

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 TWENTY-SIXTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2012 to July 10, 2013

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 9, 2013

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

Augusta, Maine
2013

Sec. 3. 15 MRSA §101-D, sub-§8, as enacted by PL 2009, c. 268, §3, is further amended to read:

8. No release during commitment period; violation. A person ordered or committed for examination, observation, care or treatment pursuant to this section may not be released from the designated ~~institution~~ placement during the period of examination. An individual responsible for or permitting the release of a person ordered committed pursuant to this section for examination, observation, care or treatment from the designated ~~institution~~ placement commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

Sec. 4. 15 MRSA §103-A, sub-§2 is enacted to read:

2. Commencement of commitment. When a person subject to an undischarged straight term of imprisonment or to an unsuspended portion of a split sentence for a Maine conviction is, for a different Maine offense, found not criminally responsible by reason of insanity or is the recipient of a negotiated insanity plea, the person must first serve the undischarged term of imprisonment or the unsuspended portion of the split sentence before commencing the commitment to the custody of the Commissioner of Health and Human Services ordered by the court pursuant to section 103 unless the court orders otherwise.

Sec. 5. 15 MRSA §104-A, sub-§2, as amended by PL 2005, c. 263, §3, is further amended to read:

2. Modified release treatment. Any individual committed pursuant to section 103 may petition the Superior Court for the county in which that person is committed for a release treatment program allowing the individual to be off institutional grounds ~~for a period of time, not to exceed 14 days at any one time if the individual is monitored by a multidisciplinary treatment team affiliated with the institution and meets face to face with a team member at least every 14 days and with a team member qualified to prescribe medication at least monthly.~~ The petition must contain a report from the institutional staff, including at least one psychiatrist, and the report must define the patient's present condition; the planned treatment program involving absence from the institution; the duration of the absence from the institution; the amount of supervision during the absence; the expectation of results from the program change; and the estimated duration of the treatment program before further change. This petition must be forwarded to the court no later than 60 days prior to the beginning of the modified treatment program. If the court considers that the individual being off the grounds, as described in the treatment plan, is inappropriate, it shall notify the hospital that the plan is not approved and shall schedule a hearing on the matter. The clerk of courts upon receipt of the proposed treatment program shall

give notice of the receipt of this program by mailing a copy to the office of the district attorney that prosecuted the criminal charges for which the person was committed under section 103, the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur and the Attorney General who may file objections and request a hearing on the matter. Representatives of the Attorney General and the office that prosecuted the person may appear at any hearing on the matter. At the hearing, the court shall receive the testimony of a member of the State Forensic Service who has examined the person, any independent psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has examined the person and any other relevant testimony. If the court does not respond within 60 days to the proposed treatment plan and no objections and request for hearing are filed by the district attorney or Attorney General, it may then be put into effect by the administrator of the hospital on the assumption that the court approved the treatment plan. The Commissioner of Health and Human Services shall inform the public safety officer of the municipality or the sheriff's office of the county in which the person will spend any unsupervised time under the release treatment program of that program.

See title page for effective date.

CHAPTER 266

H.P. 1032 - L.D. 1438

An Act To Implement Certain Recommendations of the Criminal Law Advisory Commission Relative to the Maine Bail Code, Statutory Post-conviction Review, the Maine Criminal Code and a Related Statute

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

Sec. 1. 15 MRSA §1091-A, as enacted by PL 1995, c. 456, §1, is amended to read:

§1091-A. Failure to report

1. Failure to report after stay of execution. A defendant who has been sentenced but granted a stay of execution to report ~~at until a specific time specified date or event~~ and who, in fact, fails to report as ordered is guilty of:

A. A Class E crime if the underlying crime was punishable by a maximum period of imprisonment of less than one year; or

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more.

~~It is an affirmative defense that the failure to appear resulted from just cause.~~

2. Affirmative defense. It is an affirmative defense to prosecution under subsection 1 that the failure to report resulted from just cause.

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 2. 15 MRSA §2124, sub-§1, ¶F, as enacted by PL 2011, c. 601, §7, is amended to read:

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~~

Sec. 3. 15 MRSA §2124, sub-§1, ¶F-1 is enacted to read:

F-1. Community service work imposed by the challenged criminal judgment that has not been fully performed and in a case when a person has not inexcusably failed to complete the work within the time specified by the court; or

Sec. 4. 15 MRSA §2125, as amended by PL 2011, c. 601, §8, 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 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~~, section 2128 unless section 2128-A applies, or section 2128-B.

Sec. 5. 15 MRSA §2126, as amended by PL 1985, c. 556, §2, is further amended to read:

§2126. Exhaustion

A person under restraint or impediment specified in section 2124 must also demonstrate that ~~he the person~~ 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 ~~or~~ a judgment of not criminally responsible by reason of insanity is not precluded from utilizing the remedy of this chapter while the appeal is pending, ~~provided that the~~. The post-conviction review proceeding is auto-

matically stayed pending resolution of the appeal unless the Appellate Court on motion and for good cause otherwise directs.

Sec. 6. 15 MRSA §2138, sub-§12, as amended by PL 2011, c. 601, §13, is further 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, ~~as long as the~~. 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, ~~as long as~~. The 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. 7. 17-A MRSA §757, sub-§1, ¶B, as enacted by PL 1975, c. 499, §1, is amended to read:

B. Being a person in official custody, ~~he the person~~ intentionally makes, obtains or possesses contraband.

Sec. 8. 17-A MRSA §1304, sub-§3, ¶B, as enacted by PL 1999, c. 367, §5, is amended to read:

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 ~~or may permit the offender to perform community service work at a rate authorized by paragraph A, subparagraph (2), supervised by the sheriff of the county in which the court that assessed the fine is located or by a community confinement monitoring agency with which that sheriff has contracted under Title 30-A, section 1659-A.~~

Sec. 9. 22 MRSA §2383-B, sub-§2, ¶¶E and F, as amended by PL 1997, c. 340, §5, are further amended to read:

E. Physicians, dentists, podiatrists, pharmacists or other persons authorized by law or rule to administer, dispense, prescribe or sell scheduled or prescription drugs, controlled substances or hypodermic apparatuses while acting within the course of their professional practice; ~~and~~

F. With regard to the possession or furnishing of hypodermic apparatuses, persons authorized by the Bureau of Health pursuant to a hypodermic apparatus exchange program, certified under

chapter 252-A while acting within the scope of their employment under such programs; and

Sec. 10. 22 MRSA §2383-B, sub-§2, ¶G is enacted to read:

G. Persons conducting research at a school of pharmacology that is accredited or is a candidate for accreditation in good standing.

See title page for effective date.

CHAPTER 267

H.P. 1070 - L.D. 1493

An Act To Revise the Laws Concerning Criminal History Record Information and Intelligence and Investigative Information

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

PART A

Sec. A-1. 16 MRSA c. 3, sub-c. 8, as amended, is repealed.

Sec. A-2. 16 MRSA c. 7 is enacted to read:

CHAPTER 7

CRIMINAL HISTORY RECORD INFORMATION ACT

§701. Short title

This chapter may be known and cited as "the Criminal History Record Information Act."

§702. Scope; application

This chapter governs the dissemination of criminal history record information by a Maine criminal justice agency. This chapter establishes 2 distinct categories of criminal history record information and provides for the dissemination of each:

1. Public criminal history record information. Public criminal history record information, the dissemination of which is governed by section 704; and

2. Confidential criminal history record information. Confidential criminal history record information, the dissemination of which is governed by section 705.

§703. Definitions

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

1. Administration of criminal justice. "Administration of criminal justice" means activities relat-

ing to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information.

2. Confidential criminal history record information. "Confidential criminal history record information" means criminal history record information of the following types:

A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending;

B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;

C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;

D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;

E. Information disclosing that a criminal proceeding has been indefinitely postponed or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced;

F. Information disclosing that a criminal charge has been filed, if the filing period is indefinite or for more than one year;

G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;

H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;

I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;

J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and