money in the capital reserve account is not considered unappropriated retained earnings for the purpose of section 6112, subsection 5.

3. Infrastructure replacement surcharge. A water utility may establish and file, pursuant to section 307, a temporary surcharge to allow recovery of the costs of completed replacement or repairs of water system infrastructure. The temporary surcharge may continue until the water utility's next rate case under chapter 3 or rate filing pursuant to sections 6104 and 6104-A and in accordance with section 6105.

If a water utility elects to institute an infrastructure replacement surcharge pursuant to this subsection, the water utility shall file the proposed surcharge with a justification for the implementation of the surcharge with the commission no less than 30 days before the effective date of the surcharge. The commission may investigate the surcharge in accordance with section 1303 to determine if the surcharge is just and reasonable. If the commission investigates the surcharge, the commission shall make its determination within 75 days of the filing and shall approve the surcharge if it is determined to be just and reasonable and deny the surcharge if it is determined not to be just and reasonable.

4. Limitations. A water utility may not expend amounts collected pursuant to subsection 1 for any purpose other than infrastructure improvements in accordance with this section and rules adopted by the commission.

5. Rules. The commission shall adopt rules to implement this section, including but not limited to rules governing the maximum amount of funds that may be recovered through rates or surcharges under this section, the authorized uses of those funds and