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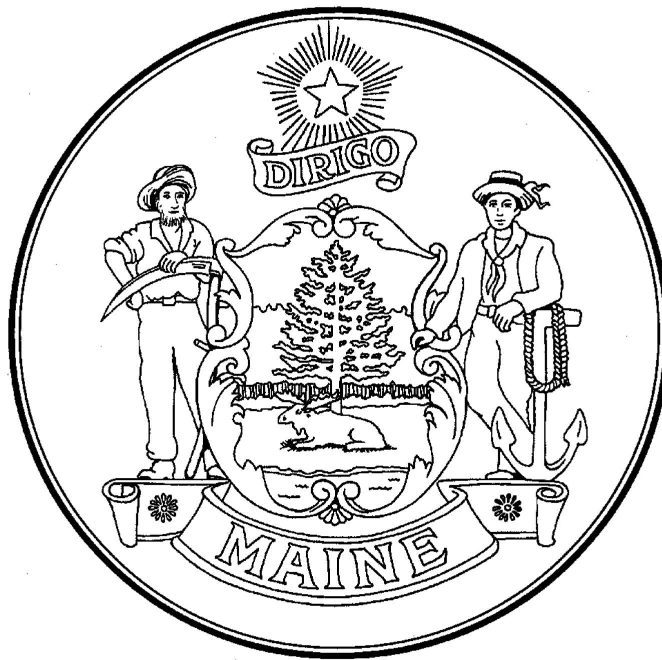

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

SECOND SPECIAL SESSION
June 19, 2018 to September 13, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 13, 2018

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2018 to June 20, 2019

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 2019

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

Augusta, Maine
2019

director may restrict public access to any portion of the land or waters within the bureau's jurisdiction when the restrictions reasonably relate to protecting public health, safety or welfare or the economic interests or natural resources of the State~~.~~; and

Sec. 3. 12 MRSA §1804, sub-§7 is enacted to read:

7. Minimum staffing levels. Determine minimum levels of staffing for all state parks, except Baxter State Park, and historic sites and national parks that are controlled and managed by the State. When making a determination of staffing levels under this subsection, the director shall consider for each park and historic site the following:

A. Visitor capacity limits;

B. Historical data regarding visitor use;

C. Availability of local emergency response services;

D. If local emergency response services are used, response time of emergency response;

E. Distance to medical services;

F. Communication capacity of staff to summon emergency response services or assistance;

G. Relative to emergency response, training and authority levels of staff;

H. Emergency planning issues specific to a park or historic site;

I. Historical record of emergency response incidents and near misses; and

J. Historical record of severe weather emergencies.

For purposes of this subsection, historical data must include 10 years of data at a minimum.

See title page for effective date.

CHAPTER 111

S.P. 332 - L.D. 1100

An Act To Clarify the Contents of the Complete Agency Record in the Appeal of an Agency's Failure or Refusal To Act

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

Sec. 1. 5 MRSA §11005, as enacted by PL 1977, c. 551, §3, is amended to read:

§11005. Responsive pleading; filing of the record

No responsive pleading need be filed unless required by order of the reviewing court. The agency shall file in the reviewing court within 30 days after the petition for review is filed, or within such shorter or longer time as the court may allow on motion, the original or a certified copy of the complete record of the proceedings under review. In the case of the alleged failure or refusal of an agency to act, the record must include written, electronic or otherwise memorialized communications, directives, orders and other documentation of all decisions by the agency to act, to refuse to act or to delay action. Within 20 days after the petition for review is filed, all parties to the agency proceeding who wish to participate in the review shall file a written appearance ~~which shall state~~ that states a position with respect to affirmance, vacation, reversal or modification of the decision under review.

See title page for effective date.

CHAPTER 112

H.P. 837 - L.D. 1148

An Act Regarding the Costs Incurred by Municipalities in the Administration of Aquaculture Lease and License Applications

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

Sec. 1. 12 MRSA §6088 is enacted to read:

§6088. Municipal fees

If a person submits an application to the commissioner for a lease or license under this subchapter and the municipality provides the commissioner with information necessary for the completion of that lease or license application, the municipality may not charge that person a fee of more than $50 for the administrative costs associated with providing that information to the commissioner on that person's behalf.

See title page for effective date.

CHAPTER 113

H.P. 1022 - L.D. 1407

An Act To Revise and Recodify Certain Provisions of the Maine Criminal Code

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until

90 days after adjournment unless enacted as emergencies; and

Whereas, since the Maine Criminal Code became effective on May 1, 1976, Part 3, addressing punishments, has undergone extensive additions and amendments, each of which was done separately and without reorganization of content; and

Whereas, the proposed recodification and revision of Part 3 of the Maine Criminal Code that is contained in this legislation will greatly assist prosecutors, defense attorneys, advocates and judges in their daily work within the criminal justice system; and

Whereas, emergency enactment of this legislation is critical to enable the Legislature to consider this recodification and revision when enacting other legislation during the First Regular Session of the 129th Legislature; 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:

PART A

Sec. A-1. 17-A MRSA Pt. 3, as amended, is repealed.

Sec. A-2. 17-A MRSA Pts. 6 and 7 are enacted to read:

PART 6

PUNISHMENTS

CHAPTER 61

GENERAL SENTENCING PROVISIONS

§1501. Purposes

The general purposes of the provisions of this Part are to:

1. Prevent crime. Prevent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety;

2. Encourage restitution. Encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;

3. Minimize correctional experiences. Minimize correctional experiences that serve to promote further criminality;

4. Provide notice of nature of sentences that may be imposed. Give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;

5. Eliminate inequalities in sentences. Eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

6. Encourage just individualization of sentences. Encourage differentiation among persons with a view to a just individualization of sentences;

7. Elicit cooperation of individuals through correctional programs. Promote the development of correctional programs that elicit the cooperation of convicted individuals;

8. Permit sentences based on factors of crime committed. Permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of:

A. The age of the victim, particularly of a victim of an advanced age or of a young age who has a reduced ability to self-protect or who suffers more significant harm due to age; and

B. The selection by the person of the victim or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation or homelessness of the victim or of the owner or occupant of that property; and

9. Recognize domestic violence and certified batterers' intervention programs. Recognize domestic violence as a serious crime against the individual and society and to recognize batterers' intervention programs certified pursuant to Title 19-A, section 4014 as the most appropriate and effective community intervention in cases involving domestic violence.

§1502. Authorized sentences

1. Sentences imposed on individuals and organizations. Every person convicted of a crime must be sentenced in accordance with the provisions of this Part.

2. Sentencing alternatives for individuals. The court shall sentence an individual convicted of a crime to at least one of the following sentencing alternatives:

A. Unconditional discharge as authorized by chapter 73;

B. A split sentence of imprisonment with probation as authorized by chapter 67, subchapter 1;

C. A fine, suspended in whole or in part, with, at the court's discretion, probation as authorized by chapter 67, subchapter 1;

D. A suspended term of imprisonment with probation as authorized by chapter 67, subchapter 1;

E. A term of imprisonment as authorized by chapter 63;

F. A fine as authorized by chapter 65, subchapter 1, which may be imposed in addition to the sentencing alternatives in paragraphs B, D, E, G, H, J, K and L;

G. A county jail reimbursement fee as authorized by section 1751;

H. A specified number of hours of community service work as authorized by chapter 71;

I. A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 67, subchapter 2;

J. A suspended term of imprisonment with administrative release as authorized by chapter 67, subchapter 2;

K. A split sentence of imprisonment with administrative release as authorized by chapter 67, subchapter 2; or

L. A term of imprisonment followed by a period of supervised release as authorized by chapter 67, subchapter 3.

3. Deferred disposition. The court may accept a plea agreement between the attorney for the State and the defendant that provides for an agreed-upon authorized sentencing alternative the imposition of which is deferred in accordance with chapter 67, subchapter 4.

4. Restitution by individuals. The court may require an individual convicted of a crime to make restitution as authorized by chapter 69. Subject to the limitations of chapter 69, restitution may be imposed as a condition of probation or may be imposed in addition to any other sentencing alternative included within subsection 2 with the exception of an unconditional discharge.

5. Consideration of sentencing alternative involving fine for individuals. Except when specifically precluded, in choosing the appropriate punishment for an individual convicted of a crime, the court shall consider imposing a sentencing alternative involving a fine either in conjunction with or in lieu of imposing a sentencing alternative involving imprisonment.

6. Consideration of substance use disorder treatment for individuals convicted of Class D drug offense. In choosing the appropriate punishment for an individual convicted of a Class D drug offense, the court shall consider imposing a sentencing alternative that includes medical and mental health treatment for substance use disorder, when appropriate.

7. Sentencing alternatives for organizations. The court shall sentence an organization convicted of a crime to at least one of the following sentencing alternatives:

A. Unconditional discharge as authorized by chapter 73;

B. A fine, suspended in whole or in part, with probation as authorized by chapter 67, subchapter 1;

C. A fine as authorized by chapter 65, subchapter 1;

D. A sanction authorized by section 1503, which may be imposed in addition to the sentencing alternatives in paragraphs B, C and E; or

E. A fine, suspended in whole or in part, with administrative release as authorized by chapter 67, subchapter 2.

8. Restitution by organizations. The court may require an organization convicted of a crime to make restitution as authorized by chapter 69. Subject to the limitations of chapter 69, restitution may be imposed as a condition of probation or may be imposed in addition to any other sentencing alternative included within subsection 7, with the exception of an unconditional discharge.

9. Other authority of court, Department of Corrections and jails. The provisions of this chapter do not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An appropriate order exercising such authority may be included as part of the judgment of conviction. The provisions of this chapter do not affect the authority of the Department of Corrections or a county jail granted by statute or the authority to transfer individuals from one facility to another by agreement.

§1503. Sanctions for organizations

1. Notice to those interested in or affected by conviction. If an organization is convicted of a crime, the court may, in addition to or in lieu of imposing other authorized penalties, sentence the organization to give appropriate publicity to the conviction by notice to the class or classes of persons or sector of the public interested in or affected by the conviction, by advertising in designated areas or by designated media or otherwise as the court may direct. Failure of the organization to provide the notice required by the court may be punishable as contempt of court.

2. Disqualification from holding office. If a director, trustee or managerial agent of an organization is convicted of a Class A or Class B crime committed on behalf of the organization, the court may include in the sentence an order disqualifying that individual from holding office in the same or another organization for a period not exceeding 5 years, if the court finds that the scope or nature of that individual's illegal actions makes it dangerous or inadvisable for such office to be entrusted to that individual.

3. Deferred disposition. The court may accept a plea agreement between the attorney for the State and the defendant that provides for an agreed-upon authorized sentencing alternative the imposition of which is deferred in accordance with chapter 67, subchapter 4.

4. Supplementary proceedings for damages. Prior to the imposition of sentence, the court may direct the Attorney General, a district attorney or any other attorney specially designated by the court to institute supplementary proceedings in the case in which the organization was convicted of the crime to determine, collect and distribute damages to persons in the class that the statute was designed to protect who suffered injuries by reason of the crime, if the court finds that the multiplicity of small claims or other circumstances make restitution by individual suit impractical. Such supplementary proceedings must be pursuant to rules adopted by the Supreme Judicial Court for this purpose. The court in which proceedings authorized by this subsection are commenced may order the State to make available to the attorney appointed to institute such proceedings all documents and investigative reports as are in the State's possession or control and grand jury minutes as are relevant to the proceedings.

§1504. Forfeiture of firearms

1. Mandatory forfeiture. As part of every sentence imposed, except as provided in subsection 2, a court shall order that a firearm must be forfeited to the State if:

A. That firearm constitutes the basis for conviction under:

(1) Title 15, section 393;

(2) Section 1105-A, subsection 1, paragraph C-1;

(3) Section 1105-B, subsection 1, paragraph C;

(4) Section 1105-C, subsection 1, paragraph C-1;

(5) Section 1105-D, subsection 1, paragraph B-1;

(6) Section 1105-E, subsection 1, paragraph B; or

(7) Section 1118-A, subsection 1, paragraph B;

B. The State pleads and proves that the firearm is used by the person or an accomplice during the commission of any murder or Class A, Class B or Class C crime or any Class D crime defined in chapter 9, 11 or 13; or

C. The person, with the approval of the State, consents to the forfeiture of the firearm.

2. Prohibited forfeiture. Except as provided in subsection 3, a court may not order the forfeiture of a firearm otherwise qualifying for forfeiture under subsection 1 if, prior to the imposition of the person's sentence:

A. For a crime other than murder or any other unlawful homicide crime, another person satisfies the court by a preponderance of the evidence that the other person, at the time of the commission of the crime, had a right to possess the firearm to the exclusion of the convicted person; or

B. For the crime of murder or any other unlawful homicide crime, another person satisfies the court by a preponderance of the evidence that the other person, at the time of the commission of the crime, was the rightful owner from whom the firearm had been stolen and the other person was not a principal or accomplice in the commission of the crime.

3. Exceptions to prohibited forfeiture. Notwithstanding subsection 2, paragraph A, the court shall order the forfeiture of a firearm even if another person meets the requirements of subsection 2, paragraph A if the person being sentenced was convicted of possessing a firearm in violation of Title 15, section 393 and, prior to the imposition of the person's sentence, the State satisfies the court by a preponderance of the evidence that the other person:

A. Knew or should have known that the convicted person was prohibited from owning, possessing or controlling a firearm under Title 15, section 393; and

B. Intentionally, knowingly or recklessly allowed the convicted person to possess or have under the convicted person's control the firearm.

4. Disposition of forfeited firearms. The Attorney General shall adopt rules governing the disposition to state, county and municipal agencies of firearms forfeited under this section. A firearm used during a murder or other unlawful homicide crime that does not meet the prohibition from forfeiture under subsection 2, paragraph B must be destroyed by the State.

CHAPTER 63

SENTENCES OF IMPRISONMENT

§1601. Definite term of imprisonment required

In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment, the court shall set a definite term of imprisonment.

§1602. Sentencing procedure

1. Class A, Class B or Class C crimes. In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment for a Class

A, Class B or Class C crime, in setting the appropriate length of that term as well as any unsuspended portion of that term accompanied by a period of probation or administrative release, the court shall employ the following 3-step process.

A. First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.

B. Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest.

C. Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension.

2. Crime of murder. In imposing a sentence pursuant to section 1603 for the crime of murder, the court shall employ only the first 2 steps of the sentencing process as specified in subsection 1, paragraphs A and B.

3. Imposition of supervised release after imprisonment for violation of gross sexual assault. When the court imposes a period of supervised release after imprisonment for a violation of section 253, subsection 1, paragraph C as required by section 1881, subsection 1 or chooses to impose a period of supervised release after imprisonment for any other violation of section 253, as authorized by section 1881, subsection 2, the court, after employing the first 2 steps of the sentencing process as specified in subsection 1, paragraphs A and B, shall determine the appropriate period of supervised release to follow the maximum term of imprisonment.

§1603. Imprisonment for crime of murder

1. Sentence. A person convicted of the crime of murder must be sentenced to imprisonment for life or for any term of years that is not less than 25. The sentence of the court must specify the length of the sentence to be served and must commit the person to the Department of Corrections.

2. Factors of domestic violence or victim's age or pregnancy. In setting a term of imprisonment pursuant to subsection 1, the court shall assign special weight to each of the following 3 factors as they relate to the sentencing procedure in section 1602, subsection 2:

A. That the victim is a child who had not in fact attained 6 years of age at the time the crime was committed;

B. That the victim is a woman whom the convicted individual knew or had reasonable cause to believe to be in fact pregnant at the time the crime was committed; and

C. That the victim is a family or household member as defined in Title 19-A, section 4002, subsection 4 who is a victim of domestic violence committed by the convicted individual.

This subsection may not be construed to restrict a court in setting a term of imprisonment from considering the age of the victim in other circumstances when relevant.

§1604. Imprisonment for crimes other than murder

1. Maximum terms of imprisonment dependent on crime class. Unless a different maximum term of imprisonment is specified by statute, the maximum term of imprisonment is as follows:

A. In the case of a Class A crime, 30 years;

B. In the case of a Class B crime, 10 years;

C. In the case of a Class C crime, 5 years;

D. In the case of a Class D crime, less than one year; or

E. In the case of a Class E crime, 6 months.

2. Exceptions to maximum term of imprisonment based on crime class. Notwithstanding subsection 1:

A. In the case of the Class A crime of aggravated attempted murder, the court shall set a term of imprisonment under section 152-A, subsection 2 of life or a definite period of any term of years;

B. If the State pleads and proves that the defendant is a repeat sexual assault offender, the court may set a definite term of imprisonment under section 253-A, subsection 1 for any term of years; and

C. In the case of the Class A crime of gross sexual assault against an individual who had not yet attained 12 years of age, the court shall set a definite term of imprisonment under section 253-A, subsection 2 for any term of years.

3. Mandatory minimum term of imprisonment for crime with use of firearm against an individual. If the State pleads and proves that a Class A, B or C crime was committed with the use of a firearm against an individual, the minimum sentence of imprisonment, which may not be suspended, is as follows:

A. In the case of a Class A crime, 4 years;

B. In the case of a Class B crime, 2 years; and

C. In the case of a Class C crime, one year.

For purposes of this subsection, the applicable sentencing class is determined in accordance with subsection 5, paragraph A.

This subsection does not apply if the State pleads and proves criminal threatening or attempted criminal threatening, as defined in section 209, or terrorizing or attempted terrorizing, as dC:\BPS Items\Chapters - 129thefined in section 210, subsection 1, paragraph A.

4. Mandatory minimum sentence of imprisonment for certain drug crimes. For an individual convicted of violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A, except as otherwise provided in section 1125, subsections 2 and 3, the court shall impose a minimum sentence of imprisonment, which may not be suspended, as provided in section 1125, subsection 1.

5. Circumstances elevating class of crime. The following circumstances elevate the class of a crime.

A. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon, then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use must be assigned special weight by the court in exercising its sentencing discretion. This paragraph does not apply to a violation or an attempted violation of section 208, to any other offenses to which use of a dangerous weapon serves as an element or to any offense for which the sentencing class is otherwise elevated because the actor or an accomplice to that actor's or accomplice's knowledge was armed with a firearm or other dangerous weapon.

B. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 12, 13, 27 or 35, excluding section 853-A; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, or an attempt of any such crime was committed, the individual had 2 or more prior convictions under chapter 9, 11,12, 13, 27 or 35, excluding section 853-A; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C, or for an attempt of any such crime, or for engaging in substantially similar conduct in another jurisdiction, the sentencing class for the crime is one class higher than it would otherwise be.

(1) In the case of a Class A crime, the sentencing class is not elevated, but the prior record must be assigned special weight by the court when imposing a sentence.

(2) Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, for violations under chapter 11, the dates of prior convictions may have occurred at any time.

This paragraph does not apply to section 210-A if the prior convictions have already served to elevate the sentencing class under section 210-A, subsection 1, paragraph C or E or any other offense in which prior convictions have already served to elevate the sentencing class.

C. The sentencing class for a crime that is pled and proved and is subject to elevation pursuant to both paragraphs A and B may be elevated successively pursuant to both of those paragraphs if the crime that is pled and proved contains different class elevation factors.

6. Special weight required for certain aggravating sentencing factors pleaded and proved. In exercising its sentencing discretion, a court shall assign special weight to the following aggravating sentencing factors pleaded and proved by the State:

A. In the case of Class A gross sexual assault, the aggravating sentencing factor specified in section 253-A, subsection 3, paragraph A;

B. In the case of gross sexual assault in violation of section 253, subsection 1 or section 253, subsection 2, the aggravating sentencing factor specified in section 253-A, subsection 3, paragraph B; and

C. In the case of sexual exploitation of a minor, the aggravating sentencing factor specified in section 282, subsection 3.

7. Special weight required for certain aggravating sentencing factors found present by court. In exercising its sentencing discretion, the court shall assign special weight to the following aggravating sentencing factors if found by the court.

A. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of aggravated attempted murder, attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a child who had not in fact attained 6 years of age at the time the crime was committed, the court shall assign special weight to this objective fact in determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B. The court may not suspend that portion of the maximum term of imprisonment based on objective or

subjective victim impact in arriving at the final sentence as the 3rd and final step in the sentencing process specified in section 1602, subsection 1, paragraph C. This paragraph may not be construed to restrict a court in setting a sentence from considering the age of the victim in other circumstances when relevant.

B. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of aggravated attempted murder, attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a woman who the convicted individual knew or had reasonable cause to believe to be in fact pregnant at the time the crime was committed, the court shall assign special weight to this fact in determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd and final step in the sentencing process specified in section 1602, subsection 1, paragraph C. This paragraph may not be construed to restrict a court in setting a sentence from considering the fact that the victim was pregnant in other circumstances when relevant.

C. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of a Class C or higher crime, the victim of which was at the time of the commission of the crime in fact being stalked by that individual, the court shall assign special weight to this objective fact in determining the basic sentence in the first step of the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact caused by the stalking in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B.

§1605. Suspension of all or part of the term of imprisonment imposed

Unless the law that the individual is convicted of violating expressly provides that an authorized term of imprisonment may not be suspended, if the individual is eligible for probation as authorized by chapter 67, subchapter 1 or administrative release as authorized by chapter 67, subchapter 2, a sentencing court may suspend the authorized term of imprisonment in whole or in part and accompany the suspension with a period of probation, which may not exceed the maximum period of probation authorized for the crime pursuant to section 1804, or a period of administrative release, which may not exceed one year.

§1606. General inapplicability of deductions under chapter 81 in setting the term of imprisonment

If a court imposes a sentencing alternative pursuant to section 1502 that includes a term of imprisonment, in setting the appropriate length of that term, as well as an unsuspended portion of that term, if any, the court may not consider the potential impact of deductions under chapter 81 except in the context of a plea agreement in which both parties are recommending to the court a particular disposition under the Maine Rules of Unified Criminal Procedure, Rule 11-A.

§1607. Prohibition against imprisonment based on incapacity to pay fine

If a court finds that an individual has met the burden of proving incapacity to pay a fine pursuant to section 1702, subsection 2, the court may not impose a term of imprisonment or any other sentencing alternative involving imprisonment solely for the reason that the individual does not have the present or future capacity to pay the fine.

§1608. Multiple sentences of imprisonment

1. Court to state whether sentence is served concurrently or consecutively; consecutive sentence contingent upon certain factors. The court shall state in the sentence of imprisonment whether a sentence must be served concurrently with or consecutively to any other sentence previously imposed or to another sentence imposed on the same date. The sentences must be concurrent except that the court may impose the sentences consecutively after considering the following factors:

A. The convictions are for offenses based on different conduct or arising from different criminal episodes;

B. The individual was under a previously imposed suspended or unsuspended sentence and was on probation or administrative release, under incarceration or on a release program or period of supervised release at the time the individual committed a subsequent offense;

C. The individual had been released on bail when that individual committed a subsequent offense, either pending trial of a previously committed offense or pending the appeal of previous conviction; or

D. The seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes or the seriousness of the criminal record of the individual, or both, re-

quire a sentence of imprisonment in excess of the maximum available for the most serious offense.

2. Limitations on imposition of consecutive terms for crimes in same criminal episode. An individual may not be sentenced to consecutive terms for crimes arising out of the same criminal episode if:

A. One crime is an included crime of the other;

B. One crime consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other;

C. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of that conduct; or

D. Inconsistent findings of fact are required to establish the commission of the crimes.

3. Reason for consecutive sentences must be stated. If the court decides to impose consecutive sentences, the court shall state its reasons for doing so on the record or in the sentences.

4. When new sentence is to be served consecutively for individual on probation, administrative release or supervised release. If an individual has been placed on probation, administrative release or supervised release pursuant to a previously imposed sentence and the court determines that the previously imposed sentence and a new sentence must be served consecutively, the court shall revoke probation or administrative release pursuant to section 1812, subsections 5 and 6 or terminate supervised release pursuant to section 1881, subsection 6. The court may order that the sentence that had been suspended be served at the same institution as that which is specified by the new sentence.

5. Mandatory resentencing following discovery of previously imposed sentence. If it is discovered subsequent to the imposition of a sentence of imprisonment that the sentencing court was unaware of a previously imposed sentence of imprisonment that is not fully discharged, the court shall resentence the individual and shall specify whether the sentences are to be served concurrently or consecutively.

6. Special requirements for individual previously sentenced in another jurisdiction. If an individual who has been previously sentenced in another jurisdiction has not commenced or completed that sentence, the court may, with consideration of the factors stated in subsection 1, sentence the individual to a term of imprisonment that must be treated as a concurrent sentence from the date of sentencing although the individual is incarcerated in an institution of the other jurisdiction. A concurrent sentence pursuant to this subsection may not be imposed unless the individual being sentenced consents or unless the individual being sentenced executes, at the time of sentencing, a written waiver of extradition for that individual's return to this State, upon completion of the sentence of the other jurisdiction, if any portion of this State's sentence remains unserved. In the absence of an order pursuant to this subsection requiring concurrent sentences, any sentence of imprisonment in this State commences as provided in section 2303, subsections 1 and 2 and runs consecutively to the sentence of the other jurisdiction.

7. Sentencing subsequent to probation, administrative release or supervised release. A court may not impose a sentence of imprisonment, not wholly suspended, to be served consecutively to any split sentence, or to any sentence including supervised release under chapter 67, subchapter 3, previously imposed or imposed on the same date, if the net result, even with the options made available by subsections 4 and 8, section 1804, subsection 12, section 1852, subsection 5 and section 1881, subsection 6, would be to have the individual released from physical confinement to be on probation, administrative release or supervised release for the first sentence and thereafter be required to serve an unsuspended term of imprisonment on the 2nd sentence.

8. Rearrangement of order of sentences. A court imposing a sentence of imprisonment to be served consecutively to any other previously imposed sentence that the individual has not yet commenced, in order to comply with subsection 7, may rearrange the order in which the sentences are to be served.

§1609. Nonconcurrent sentence for crime attempted or committed while in execution of term of imprisonment

Notwithstanding section 1608, when an individual subject to an undischarged term of imprisonment is convicted of a crime committed while in execution of any term of imprisonment or of an attempt to commit a crime while in execution of any term of imprisonment, the sentence is not concurrent with any undischarged term of imprisonment. The court may order that any undischarged term of imprisonment be tolled and service of the nonconcurrent sentence commence immediately and the court shall so order if any undischarged term of imprisonment is a split sentence. No portion of the nonconcurrent sentence may be suspended. Any sentence that the convicted individual receives as a result of the conviction of a crime or attempt to commit a crime while in execution of a term of imprisonment must be nonconcurrent with all other sentences.

This section applies to prisoners on supervised community confinement pursuant to Title 34-A, section 3036-A.

§1610. Place of imprisonment

1. Class D or Class E crimes. The court shall specify a county jail as the place of imprisonment for

an individual convicted of a Class D or Class E crime, except that, if a sentence to a term of imprisonment in a county jail is consecutive to or is to be followed by a sentence to a term of imprisonment in the custody of the Department of Corrections, the court imposing either sentence may order that both be served in the custody of the Department of Corrections. If a court imposes consecutive terms of imprisonment for Class D or Class E crimes and the aggregate length of the terms imposed is one year or more, the court may order that they be served in the custody of the Department of Corrections.

2. Class A, Class B or Class C crimes. For an individual convicted of a Class A, Class B or Class C crime the court shall:

A. Specify a county jail as the place of imprisonment if the term of imprisonment is 9 months or less; or

B. Commit the individual to the Department of Corrections if the term of imprisonment is more than 9 months.

3. Intermittent service of county jail sentence. At the request of or with the consent of a convicted individual, the court may order a sentence of imprisonment under this chapter in a county jail, a sentence of probation involving imprisonment in a county jail under chapter 67, subchapter 1 or a sentence of administrative release involving imprisonment in a county jail under chapter 67, subchapter 2 to be served intermittently.

§1611. Commitments to Department of Corrections of bound-over juveniles who have not attained 18 years of age at the time of sentencing

A juvenile who has been bound over, pursuant to Title 15, section 3101, subsection 4, who is subsequently, as to the juvenile crime's adult counterpart, convicted and sentenced to a sentencing alternative involving imprisonment and who has not attained 18 years of age at the time of sentence imposition must be committed to a Department of Corrections juvenile correctional facility for an indeterminate period not to extend beyond the juvenile's 18th birthday to serve the term of imprisonment or any unsuspended portion until discharge from the juvenile correctional facility, and once discharged the juvenile must be transferred to a correctional facility in which adult individuals are confined to serve out the remainder of the imprisonment term or unsuspended portion, if any.

§1612. Tolling of sentence of noncompliant witness

In the event a witness in a grand jury or criminal proceeding has been ordered confined by a court in the State as a remedial coercive sanction for refusing to comply with an order of the court to testify or provide evidence, and that witness is already in execution of an undischarged term of imprisonment on a sentence in the State, that court may order that the undischarged term of imprisonment be tolled for the duration of the coercive imprisonment.

CHAPTER 65

FINES, FEES, ASSESSMENTS AND SURCHARGES

SUBCHAPTER 1

FINES

§1701. Definite fine amount required

In imposing a sentencing alternative pursuant to section 1502 that includes a fine, the court shall set a specific amount of money.

§1702. Criteria for imposing sentencing alternative that includes fine

1. Consideration of financial capacity to pay and financial burden. In determining the amount of a fine, unless the fine amount is mandatory, and in determining the method of payment of a fine, the court shall take into account the present and future financial capacity of the convicted person to pay the fine and the nature of the financial burden that payment of the fine will impose on the person or a dependent, if any, of the person.

2. Burden of proving financial hardship or incapacity to pay. A convicted person who asserts a present or future incapacity to pay a fine or asserts that the fine will cause an excessive financial hardship on the person or on a dependent of the person has the burden of proving the incapacity or excessive hardship by a preponderance of the evidence. On appeal of a sentencing alternative involving a fine, the person has the burden of demonstrating that the incapacity or excessive financial hardship was proven as a matter of law.

§1703. Use of fine relative to individuals

Except when specifically precluded, in choosing the appropriate punishment for an individual convicted of a crime, the court shall consider the desirability of imposing a sentencing alternative involving a fine either in conjunction with or in lieu of a sentencing alternative involving imprisonment. A sentencing alternative involving imprisonment may not be imposed by a court solely for the reason that the individual does not have the present or future financial capacity to pay a fine.

§1704. Maximum fine amounts authorized for convicted individuals

An individual who has been convicted of a Class A, Class B, Class C, Class D or Class E crime may be sentenced to pay a fine. Except as provided in section 1706 and unless a different maximum fine is specified

by statute, the maximum fine that may be imposed by a court on a convicted individual is as follows:

1. Class A crime. In the case of a Class A crime, $50,000;

2. Class B crime. In the case of a Class B crime, $20,000;

3. Class C crime. In the case of a Class C crime, $5,000;

4. Class D crime. In the case of a Class D crime, $2,000; and

5. Class E crime. In the case of a Class E crime, $1,000.

§1705. Maximum fine amounts authorized for convicted organizations

An organization that has been convicted of murder or a Class A, Class B, Class C, Class D or Class E crime may be sentenced to pay a fine. Except as provided in section 1706 and unless a different maximum fine is specified by statute, the maximum fine that may be imposed by a court on a convicted organization is as follows:

1. Crime of murder. In the case of the crime of murder, any amount;

2. Class A crime. In the case of a Class A crime, $100,000;

3. Class B crime. In the case of a Class B crime, $40,000;

4. Class C crime. In the case of a Class C crime, $20,000; and

5. Class D crime or Class E crime. In the case of a Class D crime or a Class E crime, $10,000.

§1706. Exceptions to maximum fine amounts

Notwithstanding the maximum fine amounts specified in sections 1704 and 1705, a court may impose fines as provided in this section.

1. Pecuniary gain. Regardless of the classification of the crime, the court may impose a fine on a convicted person that is in an amount greater than the maximum fine amounts specified in section 1704 for an individual and section 1705 for an organization as long as the fine does not exceed twice the pecuniary gain derived from the crime by the convicted person. The State must plead and prove the amount of money or the value of the property obtained by the person at the time of the commission of the crime. At sentencing, if the court is considering imposing a fine based upon pecuniary gain, it shall hold a hearing in order to determine the pecuniary gain. At the hearing the court shall determine whether any money or property was returned to the victim of the crime or was seized by or surrendered to a lawful authority prior to the time of sentencing, and shall determine the value of any such property. If the court finds that money or property was returned, seized or surrendered, the court shall reduce the pecuniary gain pleaded and proved by the State by the amount of money or the value of property returned, seized or surrendered in order to arrive at the net amount of pecuniary gain upon which a fine may be based pursuant to this subsection. If the court determines that no money or property was returned, seized or surrendered, the court shall base the fine on the amount pleaded and proved by the State.

As used in this subsection, "pecuniary gain" means the amount of money or the value of property at the time of the commission of the crime derived by the person from the commission of the crime.

2. Fine based on quantity of item illegally possessed by convicted person. Whenever a statute makes the possession of a particular item, whether animate or inanimate, a criminal offense and provides that the amount of the fine depends upon the quantity of the item possessed by the person, if the State pleads and proves the quantity of the item possessed by the person, the fine is as provided for in the statute and is not subject to the maximum limits placed on fines by sections 1704 and 1705.

3. Fine based on value of scheduled drug at time of offense. Whenever a statute authorizes that the amount of the fine for a specific drug offense be based on the value of the scheduled drug at the time of the offense upon which the conviction is based, if the State pleads and proves the value of the scheduled drug at the time of the offense, the fine may be as provided for in the statute and is not subject to the maximum limits placed on fines by sections 1704 and 1705.

§1707. Multiple fines imposed on convicted person

When multiple fines are imposed on a convicted person at the same time or when a fine is imposed on a convicted person already subject to an unpaid or partly unpaid fine, the fines must be cumulative, unless the court specifies that only the highest single fine must be paid in the case of offenses based on the same conduct or arising out of the same criminal episode or for other good cause stated on the record or in the sentences.

§1708. Time and method of payment of fines imposed on convicted person

1. Timing of fine payment. If a convicted person is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If such permission is not included in the sentence, the fine must be paid immediately to the clerk of the court.

2. Payment as condition of probation or administrative release. If a convicted person sentenced to pay a fine is also placed on probation or administrative release, the court may make the payment of the fine a condition of probation or administrative release.

In the case of probation, the court may order that the fine be paid to the convicted person's probation officer.

§1709. Post-conviction relief invalidating conviction; potential return of fine payments

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

§1710. Modification of payment of fine

If a convicted person who has been sentenced to pay a fine is in danger of default, that person shall move the court for a modification of time or method of payment to avoid a default. The court may modify its prior order to allow additional time for payment or to reduce the amount of each installment.

§1711. Default

1. Return to court upon default. A convicted person who has been sentenced to pay a fine and who fails to pay part or all of that fine is in default and must be returned to court to explain the failure to pay the fine.

2. Court authorized to conduct default hearing. A convicted person who has defaulted on the payment of a fine and is required to be returned to a court pursuant to a warrant may be returned to the court that issued the warrant or to the court having jurisdiction over the area where the warrant was executed. Either court is authorized to conduct the default hearing pursuant to subsection 4.

For purposes of this subsection, "convicted person" includes an individual or individuals authorized to make disbursements from the assets of a convicted organization.

3. Reporting of default; motion to revoke probation, revoke administrative release or enforce payment. A probation officer having knowledge of a default in payment of a fine by a convicted person shall report the default to the office of the attorney for the State. An attorney for the State having knowledge of a default in payment of a fine by a convicted person shall report the default to the court. If the fine was a condition of probation, the attorney for the State may file a motion to enforce payment of the fine or, with the written consent of the probation officer, a motion to revoke probation under section 1811. If the fine was a requirement of administrative release, the attorney for the State may file a motion to enforce payment of the fine or a motion to revoke administrative release under section 1855. If the fine was not a condition of probation or a requirement of administrative release, the attorney for the State may file a motion to enforce payment of the fine.

4. Procedure for motion to enforce payment. Either the attorney for the State or the court may initiate a motion to enforce payment of a fine. Notification for the hearing on the motion must be sent by regular mail to the convicted person's last known address. If the person does not appear for the hearing after proper notification has been sent, the court may issue a bench warrant. A court need not bring a motion to enforce payment of a fine nor notify the person by regular mail of the date of the hearing if at the time of sentence imposition the court's order to pay the fine and accompanying warnings to the person comply with Title 14, section 3141, subsection 3 or 4; in this case, if the person fails to appear as directed by the court's fine order, the court may issue a bench warrant.

A. Unless the person 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 person's part to make a good faith effort to obtain the funds required for the payment, the court shall find that the default was unexcused and may:

(1) Commit the person to the custody of the sheriff until all or a specified part of the fine 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 6 months. A person committed for nonpayment of a fine is given credit toward the payment of the fine for each day of confinement that the person is in custody at the rate specified in the court's order, which may not be less than $25 or more than $100 of unpaid fine for each day of confinement. The person is also given credit for each day that the person is detained as the result of an arrest warrant issued pursuant to this section. A person is responsible for paying any fine remaining after receiving credit for confinement and detention. A default on the remaining fine is also governed by this section; or

(2) If the unexcused default relates to a fine imposed for a Class C, Class D or Class E crime, as authorized by this subchapter, order the person to perform a specified number of hours of community service work for the benefit of the State, a county, a municipality, a school administrative district or other public entity, a charitable institution or other entity approved by the court until all or a specified part of the fine is paid. The number of hours of community service work must be specified in the court's order and the person must receive a credit against the unpaid fine at a rate equal to the current hourly minimum wage.

A person ordered to perform community service work pursuant to this subparagraph is given credit toward the payment of the fine for each 8-hour day of community service work performed. The person is also given credit toward the payment of the fine for each day that the person is detained as a result of an arrest warrant issued pursuant to this section at a rate specified in the court's order that is up to $100 of unpaid fine per day of confinement. A person who fails to complete the work in the manner ordered by the court must be returned to the court to explain the failure. A person is responsible for paying any fine remaining after receiving credit for any detention and for community service work performed. A default on the remaining fine is also governed by this section.

The Department of Corrections is not responsible for supervision of community service work performed pursuant to this subparagraph.

B. If it appears that the default is excusable, the court may give the person additional time for payment, may reduce the amount of each installment or may permit the person to perform community service work at the 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.

C. If the court commits a person to the custody of the sheriff for nonpayment of a fine pursuant to paragraph A, subparagraph (1), the court may authorize, at the time of its order only, participation of the person in a project under Title 30-A, section 1606 with the agreement of the sheriff of the county jail where the person is committed. The person must be given credit according to Title 30-A, section 1606, subsection 2.

D. The confinement ordered under paragraph A, subparagraph (1) must be nonconcurrent with any judgment of conviction involving a term of imprisonment.

5. Levy of execution or other civil measures authorized; consequence of levy of execution. Upon any default, the court may order execution to be levied and may order other measures authorized for the collection of unpaid civil judgments to be taken to collect the unpaid fine. A levy of execution does not discharge a convicted person confined to a county jail or performing community service work under subsection 4 for unexcused default until the full amount of the fine has been collected or credited.

6. Payment of fine imposed on organization; consequence of failure. When a fine is imposed on an organization, the individual or individuals authorized to make disbursements from the assets of the organization shall pay the fine from the organization's assets. Failure to do so may subject the individual or individuals to court action pursuant to this section.

§1712. Deposit of certain fines in Maine Military Family Relief Fund

Notwithstanding any provision of law to the contrary, if a person is convicted under section 354, subsection 2, paragraph A of theft by deception due to that person's intentional creation or reinforcement of a false impression that the person is a veteran or a member of the Armed Forces of the United States or a state military force, any fine imposed on that person by the court must be deposited in the Maine Military Family Relief Fund established in Title 37-B, section 158.

SUBCHAPTER 2

FEES, ASSESSMENTS AND SURCHARGES

§1751. County jail reimbursement fee

1. Assessment of reimbursement fee. When an individual is sentenced to incarceration in a county jail, the sentencing court shall consider and may assess as part of the sentence a jail reimbursement fee, referred to in this section as "the reimbursement fee," to help defray the expenses of the individual's room and board.

2. Evidence. The court, in determining whether a reimbursement fee as set out in subsection 1 is to be assessed and in establishing the amount of that fee, shall consider evidence relevant to the individual's ability to pay that fee, including, but not limited to, the factors set forth in section 2005, subsection 2, paragraph D, subparagraphs (1) to (5). The court may not consider as evidence the following:

A. Joint ownership, if any, that the individual may have in real property;

B. Joint ownership, if any, that the individual may have in any assets, earnings or other sources of income; and

C. The income, assets, earnings or other property, both real and personal, owned by the individual's spouse or family.

3. Amount of reimbursement fee; collection. After considering all relevant evidence on the issue of the individual's ability to pay under subsection 2, the court may enter, as part of its sentence, a reimbursement fee that must be paid by the individual for incarceration in the county jail. The reimbursement fee may not exceed the cost of incarcerating the individual or $80 per day, whichever is less, and must bear a reasonable relationship to the individual's ability to pay. Upon petition by the individual, the amount may be

modified to reflect any changes in the financial status of the individual.

Any reimbursement fee assessed must be collected by the county treasurer of the county in which the individual is incarcerated, paid into the treasury of that county and credited to the county responsible for paying for the incarceration of the individual.

4. Timing of fee payment. If an individual is sentenced to pay a reimbursement fee, the court may allow the individual to pay the reimbursement fee within a specified time or in specified installments. If such permission is not contained in the sentence, the reimbursement fee is payable immediately.

5. Default. An individual who has been sentenced to pay a reimbursement fee and who fails to pay part or all of that fee is in default and must be returned to court to explain the failure to pay that fee.

A probation officer who knows of a default in payment of a reimbursement fee by an individual shall report the default to the office of the attorney for the State or the attorney for the county. If the reimbursement fee was a condition of probation, the attorney for the State or the attorney for the county may file a motion to enforce payment of the reimbursement fee or, with the written consent of the probation officer, the attorney for the State may file a motion to revoke probation under section 1811. If the reimbursement fee was a requirement of administrative release, the attorney for the State or the attorney for the county may file a motion to enforce payment of the reimbursement fee or the attorney for the State may file a motion to revoke administrative release under section 1855. If the reimbursement fee was not a condition of probation or a requirement of administrative release, the attorney for the State or the attorney for the county may file a motion to enforce payment of the reimbursement fee.

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

A. Unless the individual 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 individual'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 individual to the custody of the sheriff until all or a specified part of the reimbursement fee 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 6 months. An individual committed for nonpayment of a reimbursement fee is given credit toward the payment of a reimbursement fee for each day of confinement that the individual is in custody, at the rate specified in the court's order, which may not be less than $25 or more than $100 of unpaid reimbursement fee for each day of confinement. The individual is also given credit for each day that the individual has been detained as the result of an arrest warrant issued pursuant to this section. An individual is responsible for paying any reimbursement fee remaining after receiving credit for confinement and detention.

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

C. The confinement ordered under this subsection must be nonconcurrent with any judgment of conviction involving a term of imprisonment.

§1752. Supervision fee as condition of probation

If a court imposes a sentencing alternative authorized under section 1502 that includes a period of probation, it must attach as a condition of probation that the convicted individual pay, through the Department of Corrections, a supervision fee imposed pursuant to section 1807, subsection 6 for the term of probation.

§1753. Electronic monitoring fee and substance testing fee as conditions of probation

If a court imposes a sentencing alternative authorized under section 1502 that includes a period of probation, upon the request of the Department of Corrections, the court shall attach as a condition of probation an electronic monitoring fee, a substance testing fee or both, as governed by section 1807, subsection 7.

§1754. Fee for applying to Department of Corrections to temporarily or periodically leave jurisdiction

If a court requires as a condition of probation that the convicted individual remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the convicted individual's probation officer, the Department of Corrections may impose on the individual applying for permission to leave either temporarily or periodically an application fee, as governed by section 1807, subsection 8.

§1755. Administrative supervision fee as nonmandatory requirement of administrative release

If a court imposes a suspended sentence with administrative release pursuant to section 1853 and attaches requirements for the term of the administrative

release, the court-imposed requirements of administrative release may include an administrative supervision fee, as governed by section 1854, subsection 2, paragraph A.

§1756. Administrative supervision fee as nonmandatory requirement of deferred disposition

If an individual consents to a deferred disposition pursuant to section 1901 and a court orders sentencing to be deferred and imposes requirements to be in effect during the period of deferment, the court-imposed deferment requirements may include an administrative supervision fee, as governed by sections 1902 and 1903.

§1757. Surcharges and assessments outside the code

In addition to the fees authorized by this subchapter, the court shall impose, as applicable, the following surcharges and assessments.

1. Surcharge and assessment applicable to all criminal cases. The court shall impose on all persons convicted of a crime:

A. The surcharges for the Government Operations Surcharge Fund and the General Fund authorized under Title 4, section 1057, subsection 2-A;

B. The assessment for the Victims' Compensation Fund authorized under Title 5, section 3360-I; and

C. The surcharge for the County Jail Operations Fund authorized under Title 34-A, section 1210-D, subsection 5.

2. Surcharge applicable to violation of animal welfare laws or operating under the influence laws. The court shall impose:

A. The surcharge authorized under Title 17, section 1015 for a violation of Title 17, chapter 42; and

B. The surcharge authorized under Title 29-A, section 2411, subsection 7 for a violation of Title 29-A, section 2411.

§1758. Authority to impose fees, surcharges and assessments by Supreme Judicial Court

Nothing in this chapter limits the authority of the Supreme Judicial Court to impose fees, surcharges or assessments by administrative order or rule.

CHAPTER 67

CONDITIONAL RELEASE

SUBCHAPTER 1

PROBATION

§1801. Definitions

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

1. Dating partner. "Dating partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A.

2. Family or household member. "Family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.

3. Victim. "Victim" means:

A. A person who is the victim of a crime;

B. The immediate family of a victim of a crime if:

(1) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

(2) Due to death, age, physical or mental disease, disorder or defect, the victim is unable to participate as allowed by law; or

C. A person who has obtained under Title 19-A, section 4007 an active protection order or approved consent agreement against the defendant.

§1802. Eligibility for sentencing alternative that includes period of probation

1. General eligibility. A person who has been convicted of a crime may be sentenced to a sentencing alternative under section 1502 that includes a period of probation, unless:

A. The conviction is for murder;

B. The conviction is for a Class D or Class E crime other than:

(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 person 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 person does not have a 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 that the State pleads and proves was committed against a family or household member or a dating partner under chapter 9 or 13 or section 554, 555 or 758;

(3) A Class D crime under Title 5, section 4659, subsection 1; Title 15, section 321, subsection 6; or Title 19-A, section 4011, subsection 1;

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

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

(6) A Class E crime under section 552;

(7) A Class D or Class E crime under section 556, section 853, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;

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

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

(10) A Class D crime under Title 17, section 1031; or

(11) A Class E crime under Title 15, section 1092, subsection 1, paragraph A, if the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) and the underlying crime involved domestic violence;

C. The court sentences the person to a sentencing alternative under section 1502 that includes a period of administrative release;

D. The court sentences the individual to a term of imprisonment followed by a period of supervised release as authorized by subchapter 3;

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

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

2. Eligibility for persons needing supervision or assistance. A person who is eligible for sentence under this subchapter, as provided in subsection 1, may be sentenced to a sentencing alternative that includes a period of probation if the person is in need of the supervision, guidance, assistance or direction that probation can provide.

§1803. Definite period of probation required

In imposing a sentencing alternative under section 1502 that includes a period of probation, the court shall set a definite period of probation.

§1804. Period of probation; modification; termination and discharge

1. Limit on length of probation. Except as provided in subsections 2, 3, 4, 5 and 6, the period of probation for a person may not exceed:

A. For a Class A crime, 4 years;

B. For a Class B crime, 3 years;

C. For a Class C crime, 2 years; and

D. For a Class D or Class E crime, one year.

2. Exception to limits when victim is less than 12 years of age. If the State pleads and proves that at the time of the crime the victim had not attained 12 years of age or, in the case of a crime under sections 283 and 284, the victim had not attained 12 years of age at the time the sexually explicit conduct occurred, the period of probation for a person convicted under chapter 11 or 12 may not exceed:

A. For a Class A crime, 18 years;

B. For a Class B crime, 12 years; and

C. For a Class C crime, 6 years.

3. Exception to limits when victim is family or household member. If the State pleads and proves that the person was convicted of committing against a family or household member a crime under chapter 9 or 13 or section 554 or if the person was convicted under chapter 11 or 12 or section 556, the period of probation may not exceed:

A. For a Class A crime, 6 years; and

B. For a Class B or Class C crime, 4 years.

4. Exception to limits when person sentenced as repeat sexual assault offender. The period of probation for a person sentenced as a repeat sexual assault offender pursuant to section 253-A, subsection 1 is any term of years.

5. Exception to limits when person sentenced for nonsupport of dependents. The period of probation for a person sentenced for the crime of nonsupport of dependents under section 552 is as provided under section 552, subsection 4.

6. Exception to limits when person ordered to complete batterers' intervention program and pay restitution. If the State pleads and proves that the enumerated Class D or Class E crime was committed by the person against a family or household member

and the court orders the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014, the person may be placed on probation for a period not to exceed 2 years, except that, on motion by the person's probation officer, the person or the court, the term of probation must be terminated by the court when the court determines that the person has:

A. Served at least one year of probation;

B. Completed the certified batterers' intervention program;

C. Paid in full any victim restitution ordered; and

D. From the time the period of probation commenced until the motion for termination is heard, met all other conditions of probation.

As used in this subsection, "enumerated Class D or Class E crime" means any Class D crime in chapter 9, any Class D or Class E crime in chapter 11, the Class D crimes described in sections 302 and 506-B and the Class D crimes described in sections 554, 555 and 758.

7. Modification of probation requirements authorized. During the period of probation specified in the sentence made pursuant to this section, and upon application of the person on probation or the person's probation officer, or upon the court's 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 1807 or relieve the person on probation of any requirement imposed by the court or a community reparations board that, in the court's 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.

8. Ex parte motion for modification by probation officer in advance of hearing. Notwithstanding subsection 7, the court may grant, ex parte, a motion brought by the probation officer of the person on probation to add further requirements if the court determines that all reasonable efforts have been made to give written or oral notice to the person on probation and the requirements are immediately necessary to protect the safety of an individual or the public. 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 will hold a hearing on the added requirements, is given to the person on probation.

9. Conversion of probation to administrative release. Once the period of probation has commenced, on motion of the person on probation or the person's probation officer, or on the court's own motion, the court may at any time convert a period of probation for a Class D or Class E crime or a Class C crime under Title 29-A, section 2557-A to a period of administrative release. A conversion to administrative release may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. The provisions of subchapter 2 apply when probation is converted to administrative release. Conversion to administrative release in accordance with this subsection relieves the person on probation of any obligations imposed by the probation conditions.

10. Early termination of probation and discharge authorized. Once the period of probation has commenced, on motion of the person on probation or the person's probation officer, or on the court's own motion, the court may at any time terminate a period of probation and discharge the person at any time earlier than that provided in the sentence made pursuant to this section, if warranted by the conduct of the person. A termination and discharge may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. Termination and discharge in accordance with this subsection relieves the person on probation of any obligations imposed by the sentence of probation.

11. Justice or judge authorized to hear motions regarding probation. A motion and hearing pursuant to subsection 7, 8, 9 or 10 need not be before the justice or judge who originally imposed probation. Any justice or judge may initiate and hear a motion, and any justice or judge may hear a motion brought by the person on probation or the person's probation officer.

12. Termination of probation to prevent delay of consecutive term of imprisonment. Any court, in order to comply with section 1608, subsection 7, shall terminate a period of probation that would delay commencement of a consecutive unsuspended term of imprisonment.

§1805. Partially suspended term of imprisonment with probation or split sentence

1. Determination of date probation begins; revocation; place of imprisonment. Unless prohibited pursuant to section 1802, subsection 1, paragraphs A to F, the court may impose a split sentence by sentencing an individual to a term of imprisonment not to exceed the maximum term authorized for the crime, an initial portion of which is to be served and the remainder of which is to be suspended, and accompany the suspension with a period of probation not to exceed the maximum period authorized for the crime. The period of probation commences on the date the individual is released from the unsuspended portion of the term of imprisonment, unless the court orders it to commence on an earlier date.

A. If the period of probation commences upon release of the individual from an unsuspended portion of the term of imprisonment, the court may revoke probation for any criminal conduct committed during that unsuspended portion of the term of imprisonment.

B. If execution of the sentence is stayed, the court may revoke probation for criminal conduct committed during the period of stay or for failure to report as ordered.

C. The court may revoke probation if, during any unsuspended portion of the term of imprisonment, an individual sentenced as a repeat sexual assault offender, pursuant to section 1804, subsection 4, refuses to actively participate in a sex offender treatment program in accordance with the expectations and judgment of the treatment providers, when requested to do so by the Department of Corrections.

D. The court may revoke probation if, during an unsuspended portion of the term of imprisonment:

(1) The individual has contact with a victim with whom the individual has been ordered not to have contact as a condition of probation;

(2) In the case of an individual who has been committed to the Department of Corrections, the individual has contact with any victim with whom the individual has been prohibited to have contact by the Department of Corrections; or

(3) In the case of an individual who has been committed to a county or regional jail, the individual has contact with any victim with whom the individual has been prohibited to have contact by the county or regional jail.

E. As to both the suspended and unsuspended portions of the sentence, the place of imprisonment must be as follows.

(1) For a Class D or Class E crime, the court must specify a county jail as the place of imprisonment.

(2) For a Class A, Class B or Class C crime, the court must:

(a) Specify a county jail as the place of imprisonment for any portion of the sentence that is 9 months or less; and

(b) Commit the individual to the Department of Corrections for any portion of the sentence that is more than 9 months.

2. Applicability to prosecution of crime committed prior to September 23, 1983. In any prosecution for a crime committed prior to September 23, 1983, the court may, with the consent of the defendant, impose a sentence under subsection 1.

§1806. Wholly suspended term of imprisonment with probation

Unless prohibited pursuant to section 1802, subsection 1, paragraphs A to F, the court may sentence an individual to a term of imprisonment not to exceed the maximum term authorized for the crime, suspend the entire term of imprisonment and accompany the suspension with a period of probation not to exceed the maximum period authorized for the crime, to commence on the date the individual goes into actual execution of the sentence.

§1807. Conditions of probation

1. Purpose of conditions. If the court imposes a sentencing alternative under section 1502 that includes a period of probation, it shall attach conditions of probation, as authorized by this section, as it considers to be reasonable and appropriate to assist the person to lead a law-abiding life, including, without exception, a condition of probation that the person refrain from criminal conduct.

2. Specific conditions of probation authorized. As a condition of probation, the court in its sentence may require the person to:

A. Support the person's dependents and to meet the person's family responsibilities;

B. Make restitution pursuant to chapter 69 to each victim of the person's crime, or to the county where the offense is prosecuted if the identity of the victim cannot be ascertained or if the victim voluntarily refuses the restitution. If the court orders as a condition of probation that the person forfeit and pay a specific amount of restitution, that order, as a matter of law, also constitutes the imposition of restitution pursuant to chapter 69 as a sentencing alternative and an additional order regarding restitution is unnecessary;

C. Pursue and maintain approved employment or an approved occupation;

D. Undergo, as an outpatient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition is considered only as a violation of probation and may not, in itself, authorize involuntary treatment or hospitalization. The court may not order and the State may not pay for the person to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014;

E. Pursue a prescribed secular course of study or vocational training;

F. Refrain from frequenting specified places or consorting with specified persons;

G. Refrain from possessing any firearm or other dangerous weapon;

H. Remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the person's probation officer, and to notify the probation officer of any change in the person's address or employment;

I. Refrain from drug use and use or excessive use of alcohol;

J. Report as directed to the court or the person's probation officer, to answer all reasonable inquiries by the probation officer and to permit the probation officer to visit at reasonable times at the person's home or elsewhere;

K. Pay any monetary penalty imposed by the court as part of the sentence;

L. Perform specified work for the benefit of the State, a county, a municipality, a school administrative district, other public entity or a charitable institution;

M. Participate in an electronic monitoring program, if available; or

N. Satisfy any conditions reasonably related to the rehabilitation of the person or the public safety or security.

3. Opportunity to address court regarding probation conditions; written statement required. The person must be given an opportunity to address the court on the conditions that are proposed to be attached and, after sentence, must be given a written statement setting forth the particular conditions on which the person is released on probation.

4. Findings or explanation required in certain cases when completion of batterers' intervention program is not ordered as a condition of probation. If an individual is convicted of a crime under chapter 9 or 13 or section 758 that the State pleads and proves was committed by the individual against a spouse, domestic partner or sexual partner; a former spouse, domestic partner or sexual partner; a victim with whom the individual is living or lived as a spouse; or a victim who is or was a dating partner of the individual and the court does not order as a condition of probation that the individual complete a batterers' intervention program certified pursuant to Title 19-A, section 4014, the court shall make findings on the record of the court's reasons for not ordering the individual to complete a batterers' intervention program. If a plea agreement submitted to the court in accordance with Rule 11A(b) of the Maine Rules of Unified Criminal Procedure does not contain a provision ordering the individual to complete a batterers' intervention program, the attorney for the State shall indicate, in a writing submitted to the court, the basis for the plea agreement's not including completion of a batterers' intervention program as a condition of probation. For purposes of this subsection, "dating partner" means a victim currently or formerly involved in dating the individual, whether or not the individual and the victim are or were sexual partners. For purposes of this subsection, "domestic partner" means one of 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare.

5. Condition of probation that includes psychiatric treatment or mental health counseling; notice by court to Department of Health and Human Services. Before imposing any condition of psychiatric outpatient or inpatient treatment or mental health counseling, the court may request that a report be submitted by an agent of the Department of Health and Human Services who has been designated pursuant to Title 34-B, section 1220 for the purpose of assessing the appropriateness of psychiatric treatment or mental health counseling for the individual and the availability of this treatment or counseling. Whether or not a report is requested, the court shall notify the designated agent of the Department of Health and Human Services when any conditions of probation are imposed that include psychiatric outpatient or inpatient treatment or mental health counseling. This notification must include the name and last known address of the individual placed on probation, the name and address of the attorney of record for that individual and the conditions of probation.

6. Supervision fee; determination of amount by court; failure to pay. The court shall attach as a condition of probation that the person pay, through the Department of Corrections, a supervision fee of between $10 and $50 per month, as determined by the court, for the term of probation. If the court does not set a supervision fee, the supervision fee is $10 per month. Notwithstanding the attachment of supervision fee conditions on more than one sentence, a person on probation on concurrent sentences is required to pay only one supervision fee. In determining whether to set an amount higher than $10 per month, the court shall take into account the financial resources of the person and the nature of the burden its payment imposes. A person may not be sentenced to imprisonment without probation solely for the reason the person is not able to pay the fee. When a person on probation fails to pay the supervision fee, the court may revoke probation as specified in section 1812, unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. The court, if it determines that revocation of probation is not warranted,

shall issue a judgment for the total amount of the fee and shall issue an order attaching a specified portion of money received by or owed to the person on probation until the total amount of the fee has been paid. If the person makes this showing, the court may allow additional time for payment within the remaining period of probation or reduce the size of the fee to no less than $10 per month, but may not revoke the requirement to pay the fee unless the remaining period of probation is 30 days or less.

7. Electronic monitoring and substance testing fees; determination of amount by court; failure to pay; use of fees. Upon the request of the Department of Corrections, the court shall attach as a condition of probation that the person pay, through the department, an electronic monitoring fee, a substance testing fee or both, as determined by the court, for the term of probation. In determining the amount of the fees, the court shall take into account the financial resources of the person and the nature of the burden the payment imposes. A person may not be sentenced to imprisonment without probation solely for the reason the person is not able to pay the fees. When a person on probation fails to pay the fees, the court may revoke probation as specified in section 1812, unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. The court, if it determines that revocation of probation is not warranted, shall issue a judgment for the total amount of the fees and shall issue an order attaching a specified portion of money received by or owed to the person on probation until the total amount of the fees has been paid. If the person makes this showing, the court may allow additional time for payment within the remaining period of probation or reduce the size of the fees, but may not revoke the requirement to pay the fees unless the remaining period of probation is 30 days or less. Fees received from a person on probation must be deposited into the department's adult community corrections account, unless the department has required the person to pay fees directly to a provider of electronic monitoring, substance testing or other services. Funds from the adult community corrections account do not lapse and must be used to defray costs associated with the purchase and operation of electronic monitoring and substance testing programs.

8. Condition of probation that includes staying within jurisdiction of court; application fee; use of fees. Whenever the court requires as a condition of probation that the person remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the person's probation officer, the Department of Corrections may impose on a person applying for such permission an application fee of $25. The department may impose on a person an additional fee of $25 per month if permission is sought and granted to leave the jurisdiction of the court on a periodic basis. Permission to leave may not be denied or withdrawn solely because the person is not able to pay the application fee or the additional fee. When a person fails to pay a fee imposed under this subsection, the department may refuse to process the application or may withdraw permission to leave if the failure to pay is attributable to the person's willful refusal to pay or to a failure on the person's part to make a good faith effort to obtain the funds required for the payment. Fees received from a person pursuant to this subsection must be deposited into the department's adult community corrections account, which does not lapse, and must be used to defray costs associated with processing the applications, including, but not limited to, the cost of materials, equipment, training for probation officers and administration, and for the department's share of the costs of extraditing persons on probation who are fugitives from justice.

§1808. Community reparations boards

1. Persons required to appear before board. If the court imposes a sentencing alternative that includes a period of probation, the court shall require as a condition of probation that the person appear before a community reparations board, referred to in this section as "the board," and abide by any requirement imposed by the board if:

A. The person has been sentenced to a suspended term of imprisonment with probation or a split sentence of imprisonment with probation the initial portion of which must be served in a county jail under section 1805;

B. The person has not been convicted of a crime under chapter 11 or a crime of domestic violence;

C. The Department of Corrections recommends that appearance before the board be required; and

D. The court finds no circumstance that makes appearance inappropriate.

2. Duties of person required to appear before board. A person required to appear before a community reparations board shall:

A. Cooperate with the preparation of the intake report to be submitted to the board;

B. Appear before the board as directed by the person's probation officer; and

C. Cooperate with the board.

3. Powers of board. The powers of a community reparations board are limited to requiring the person to:

A. Pay restitution in accordance with chapter 69;

B. Perform community service;

C. Complete a prescribed course of counseling or education;

D. Refrain from frequenting specified places or consorting with specified persons;

E. Comply with reparative sanctions other than restitution, including, but not limited to, writing an apology to the victim and fulfilling crime-impact education measures; and

F. Report to the board regarding compliance with the requirements of this subsection.

4. Time limit on requirement imposed by board. A requirement imposed by a community reparations board may not extend longer than 6 months, except the requirement to pay restitution.

5. Violation. A person who fails to abide by the requirements of this section commits a violation of probation.

§1809. Commencement of probation revocation proceedings by arrest

1. Authority of probation officer. If a probation officer has probable cause to believe that a person on probation has violated a condition of that person's probation, that officer may arrest the person or cause the person to be arrested for the alleged violation. If the probation officer cannot, with due diligence, locate the person, the officer shall file a written notice of this fact with the court that placed the person on probation. Upon the filing of that written notice, the court shall issue a warrant for the arrest of that person.

2. Probable cause hearing; timing; evidence. A person arrested pursuant to subsection 1, with or without a warrant, must be given a probable cause hearing as soon as reasonably possible, but not later than on the 5th day after arrest, excluding Saturdays, Sundays and holidays. A probable cause hearing is not given if, within the 5-day period, the person is released from custody or is afforded an opportunity for a court hearing on the alleged violation. A probable cause hearing is not required if the person is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction.

A. Whenever a person arrested pursuant to subsection 1 is entitled to a probable cause hearing pursuant to this subsection, unless the person waives the right to the hearing, that hearing must be held at the initial appearance and may be held in the court located as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. If it is alleged that the person violated probation because of the commission of a new offense, the probable cause hearing is limited to the issue of identification if probable cause on the new offense has already been found by the District Court or by the Superior Court or the person has been indicted, has waived indictment or has been convicted.

B. Evidence presented to establish probable cause may include affidavits and other reliable hearsay evidence as permitted by the court.

C. If the court determines that there is not probable cause to believe that the person has violated a condition of probation, the court shall order the person's release.

3. Failure to hold probable cause hearing within required time period. If a probable cause hearing is not held as required by subsection 2 within the time period specified in subsection 2, it is grounds for the person's release on personal recognizance pending further proceedings.

§1810. Commencement of probation revocation proceedings by summons

1. Authority of probation officer. If a probation officer has probable cause to believe that a person on probation has violated a condition of probation, that officer may deliver to that person, or cause to be delivered to that person, a summons ordering that person to appear for a court hearing on the alleged violation.

2. Contents of summons; probation officer to file motion for revocation. The summons delivered pursuant to subsection 1 must include the signature of the probation officer; a brief statement of the alleged violation; the time and place of the alleged violation; and the time, place and date the person is to appear in court or a statement that the court will notify the person of the time, place and date to appear. As soon as practical after service of the summons, the probation officer shall file with the court a motion for revocation of probation that sets forth the facts underlying the alleged violation.

3. Initial appearance. A person appearing on a motion to revoke probation pursuant to a summons must be given an initial appearance as provided in section 1811, subsection 4.

4. Failure to appear. If the person 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, the person must be given a probable cause hearing as provided in section 1809, subsection 2 and an initial appearance as provided in section 1811, subsection 3.

§1811. Initial proceedings on probation violation; filing of motion; initial appearance

1. Timing of motion for probation revocation. A motion for probation revocation, which first must be approved by the prosecuting attorney, must be filed within 3 days, excluding Saturdays, Sundays and holidays, of the arrest of a person on probation pursuant to section 1809.

2. Contents of motion. The motion must set forth the facts underlying the alleged violation and, unless the person is to be given a probable cause hearing at the initial appearance as provided in section 1809, must be accompanied by a copy of the summons delivered to the person.

3. Timing of initial appearance on motion receipt; copy of motion to person on probation. Upon receipt of a motion for revocation of probation with respect to a person arrested pursuant to section 1809 or section 1810, subsection 4 who is not sooner released, the court shall provide the person with an initial appearance on the revocation of probation within 5 days after the arrest, excluding Saturdays, Sundays and holidays. A copy of the motion must be furnished to the person prior to or at the initial appearance.

4. Procedure at initial appearance. At the initial appearance, the court shall advise the person of the contents of the motion, the right to a hearing on the motion, the right to be represented by counsel at a hearing and the right to appointed counsel. If the person cannot afford counsel, the court shall appoint counsel for the person. The court shall ask the person to admit or deny the alleged violation. If the person refuses to admit or deny, a denial must be entered. In the case of a denial, the court shall set the motion for hearing and may commit the person, with or without bail, pending hearing. If the person is committed without bail pending hearing, the date of the hearing must be set no later than 45 days from the date of the initial appearance.

5. Bail determination. In deciding whether to set bail under this section and in setting the kind and amount of that bail, the court must be guided by the standards of post-conviction bail in Title 15, section 1051, subsection 2-A. Appeal is governed by Title 15, section 1051, subsections 5 and 6. Bail set under this section is also governed by the sureties and other forms of bail provisions in Title 15, chapter 105-A, subchapter 4 and the enforcement provisions in Title 15, chapter 105-A, subchapter 5, articles 1 and 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

6. Effect of failure to meet time limits. Failure to comply with the time limits set forth in this section is not grounds for dismissal of a motion for probation revocation but may be grounds for the release of the person on probation on personal recognizance pending further proceedings.

§1812. Court hearing on probation revocation

1. Place of hearing. The hearing on a motion to revoke probation must be held in the court that sentenced the person to probation in either the county or division in which the person resides or is incarcerated, unless the court orders otherwise in the interests of justice. A motion for revocation of probation need not be heard by the justice or judge who originally imposed probation, but may be heard by any justice or judge.

2. Hearing procedure. If a hearing is held, the person on probation must be given the opportunity to confront and cross-examine witnesses against the person, to present evidence on that person's own behalf and to be represented by counsel. If the person cannot afford counsel, the court shall appoint counsel for the person. Assignment of counsel, to the extent not covered in this subsection, and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

3. Commission of new crime while on probation. When the alleged violation constitutes a crime for which the person on probation has not been convicted, the court may revoke probation if it finds by a preponderance of the evidence that the person committed the crime. If the person is subsequently convicted of the crime, or any other crime or crimes arising out of the same conduct, sentencing is subject to the requirements of section 1608. If concurrent terms of imprisonment are imposed and the terms do not commence on the same date, any time served as a result of the probation revocation must be deducted from the time the person is required to serve as a result of the new conviction.

4. Failure to comply with requirement of probation. If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person on probation has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation.

5. Conviction for new crime while on probation. If a person on probation is convicted of a new crime during the period of probation, the court may sentence that person for the crime and revoke probation. If the person has been sentenced for the new crime and probation revocation proceedings are subsequently commenced, the court that conducts the revocation hearing may revoke probation. Sentencing for the multiple offenses is subject to section 1608. If concurrent terms of imprisonment are imposed and the terms do not commence on the same date, any time served as a result of the new conviction must be deducted from the time the person is required to serve as a result of the probation revocation.

6. Authority of court finding violation of probation. Upon a finding of a violation of probation, the court may vacate all, part or none of the suspension of execution as to imprisonment or fine specified when probation was granted, considering the nature of the violation and the reasons for granting probation. The remaining portion of the sentence for which suspension of execution is not vacated upon the revocation of probation remains suspended and is subject to revocation at a later date. During the service of that portion

of the sentence imposed for which the suspension of execution was vacated upon revocation, the running of the period of probation must be interrupted and resumes again upon release. If the court finds a violation of probation but vacates none of the suspended sentence, the running of the period of probation resumes upon entry of that final disposition. The court may nevertheless revoke probation and vacate the suspension of execution as to the remainder of the suspended sentence or a portion thereof for any criminal conduct committed during the service of that portion of the sentence for which the suspension of execution was vacated upon revocation.

7. Tolling of period of probation; conditions of probation continue in effect. The running of the period of probation is tolled upon either the delivery of the summons, the filing of the written notice with the court that the person cannot be located or the arrest of the person. If the motion is dismissed or withdrawn, or if the court finds no violation of probation, the running of the period of probation is deemed not to have been tolled. The conditions of probation continue in effect during the tolling of the running of the period of probation, and any violation of a condition subjects the person to a revocation of probation pursuant to the provisions of this subchapter.

8. Disposition agreement by parties in return for admission of probation violation. If the attorney for the State and the attorney for the person on probation or the person on probation reach agreement that, in return for an admission of a violation of probation, the attorney for the State will dismiss other charges or the attorney for the State will not oppose the requested disposition requested by the person or the attorney for the State will recommend a particular disposition or both sides will recommend a particular disposition, and the court at the time of disposition intends to enter a disposition less favorable to the person than that recommended, the court shall on the record:

A. Inform the parties of this intention;

B. Advise the person personally in open court that the court is not bound by the recommendation;

C. Advise the person that if the person does not withdraw the admission, the disposition of the motion will be less favorable to the person than that recommended; and

D. Give the person the opportunity to withdraw the admission.

The court shall, if possible, inform the person of the intended disposition.

9. Deduction of time for detention pending revocation proceeding. Whenever a person is detained in any correctional facility, mental health institute or county jail pending a probation revocation proceeding, and not in execution of any other sentence of confinement, that period of detention must be deducted from the time the person is required to serve under that portion of the sentence for which the suspension of execution was vacated as a result of the probation revocation. A person who is simultaneously detained for conduct for which the person receives a consecutive term of imprisonment is not entitled to receive a day-for-day deduction from the consecutive term of imprisonment for the period of simultaneous detention except for any period of detention that is longer than the prior term of imprisonment.

10. Respecification of place of imprisonment following vacation of suspension of sentence. Whenever a previously suspended sentence of imprisonment for a Class A, Class B or Class C crime is vacated, in whole or in part, as the result of a probation revocation, the court must respecify the place of imprisonment for both the portion required to be served and any remaining suspended portion, if necessary, to carry out the intent of section 1805, subsection 1, paragraph D.

11. Effect of vacating suspension while person in execution of unsuspended portion of sentence. If a probation revocation proceeding results in the court vacating a part of the suspension of execution as to imprisonment while the person is in execution of the initial unsuspended portion of the sentence, the portion of imprisonment to be served as a result of the vacating commences only after the initial unsuspended portion of imprisonment has been fully served. If separate probation revocation proceedings result in the vacating of 2 or more parts of the suspension of execution as to imprisonment on the same sentence, the portions to be served must be served successively.

§1813. Review

1. Discretionary appeal to Law Court. Review of a revocation of probation pursuant to section 1812 must be by appeal to the Law Court. A person whose probation is revoked may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

2. Assignment and withdrawal of counsel. Assignment and withdrawal of counsel for an appeal under this section must be in accordance with the Maine Rules of Unified Criminal Procedure.

§1814. Additional conditions in lieu of probation revocation proceedings

Whenever a probation officer has probable cause to believe that a person under the supervision of that probation officer has violated a condition of probation but the violation does not constitute a crime, the probation officer, instead of commencing a probation revocation proceeding under section 1809, may offer

to the person the option of adding one or more of the following conditions to the person's probation:

1. Participation in public restitution program or treatment program. The person will participate in a public restitution program or treatment program administered through a correctional facility or county jail; or

2. Residence at correctional facility or county jail. The person will reside at a correctional facility or county jail for a period of time not to exceed 90 days.

If the person agrees in writing to the additional conditions under subsection 1 or 2, the conditions must be implemented. If the person does not agree or if the person fails to fulfill the additional conditions to the satisfaction of the probation officer, the probation officer may commence probation revocation proceedings under section 1809 or 1810 for the violation that the probation officer had probable cause to believe occurred. If the person fulfills the additional conditions to the satisfaction of the probation officer, the probation officer shall so notify the person in writing and the probation officer may not commence probation revocation proceedings for the violation that the probation officer had probable cause to believe occurred.

SUBCHAPTER 2

ADMINISTRATIVE RELEASE

§1851. Eligibility for sentencing alternative that includes period of administrative release; exceptions

The court may sentence a person who has been convicted of a Class D or Class E crime or a Class C crime under Title 29-A, former section 2557, section 2557-A or section 2558 to a sentencing alternative under section 1502, subsection 2, paragraphs I, J and K for an individual and section 1502, subsection 7, paragraph E for an organization, unless:

1. Sentencing alternative includes probation. The court sentences the person to a sentencing alternative under section 1502 that includes a period of probation; or

2. Sentencing alternative diminishes gravity of crime. The court finds that such a sentence would diminish the gravity of the crime for which that person was convicted.

§1852. Period of administrative release

1. Time limit. A period of administrative release imposed pursuant to this subchapter may not exceed one year.

2. Modification of requirements. During the period of administrative release and upon application of a person placed on administrative release or of the attorney for the State or upon the court's own motion, the court, after notice to the attorney for the State and the person and a hearing, may modify the requirements imposed by the court, add further requirements or release the person of any requirement imposed by the court that, in the court's opinion, imposes on the person an unreasonable burden.

3. Inability to meet requirement; duty on person to bring motion. 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.

4. Termination by court. On application of the attorney for the State or of the person placed on administrative release or on the court's own motion, the court may terminate a period of administrative release and discharge the person at any time earlier than that provided in the sentence made pursuant to subsection 1 if warranted by the conduct of the person. The court may not order a termination of the period of administrative release and discharge upon the motion of the person placed on administrative release unless notice of the motion is given to the attorney for the State by the person placed on administrative release. The termination of the period of administrative release and discharge relieves the person placed on administrative release of any obligations imposed by the sentence of administrative release.

5. Termination to prevent delay of consecutive term of imprisonment. The court, in order to comply with section 1608, subsection 7, shall terminate a period of administrative release that would delay commencement of a consecutive unsuspended term of imprisonment.

§1853. Suspended sentence with administrative release

1. Suspension of term of imprisonment accompanied by administrative release. The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for a Class D or Class E crime or the Class C crime under Title 29-A, former section 2557, section 2557-A or section 2558, suspend the term of imprisonment in whole or in part and accompany the suspension with a period of administrative release.

2. Suspension of fine accompanied by administrative release. The court may sentence a person to a fine, not to exceed the maximum fine authorized for a Class D or Class E crime or the Class C crime under Title 29-A, former section 2557, section 2557-A or section 2558, suspend the fine in whole or in part and accompany the suspension with a period of administrative release.

§1854. Requirements of administrative release

If the court imposes a suspended sentence with administrative release under section 1853, the court

shall attach requirements of administrative release, as authorized by this section, as the court determines to be reasonable and appropriate to help ensure accountability and rehabilitation of the person.

1. Mandatory requirements. The court-imposed requirements of administrative release must include a requirement that the person refrain from criminal conduct and that the person pay all assessments, surcharges, other fees and costs required by law.

2. Discretionary requirements. In addition to the requirements in subsection 1, the court in its sentence may require the person:

A. To pay to the appropriate county an administrative supervision fee of not more than $50 per month, as determined by the court, for the term of the administrative release. In determining the amount of the fee, the court shall take into account the financial resources of the person and the nature of the burden its payment imposes. When a person fails to pay the administrative supervision fee, the court may revoke administrative release as provided in sections 1855 and 1856 unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment;

B. To pay a fine imposed by the court as part of the sentence;

C. To make restitution to each victim of the crime imposed by the court as part of the sentence;

D. To perform community service work imposed by the court as part of the sentence; or

E. To satisfy any requirement reasonably related to helping ensure the accountability and rehabilitation of the person.

3. Opportunity to address court regarding requirements; written statement of requirements to be provided. The person must be given an opportunity to address the court on the requirements that are proposed to be attached pursuant to subsections 1 and 2 and must, after the sentencing, be given a written statement setting forth the specific requirements on which the person is being administratively released.

§1855. Commencement of administrative release revocation proceeding

1. Motion to revoke administrative release. 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. The motion must set forth the facts underlying the alleged violation.

2. Summons. 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.

3. Initial appearance. 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 1811, subsection 4.

4. Failure to appear following service of summons. If a 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 an initial appearance as provided in section 1811, subsection 4; if the person is retained in custody, section 1811, subsection 3 also applies.

5. Arrest of person for violation of requirement of administrative release; copy of motion to be furnished; timing of initial appearance. 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 or request that a warrantless arrest be made of the person pursuant to section 15, subsection 1, paragraph A, subparagraph (15). The court shall provide the person with an initial appearance on the revocation of administrative release within 5 days after arrest unless the person is released before that. A copy of the motion must be furnished to the person prior to or at the initial appearance. The initial appearance is governed by section 1811, subsection 4. Bail is governed by section 1811, subsections 5 and 6.

§1856. Court hearing on administrative release revocation

The hearing on a motion to revoke administrative release is governed by section 1812.

§1857. Review

Review of a revocation of administrative release pursuant to section 1856 must be by appeal, as provided under section 1813.

SUBCHAPTER 3

SUPERVISED RELEASE FOR SEX OFFENDERS

§1881. Inclusion of period of supervised release after imprisonment

1. Mandatory imposition of supervised release. If a person is convicted of gross sexual assault with a person who has not yet attained 12 years of age, in violation of section 253, subsection 1, paragraph C, the court, in addition to imposing as part of the sen-

tence a definite term of imprisonment in accordance with section 253-A, subsection 2, shall impose as part of the sentence a period of supervised release of up to life to immediately follow that imprisonment. The period of supervised release commences on the date the person is released from confinement pursuant to section 2314 and must include the best available monitoring technology for the full period of supervised release.

2. Discretionary imposition of supervised release. If a person is convicted of gross sexual assault in violation of any provision of section 253 other than section 253, subsection 1, paragraph C, the court, if it imposes as part of the sentence a definite term of imprisonment that does not include a period of probation, also may impose as part of the sentence a period of supervised release to immediately follow that imprisonment. The period of supervised release commences on the date the person is released from confinement pursuant to section 2314.

If a person has been convicted of violating any provision of section 253 other than section 253, subsection 1, paragraph C, the authorized period of supervised release is:

A. Any period of years for a person sentenced as a repeat sexual assault offender pursuant to section 253-A, subsection 1; and

B. For a person not sentenced under section 253-A, subsection 1 or 2, a period not to exceed 10 years for a Class A violation of section 253 and a period not to exceed 6 years for a Class B or Class C violation of section 253.

3. Modification of requirements. During the period of supervised release specified in the sentence made pursuant to subsections 1 and 2, and upon application of a person on supervised release or the person's probation officer, or upon the court's own motion, the court, after notice to the probation officer and the person on supervised release and a hearing, may modify the requirements imposed by the court, add further requirements authorized by section 1882 or relieve the person on supervised release of any requirement imposed by the court that, in its opinion, imposes on the person an unreasonable burden.

4. Ex parte modification of requirements for immediate necessity. Notwithstanding subsection 3, the court may grant, ex parte, a motion brought by the probation officer of the person on supervised release to add further requirements if the court determines that all reasonable efforts have been made to give written or oral notice to the person on supervised release and the requirements are immediately necessary to protect the safety of an individual or the public. 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 will hold a hearing on the added requirements, is given to the person on supervised release.

5. Termination by court. On application of the person on supervised release or the person's probation officer, or on the court's own motion, and if warranted by the conduct of the person, the court may terminate a period of supervised release and discharge the person at any time earlier than that provided in the sentence made pursuant to subsections 1 and 2. A termination and discharge may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. A termination and discharge relieves the person on supervised release of any obligations imposed by the sentence of supervised release.

6. Termination to prevent delay of consecutive term of imprisonment. The court, in order to comply with section 1608, subsection 7, shall terminate a period of supervised release that would delay commencement of a consecutive unsuspended term of imprisonment.

7. Revoked period of supervised release to be served in prison. The court may revoke a period of supervised release pursuant to section 1883 for any ground specified in subsection 8. If the court revokes a period of supervised release, the court shall require the person to serve time in prison under the custody of the Department of Corrections. This time in prison may equal all or part of the period of supervised release, without credit for time served on post-release supervision. The remaining portion of the period of supervised release that is not required to be served in prison, if any, may not run during the time in prison and must resume again after the person's release and is subject to revocation at a later date.

8. Grounds for revocation. The court may revoke a period of supervised release for:

A. A violation of supervised release;

B. Criminal conduct committed during the term of imprisonment; or

C. Refusal during the term of imprisonment to actively participate, when requested to do so by the Department of Corrections, in a sex offender treatment program in accordance with the expectations and judgment of the treatment providers.

§1882. Conditions of supervised release

If the court imposes a sentence that includes a period of supervised release, it shall set conditions of supervised release. The conditions of release that apply to probation under section 1807 apply to conditions of supervised release. The court may also set conditions of supervised release that it determines to be reasonable and appropriate to manage the person's behavior.

§1883. Revocation procedures

The procedures, rights and responsibilities that apply to probation revocation under sections 1809 to 1812, including bail under section 1811, subsections 5 and 6 and appellate review of revocation under section 1813, apply to revocation of supervised release.

SUBCHAPTER 4

DEFERRED DISPOSITION

§1901. Eligibility for deferred disposition

A person who has pleaded guilty to a Class C, Class D or Class E crime and who consents to a deferred disposition in writing is eligible for a deferred disposition.

§1902. Deferred disposition

1. Authority of court to order deferment and impose requirements; administrative supervision fee. Following the acceptance of a plea of guilty for a crime for which a person is eligible for a deferred disposition under section 1901, the court may order sentencing deferred to a date certain or determinable and impose requirements upon the person, to be in effect during the period of deferment, considered by the court to be reasonable and appropriate to assist the person to lead a law-abiding life. The court-imposed deferment requirements must include a requirement that the person refrain from criminal conduct and may include a requirement that the person pay to the appropriate county an administrative supervision fee of not more than $50 per month, as determined by the court, for the term of the deferment. In determining the amount of the fee, the court shall take into account the financial resources of the person and the nature of the burden its payment imposes. In exchange for the deferred sentencing, the person shall abide by the court-imposed deferment requirements. Unless the court orders otherwise, the requirements are immediately in effect.

2. Modification of requirements. During the period of deferment and upon application of the person granted deferred disposition pursuant to subsection 1 or of the attorney for the State or upon the court's own motion, the court may, after a hearing upon notice to the attorney for the State and the person, modify the requirements imposed by the court, add further requirements or relieve the person of any requirement imposed by the court that, in the court's opinion, imposes an unreasonable burden on the person.

3. Inability to meet requirement; duty on person to bring motion. 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.

4. Determination of date of conviction; bail. For purposes of a deferred disposition, a person is deemed to have been convicted when the court imposes the sentence. Notwithstanding Title 15, chapter 105-A, subchapter 3, prior to sentence imposition, preconviction bail applies to the person.

5. Preferred disposition in prosecution for possession of schedule W drug. A deferred disposition is a preferred disposition in a prosecution for possession of schedule W drugs under section 1107-A, subsection 1, paragraphs B and B-1.

§1903. Court hearing as to final disposition

1. Final disposition following period of deferment. Unless a court hearing is sooner held under subsection 3, and except as provided in subsection 2, at the conclusion of the period of deferment, after notice, a person who was granted deferred disposition pursuant to section 1902 shall return to court for a hearing on final disposition. If the person demonstrates by a preponderance of the evidence that the person has complied with the court-imposed deferment requirements, the court shall impose a 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 person, the court shall grant the State's motion. If the court grants 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. Consensual withdrawal of guilty plea by parties. Notwithstanding subsection 1, if at the conclusion of the period of deferment and prior to sentence imposition the attorney for the State in writing moves the court to allow the person to withdraw the plea of guilty and the person in writing agrees to such withdrawal, the court may, without a hearing on final disposition and in the absence of the person, grant the attorney for the State's motion and allow the person to withdraw the plea. Following such court action, the attorney for the State shall dismiss the pending charging instrument with prejudice.

3. Violation of deferment requirement. 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 1902 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 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. When a person fails to pay an administrative supervision fee imposed under section 1902, subsection 1, the court may terminate the running of the period of deferment and impose sentence unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. 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 subchapter.

4. Place of hearing. A hearing under this section or section 1902 must be held in the court that ordered the deferred disposition. The hearing need not be conducted by the justice or judge who originally ordered the deferred disposition.

5. Rights of person at hearing. The person at a hearing under this section or section 1902 must be given the opportunity to confront and cross-examine witnesses against the person, to present evidence on that person's own behalf and to be represented by counsel. If the person who was granted deferred disposition pursuant to section 1902 cannot afford counsel, the court shall appoint counsel for the person. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

6. Summons to appear at hearing; failure to appear. A summons may be used to order a person who was granted deferred disposition pursuant to section 1902 to appear for a hearing under this section. If the person fails to appear after having been served with a summons, the court may issue a warrant for the arrest of the person.

7. Authority of attorney for State regarding violation of condition of deferment. 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 1902 has violated a court-imposed deferment requirement, the attorney for the State may apply for a warrant for the arrest of the person or request that a warrantless arrest be made of the person pursuant to section 15, subsection 1, paragraph A, subparagraph (17).

§1904. Limited review by appeal

A person may not attack the legality of a deferred disposition, including a final disposition, except that a person who has been determined by a court to have inexcusably failed to comply with a court-imposed deferment requirement and thereafter has been sentenced to an alternative authorized for the crime may appeal to the Law Court, but not as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

CHAPTER 69

RESTITUTION

§2001. Purpose

The Legislature finds and declares that the victims of crimes often suffer losses through no fault of their own and for which there is no compensation. It also finds that repayment, in whole or in part, by the offender to the victim of the offender's crime can operate to rehabilitate the offender in certain instances. It is the purpose of this chapter to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender. Restitution by the offender can serve to reinforce the offender's sense of responsibility for the offense, to provide the offender the opportunity to pay the offender's debt to society and to the offender's victim in a constructive manner and to ease the burden of the victim as a result of the criminal conduct.

The Legislature recognizes that a crime is an offense against society as a whole, not only against the victim of the crime, and that restitution for victims is therefore ancillary to the central objectives of the criminal law. It intends restitution to be applied only when other purposes of sentencing can be appropriately served.

The Legislature does not intend the use of restitution to result in preferential treatment for offenders with substantial financial resources.

§2002. Definitions

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

1. Collateral source. "Collateral source" means a source of benefits or advantages for economic loss resulting from a crime, which the victim has received, or which is readily available to the victim from:

A. The Government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality of 2 or more states unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this chapter;

B. Social security, Medicare and Medicaid;

C. Workers' compensation;

D. Wage continuation programs of any employer;

E. Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminal conduct; or

F. A contract providing prepaid hospital and other health care services or benefits for disability.

2. Dependent. "Dependent" means an individual who is wholly or partially dependent upon the victim for care or support and includes a child of the victim born after the victim's death.

3. Economic loss. "Economic loss" includes economic detriment consisting of environmental clean-up expense, property loss, allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment. "Economic loss" includes expenses of an emergency response by any public agency and critical investigation expenses.

A. "Allowable expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, counseling services and other remedial treatment and care, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. The term includes reasonable and customary charges incurred for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

B. "Critical investigation expense" means a necessary expense incurred by a government or by a victim while investigating or prosecuting suspected criminal conduct. "Critical investigation expense" is limited to the cost of an audit or other financial analysis when that analysis is necessary to determine whether and to what extent a victim has suffered financial harm from criminal conduct by an employee or other person in a position of trust and the cost of analysis of suspected illegal drugs.

C. "Dependent's economic loss" means loss after a decedent's death of contributions of things of economic value to the decedent's dependents, not including services they would have received from the decedent if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

D. "Dependent's replacement loss" means loss reasonably incurred by dependents after a decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of the decedent's death and not subtracted in calculating dependent's economic loss.

E. "Environmental clean-up expense" means any reasonable expense incurred for products and services needed to clean up any harm or damage caused to the environment, including any harm or damage caused by chemicals; to restore the environment to its previous condition prior to any harm or damage; and to properly dispose of chemicals and other materials, including those used in the manufacture of scheduled drugs in violation of chapter 45.

F. "Expense of an emergency response" means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, including a response to a suspected unlawful methamphetamine laboratory under section 1124, but only includes those costs directly arising because of the response to the particular incident. Reasonable costs include the costs of providing police, firefighting, rescue and emergency medical services at the scene of the incident, as well as the compensation for the personnel, including trained laboratory personnel, responding to the incident. "Public agency" means the State or any county, municipality, district or public authority located, in whole or in part, within this State that provides or may provide laboratory services or police, firefighting, ambulance or other emergency services.

G. "Property loss" means the value of property taken from the victim, or of property destroyed or otherwise broken or harmed. A property loss includes the value of taxes or other obligations due to the government that have not been paid. "Property loss" also includes, in cases involving a violation of chapter 45, the value of money or other consideration given or offered in exchange for scheduled drugs by a law enforcement officer or another at the direction of a law enforcement officer that are not, in fact, recovered by the State at the time of sentencing, regardless of whether other money or items of value are sought, acquired or forfeited pursuant to Title 15, chapter 517. In cases involving a violation of chapter 45, the court must make a finding that the property loss is specifically related to that case.

H. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured per-

son would have performed, not for income but for the benefit of the injured person or the injured person's family, if the injured person had not been injured.

I. "Work loss" means loss of income from work the injured person would have performed if the injured person had not been injured and expenses reasonably incurred by the injured person in obtaining services in lieu of those the injured person would have performed for income, reduced by any income for substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work the injured person was capable of performing but unreasonably failed to undertake. For a victim of a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C, "work loss" includes pay or benefits unfairly or illegally withheld from the victim by the offender or any unfair labor agreement under Title 26, section 629, as defined by rules adopted by the Department of Labor.

4. Noneconomic detriment. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and other nonpecuniary damage.

5. Offender. "Offender" means an individual or an organization convicted of a crime.

6. Restitution. "Restitution" means:

A. Monetary reimbursement, in whole or in part, for economic loss;

B. Work or service provided to a victim for economic loss; or

C. Any combination of service or monetary reimbursement by an offender to the victim of the offender's crime or to other authorized claimants, either directly or indirectly.

7. Victim. "Victim" means a government that suffers economic loss or a person who suffers personal injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime.

§2003. Mandatory consideration of restitution

1. Inquiry as to victim's financial loss. The court shall, whenever practicable, inquire of a prosecutor, law enforcement officer or victim with respect to the extent of the victim's financial loss and shall order restitution when appropriate. The order for restitution must designate the amount of restitution to be paid and the person or persons to whom the restitution must be paid.

2. Reasons for not imposing restitution. In any case where the court determines that restitution should not be imposed in accordance with the criteria set forth in section 2005, the court shall state in open court or in writing the reasons for not imposing restitution.

3. Restitution required. In any prosecution for a crime committed prior to the effective date of this chapter, or any amendment to this chapter, the court may, with the consent of the defendant, require the defendant to make restitution in accordance with this chapter as amended.

§2004. Authorized claimants

Restitution may be authorized for:

1. Victim. The victim or a dependent of a deceased victim;

2. County. The county where the offense was prosecuted if the victim voluntarily refuses restitution or if the identity of the victim cannot be ascertained;

3. Person providing recovery. Any person, firm, organization, corporation or government entity that has provided recovery to the victim as a collateral source, but only to the extent that such recovery was actually made; and

4. Person acting on behalf of victim. Any person legally authorized to act on behalf of the victim.

§2005. Criteria for restitution

1. Restitution authorized. Restitution may be authorized, in whole or in part, as compensation for economic loss. In determining the amount of restitution authorized, the following must be considered:

A. The contributory misconduct of the victim;

B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and

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

2. Restitution not authorized. Restitution is not authorized:

A. To a victim without that victim's consent;

B. To a victim who is an accomplice of the offender;

C. To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of the collateral compensation may be authorized; and

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

(1) The number of the offender's dependents;

(2) The minimum living expenses of the offender and the offender's dependents;

(3) The special needs of the offender and 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.

3. Exception. The provisions of subsection 2, paragraph D do not apply to an offender that is an organization.

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.

§2006. Time and method of restitution

When restitution is authorized, and the offender is not committed to the Department of Corrections and does not receive a sentence that includes a period of probation, the time and method of payment or of the performance of the services must be specified by the court and monetary compensation may be ordered paid to the office of the prosecuting attorney who is prosecuting the case or to the clerk of the court. If the offender is committed to the Department of Corrections or receives a sentence that includes a period of probation, monetary compensation must be paid to the Department of Corrections and the time and method of payment must be determined by the Department of Corrections during the term of commitment or the period of probation unless at the time of sentencing the court has specified the time and method of payment. Once any term of commitment to the Department of Corrections or period of probation is completed and if the restitution ordered has not been paid in full, the offender is subject to the provisions of section 2011 and, in the event of a default, the provisions of section 2015. The state agency receiving the restitution shall deposit any money received in the account maintained by the Treasurer of State for deposit of state agency funds, from which funds are daily transferred to an investment account and invested. Interest accrued on that money is the property of and accrues to the State for deposit in the General Fund. The agency receiving the restitution shall make the disbursement to the victim or other authorized claimant as soon as possible after the agency receives the money.

§2007. Income withholding order

1. Instructions for employer. When restitution is required of an offender who will not be commencing service of a period of institutional confinement, who does not receive a sentence that includes a period of probation and who is employed, the court shall, at the time of ordering restitution, enter a separate order for income withholding. When restitution is required of an offender who receives a sentence that includes a period of probation and who is employed, upon application of the offender's probation officer, the court shall enter a separate order for income withholding. The withholding order must direct the employer to deduct from all income due and payable to the offender an amount determined pursuant to section 2006 to meet the offender's restitution obligation. The withholding order must include an instruction to the employer that upon receipt of a copy of the withholding order the employer shall:

A. Immediately begin to withhold the offender's income when the offender is usually paid;

B. Send each amount withheld to the agency to which restitution has been ordered to be paid at the address set forth in the order within 7 business days of the withholding; and

C. Identify each amount sent to the agency by indicating the court's docket number.

2. Term of order. The income withholding order is effective as long as the order for restitution upon which it is based is effective, including after a defendant is no longer in the custody or under the supervision of the Department of Corrections and has not paid the restitution in full as described in section 2011, or until further order of the court.

§2008. Deceased victims

An offender's obligation to pay restitution is not affected by the death of the victim to whom the restitution is due. The money collected as restitution must be forwarded to the estate of the victim.

§2009. Victim unable to be located

If the location of a victim cannot, with due diligence, be ascertained, the money collected as restitution must be forwarded to the Treasurer of State to be handled as unclaimed property.

§2010. Joint and several order

If the victim's financial loss has been caused by more than one offender, the order must designate that the restitution is to be paid on a joint and several basis, unless the court specifically determines that one defendant should not equally share the burden. The agency collecting restitution pursuant to a joint and several order may, after the full amount of restitution has been collected and disbursed to the victim, continue to collect payments from an offender who has not paid an equal share of the restitution and may disburse the money collected to any other offender who has paid more than an equal share of the restitution.

§2011. Former Department of Corrections' clients owing restitution

An offender is responsible for paying any restitution outstanding at the time the term of commitment to the Department of Corrections or period of probation is completed. An offender who has complied with the time and method of payment of monetary compensation determined by the Department of Corrections during the period of probation shall continue to make payments to the Department of Corrections in accordance with that payment schedule unless modified by the court pursuant to section 2014 or 2015. An offender who has not complied with the time and method of payment of monetary compensation determined by the Department of Corrections during the period of probation must be returned to the court for further disposition pursuant to section 2015. An offender who is unconditionally released and discharged from institutional confinement with the Department of Corrections upon the expiration of the sentence must, upon application of the office of the attorney for the State, be returned to the court for specification by the court of the time and method of payment of monetary compensation, which may be ordered paid to the office of the attorney for the State who prosecuted the case or to the clerk of the court. Prior to the offender's release and discharge, the Department of Corrections shall provide the office of the attorney for the State who prosecuted the case written notice as to the amount of restitution outstanding. An income withholding order issued pursuant to section 2007 remains effective and enforceable until the restitution is paid in full, even after an offender is no longer in the custody or under the supervision of the Department of Corrections.

§2012. Restitution deducted from judgment in civil action

Any restitution ordered and paid must be deducted from the amount of any judgment awarded in a civil action brought by the victim against the offender based on the same facts. If the restitution ordered and made was work restitution, the reasonable value of the services may be deducted from any such judgment.

§2013. Post-conviction 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.

§2014. Modification of restitution

A convicted person who cannot make restitution payments in the manner ordered by the court or determined by the Department of Corrections pursuant to section 2006 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 or the determination of the Department of Corrections to reduce the amount of each installment or to allow additional time for payment or service.

§2015. Default

1. Return to court. An offender who has been sentenced to make restitution and has defaulted in payment or service thereof must be returned to court to explain the failure to pay or perform the service.

2. Reports. A probation officer having knowledge of a default in restitution by an offender shall report the default to the office of the attorney for the State. 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 1811. If the restitution was not a condition of probation, the attorney for the State may file a motion to enforce payment of restitution.

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.

C. The confinement ordered under this subsection must be nonconcurrent with any judgment of conviction involving a term of imprisonment.

4. Forfeiture of bail. When an offender who has been sentenced to make restitution and has defaulted in payment or service of the restitution is declared in forfeiture of bail in the proceeding brought under this section pursuant to Title 15, section 1094, the obligation and sureties of the defendant must be enforced pursuant to Title 15, section 1094 and the district attorney shall use the proceeds to satisfy the offender's restitution obligation. Any proceeds from the forfeited bail remaining after the offender's restitution obligation has been satisfied must be used in accordance with Title 15, section 224-A, subsection 2.

5. 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.

6. 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.

7. Payments. Payments made pursuant to this section must be made to the same agency to which the restitution was required to be paid under section 2006 or section 2011, except that if the offender is no longer in the custody or under the supervision of the Department of Corrections the payments must be made to the office of the attorney for the State who prosecuted the case or the clerk of the court, as ordered by the court.

§2016. Work program release; restitution

1. Work program; payment of restitution and fines. A prisoner who has been ordered to pay restitution or fines may not be released pursuant to a work program administered by the Department of Corrections under Title 34-A, section 3035, or a sheriff under Title 30-A, section 1605, or participate in an industry program under Title 34-A, section 1403, subsection 9 or any other program administered by the Department of Corrections or a sheriff by which a prisoner is able to generate money, unless the prisoner consents to pay at least 25% of the prisoner's gross weekly wages or other money generated to the victim or the court until such time as full restitution has been made or the fine is paid in full. The chief administrative officer of the correctional facility where the prisoner is incarcerated shall collect and disburse to the victim or victims that portion of the prisoner's wages or other money generated agreed to as payment of restitution. The chief administrative officer of the correctional facility where the prisoner is incarcerated shall also collect and disburse to the court that portion of the prisoner's wages or other money generated agreed to as payment of fines after the restitution is paid in full. If the victim or victims ordered by the court to receive restitution cannot be located, the correctional facility shall inform the court that ordered restitution. The court shall determine the distribution of these funds.

2. Payment of restitution or fines from other sources. A prisoner, other than one addressed by subsection 1, who receives money, from any source, shall pay 25% of that money to any victim or the court if the court has ordered that restitution or a fine be paid. The chief administrative officer of the correctional facility in which the prisoner is incarcerated shall collect and disburse to the victim or victims that portion of the prisoner's money ordered as restitution. The chief administrative officer of the correctional facility where the prisoner is incarcerated shall also collect and disburse to the court that portion of the prisoner's money ordered as fines after the restitution is paid in full. If the victim or victims ordered by the court to receive restitution cannot be located, the correctional facility shall inform the court that ordered restitution. The court shall determine the distribution of these funds. Money received by the prisoner and directly deposited into a telephone call account established by the Department of Corrections for the sole purpose of paying for use of the department's client telephone system is not subject to this subsection, except that 25% of any money received by the prisoner and transferred from the telephone call account to the department's general client account at the time of the prisoner's discharge or transfer to supervised community confinement must be collected and disbursed as provided in this subsection.

3. Restitution; absolute. The requirements imposed on a prisoner by this section to pay restitution and fines during incarceration apply regardless of whether:

A. The court order to pay restitution or fines constitutes a sentence or is imposed as a condition of probation;

B. Payment has been stayed in the court order;

C. The court has specified a time and method of payment pursuant to section 1708, subsection 1 or section 2006; or

D. The person's incarceration resulted from a revocation of probation.

§2017. Waiver of issue of excessiveness

If a defendant at the time of sentencing has consented to the imposition by the sentencing court of a specific amount of restitution, the defendant is thereafter precluded from seeking to attack the legality or

propriety of the amount of restitution ordered if that amount does not exceed the specific amount consented to by the defendant.

§2018. Restitution for benefit of victim

When compensation is awarded from the Victims' Compensation Fund pursuant to Title 5, chapter 316-A, the amount of any restitution ordered to be paid to or for the benefit of the victim and collected as part of a sentence imposed must be paid by the agency collecting the restitution in an amount not to exceed the amount of the payments from the fund, directly to the fund if, when added to the payments from the fund, the restitution exceeds the victim's actual loss.

§2019. Civil remedy upon default

Upon the request of the attorney for the State or a person entitled to restitution under an order of restitution, the clerk shall enter the order of restitution in the same manner as a judgment in a civil action. When entered under this section, the order of restitution is deemed to be a money judgment. Upon default, the order to make restitution is enforceable in accordance with Title 14, chapter 502 by any person entitled to restitution under the order.

CHAPTER 71

COMMUNITY SERVICE WORK

§2031. Sentencing alternative of community service work; authorization

The court may sentence an individual convicted of a Class D or Class E crime to perform a specified number of hours of community service work for the benefit of the State, a county, a municipality, a school administrative unit or other public entity, a charitable institution or another entity approved by the court.

§2032. Modification of community service work

An individual who has been sentenced to perform a specified number of hours of community service work pursuant to section 2031 and who is in danger of default for failing to complete the work in the manner ordered by the court shall move the court for a modification to avoid the default. The court may modify its prior order as to the time for completion, the nature of the work to be performed or the entity for which the work is to be performed.

§2033. Default

1. Return to court. An individual who has been sentenced to perform community service work pursuant to section 2031 and fails to complete the specified number of hours of work in the manner ordered by the court must be returned to the court to explain the failure.

2. Report of failure. If the entity for which the court orders an individual to perform community service work pursuant to section 2031 knows that the individual has failed to meet the requirements of the order, the entity may report the failure to the attorney for the State or to the court. If the attorney for the State knows of the default, the attorney for the State shall report the default to the court.

3. Motion to enforce sentence or motion to seek coercive or punitive sanction. Either the attorney for the State or the court may initiate a motion to enforce completion of community service work ordered by the court pursuant to section 2031 or may initiate a motion seeking a coercive or punitive sanction for the default as specified in subsection 4, paragraphs C and D. The court shall send notification of the hearing on the motion by regular mail to the individual's last known address. If the individual does not appear for the hearing after proper notification has been sent, the court may issue a bench warrant.

4. Hearing on motion. At a hearing under subsection 3, unless the individual who has been sentenced to perform community service work 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 individual's part to make a good faith effort to comply with the order, the court shall find that the default was unexcused and may:

A. Reaffirm the requirement that the individual complete the community service work as previously ordered;

B. Modify the original order as to:

(1) When the community service work is to be performed;

(2) The entity for whom the work is to be performed; or

(3) The nature of the work to be performed;

C. Impose a coercive sanction by committing the individual to the custody of a sheriff until such time as the individual demonstrates to the court a willingness to comply with the order. The commitment imposed pursuant to this paragraph may not exceed 6 months; or

D. Impose a punitive sanction by committing the individual to the custody of a sheriff. The commitment imposed pursuant to this paragraph may not exceed 6 months.

The provisions of Rule 66 of the Maine Rules of Civil Procedure do not apply to a hearing on a motion seeking a coercive or punitive sanction imposed pursuant to paragraph C or D.

5. Commitment order; tolling of undischarged term; no deductions. If the court orders an individual committed as a coercive sanction pursuant to subsection 4, paragraph C:

A. The court may order that an undischarged term of imprisonment be tolled for the duration of the coercive commitment if the individual is in execution of the undischarged term of imprisonment on a sentence in this State; and

B. The individual may not receive a deduction for time detained as a result of an arrest made under subsection 3 or a deduction based on conduct or participation in programs established or approved by the administrator of the jail to which the individual is committed during the coercive commitment.

6. Commitment order; nonconcurrent with any term of imprisonment; deduction only for time detained. If the court orders an individual committed as a punitive sanction pursuant to subsection 4, paragraph D:

A. The committal must not be concurrent with another term of imprisonment in this State imposed pursuant to a judgment of conviction;

B. The individual must receive a day-for-day deduction for time detained as a result of an arrest made under subsection 3; and

C. The individual may not receive a deduction based on conduct or participation in programs established or approved by the administrator of the jail to which the individual is committed during the commitment imposed as a punitive sanction.

7. Right to counsel. At a hearing under subsection 3 in which the State seeks a coercive or punitive sanction for a default, the individual has the right to be represented by counsel. If the individual cannot afford counsel, the court shall assign counsel for the individual unless the court concludes that in the event of a finding of an unexcused default the options in subsection 4, paragraphs C and D will not be employed by the court.

8. Excused default. If at a hearing under subsection 3 the court finds the default to be excused, the court may leave its prior order in place or modify the order as to the time for completion, the nature of the work to be performed or the entity for which the work is to be performed.

9. Supervision of work. The Department of Corrections is not responsible for supervision of community service work imposed pursuant to section 2031.

CHAPTER 73

UNCONDITIONAL DISCHARGE

§2051. Sentencing alternative of unconditional discharge

The court shall sentence a convicted person to an unconditional discharge if the court determines that no other authorized sentencing alternative is appropriate punishment and the convicted person is:

1. Eligible for probation. Eligible for the imposition of a sentencing alternative that includes a period of probation under section 1802, subsection 1; or

2. Ineligible for probation due to excluded Class D or Class E crime. Ineligible for the imposition of a sentencing alternative that includes a period of probation under section 1802, subsection 1 solely by operation of section 1802, subsection 1, paragraph B.

A sentence of unconditional discharge is for all purposes a final judgment of conviction.

CHAPTER 75

VICTIMS' RIGHTS

§2101. Definitions

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

1. Crime. "Crime" means a criminal offense in which, as defined, there is a victim.

2. Victim. "Victim" means:

A. A person who is the victim of a crime; and

B. The immediate family of a victim of a crime if:

(1) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

(2) Due to death, age, physical or mental disease, disorder or defect, the victim is unable to participate as allowed under this chapter.

As used in this paragraph, "immediate family" means the spouse, domestic partner, parent, child, sibling, stepchild or stepparent of the victim.

§2102. Victims to be notified

1. Information provided to victim. When practicable, the attorney for the State shall make a good faith effort to inform each victim of the following:

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

B. The right to comment on a plea agreement, including a deferred disposition, pursuant to section 2103;

C. The proposed dismissal or filing of an indictment, information or complaint pursuant to the Maine Rules of Unified Criminal Procedure, Rule 48, before that action is taken;

D. The time and place of the trial;

E. The time and place of sentencing;

F. The right to participate at sentencing pursuant to section 2104; and

G. 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 2105.

2. Pamphlets. When providing notice under subsection 1, the attorney for the State shall offer to provide the victim with a pamphlet containing this chapter, Title 5, chapter 316-A and Title 15, sections 812 and 6101. In addition, the attorney for the State, as part of any victim and witness support program that attorney administers under Title 30-A, section 460, shall provide the victim with a pamphlet outlining in everyday language the provisions set out in this chapter, Title 5, chapter 316-A and Title 15, sections 812 and 6101. The attorney for the State may use the pamphlet printed and distributed by the Department of Corrections or another pamphlet that meets the criteria in this section.

§2103. Plea agreement procedure

When a plea agreement is submitted to the court pursuant to the Maine Rules of Unified Criminal Procedure, Rule 11A(b), the attorney for the State shall disclose to the court any and all attempts made to notify each victim of the plea agreement and any objection to the plea agreement by a victim. A victim who is present in court at the submission of the plea may address the court at that time.

§2104. Sentencing procedure

1. Participation by victim. The victim must be provided the opportunity to participate at sentencing by:

A. Making an oral statement in open court; or

B. Submitting a written statement to the court either directly or through the attorney for the State. A written statement must be made part of the record.

An attorney for the victim may submit a written statement or make an oral statement on the victim's behalf.

2. Consideration of victim's statements. The court shall consider any statement made under subsection 1, along with all other appropriate factors, in determining the sentence.

3. Participation by interested person. An interested person, including, but not limited to, a member of the victim's family who is not immediate family of the victim, a close friend of the victim, a community member and other interested person, does not have a right to participate at sentencing. Participation by such interested persons is a matter for the court's discretion in determining what information to consider when sentencing.

§2105. 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.

§2106. Notification of defendant's release or escape

Upon complying with subsection 1, a victim of a crime of murder or of a Class A, Class B or Class C crime or of a Class D crime under chapters 9, 11 and 12 for which the defendant is committed to the Department of Corrections or to a county jail or is committed to the custody of the Commissioner of Health and Human Services either under Title 15, section 103 after having been found not criminally responsible by reason of insanity or under Title 15, section 101-D after having been found incompetent to stand trial must receive notification of the defendant's unconditional release and discharge from institutional confinement upon the expiration of the sentence or upon release from commitment under Title 15, section 101-D or upon discharge under Title 15, section 104-A; must receive notification of any conditional release of the defendant from institutional confinement, including probation, supervised release for sex offenders, parole, furlough, work release, funeral or deathbed visit, supervised community confinement, home release monitoring or similar program, administrative release or release under Title 15, section 104-A; and must receive notification of the defendant's escape from the Department of Corrections, the custody of the Commissioner of Health and Human Services or the county jail to which the defendant is committed. For purposes of this section, "victim" also includes a person who has obtained under Title 19-A, section 4007 an active protection order or approved consent agreement against the defendant.

1. Request for notification. A victim who wishes to receive notification must file a written request for that notification of the defendant's release or escape under this section with the office of the attorney for the State. The attorney for the State shall forward this request form to the Department of Corrections or to the state mental health institute or to the county jail to which that defendant is committed. Notwithstanding this subsection, a victim who wishes to receive notification regarding a defendant who is committed to the Department of Corrections may file a request for notification of the defendant's release directly with the Department of Corrections.

2. Notification of victim. The Department of Corrections or the state mental health institute or the county jail to which the defendant is committed shall keep the victim's written request for a notification under subsection 1 in the file of the defendant and shall notify the victim by mail of any impending release as soon as the release date is set or, if the defendant has escaped, by the quickest means reasonably practicable. This notification must be mailed to the address provided in the request or any subsequent address provided by the victim.

3. Contents of notification upon release. If the defendant is being released, the notification required by this section must contain:

A. The name of the defendant;

B. The nature of the release authorized, whether it is a conditional release, including probation, supervised release for sex offenders, parole, furlough, work release, funeral or deathbed visit, supervised community confinement, home release monitoring or a similar program, administrative release or release under Title 15, section 104-A, or an unconditional release and discharge upon release from commitment under Title 15, section 101-D or upon the expiration of a sentence or upon discharge under Title 15, section 104-A;

C. The anticipated date of the defendant's release from institutional confinement and any date on which the defendant must return to institutional confinement, if applicable;

D. The geographic area to which the defendant's release is limited, if any;

E. The address at which the defendant will reside; and

F. The address at which the defendant will work, if applicable.

4. Contents of notification upon escape. If the defendant has escaped, the notice required by this section must contain the name of the defendant, the manner of escape, the place from which the defendant escaped and the date of the escape.

5. Termination of notification requirement. The notification requirement under this section ends when:

A. Notification has been provided of an unconditional release or discharge upon the expiration of the sentence or upon release under Title 15, section 101-D or upon discharge under Title 15, section 104-A; or

B. The victim has filed a written request for a notification under subsection 1 with the Department of Corrections or the state mental health institute or the county jail to which the defendant is committed asking that no further notification be given.

6. Liability. Neither the failure to perform the requirements of this chapter nor compliance with this chapter subjects the attorney for the State, the Commissioner of Corrections, the Department of Corrections, the Commissioner of Health and Human Services, the institution for the care and treatment for persons with mental illness to which the defendant is committed by the Commissioner of Health and Human Services or the residential program that provides care and treatment for persons who have intellectual disabilities or autism to which the defendant is committed by the Commissioner of Health and Human Services or the county jail or the employees or officers of the attorney for the State, the Commissioner of Corrections, the Department of Corrections, the Commissioner of Health and Human Services, the state mental health institution for the care and treatment for persons with mental illness to which the defendant is committed by the Commissioner of Health and Human Services or the residential program that provides care and treatment for persons who have intellectual disabilities or autism to which the defendant is committed by the Commissioner of Health and Human Services or the county jail to liability in a civil action.

§2107. Notification of defendant's release on preconviction bail

1. Contact information for victim of certain crimes. In the case of an alleged crime involving domestic violence, sexual assault under chapter 11 or stalking, the arresting law enforcement officer shall obtain the victim's contact information and provide that information to the jail to which the defendant is delivered.

2. Notification of victim of certain crimes by jail or law enforcement agency. In a case of an alleged crime involving domestic violence, sexual assault under chapter 11 or stalking, the jail to which the defendant is delivered shall notify the victim of the defendant's release on preconviction bail under Title 15, chapter 105-A as soon as possible but no later than one hour after the defendant's release. If the defendant is released on preconviction bail before being delivered to a jail, the arresting law enforcement agency shall notify the victim as provided in this section.

3. Method of notification. Notification under subsection 2 must be made by a telephone call either directly to the victim or as provided in subsection 5. In the event that the jail has not succeeded in contacting the victim after the jail has exercised due diligence in attempting to contact the victim, notification of the defendant's release must be made to the law enforcement agency that investigated the report of domestic violence, sexual assault under chapter 11 or stalking. That law enforcement agency shall make a reasonable attempt to notify the victim of the defendant's release on preconviction bail.

4. Request by victim to not be notified. Notwithstanding subsection 2, a victim of an alleged crime described in subsection 1 may request in writing that the jail or arresting law enforcement agency not notify the victim of the defendant's release on preconviction bail.

5. Notification based on age of victim. Notification under this section to an adult victim must be made to the victim. Notification to a minor victim must be made to an adult who is the victim's parent or legal guardian or, if a parent or legal guardian is not available, to another immediate family member of the victim unless the jail or arresting law enforcement agency reasonably believes that it is in the best interest of the minor victim to be notified directly.

6. Liability. Neither the failure to perform the requirements of this section nor compliance with this section subjects the State, the arresting law enforcement agency, the jail to which the defendant was delivered, the Department of Corrections or officers or employees of the law enforcement agency, jail or Department of Corrections to liability in a civil action.

For purposes of this section, "crime involving domestic violence" has the same meaning as in Title 15, section 1003, subsection 3-A and includes those crimes under section 152, subsection 1, paragraph A, section 208 and section 208-B when the victim is a family or household member as defined in Title 19-A, section 4002, subsection 4.

§2108. Confidentiality of victim records

1. General rule of confidentiality. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

2. Disclosure to law enforcement or victims' service agency. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

A. A state agency if necessary to carry out the statutory duties of that agency;

B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;

C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or

D. A person or agency upon request of the victim.

3. Limited disclosure as part of bail condition or court order. A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim only when it is clear that the defendant already knows the victim's current address or location or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

4. Limited disclosure pursuant to discovery. An attorney for the State may withhold the current address or location of a victim from the defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

5. Disclosure of victim's request for notice prohibited. In no case may a victim's request for notification of the defendant's release under section 2106 be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those persons to perform their official duties under this chapter.

§2109. Certain communications by victims confidential

The following communications are privileged from disclosure.

1. To sexual assault counselor. Communications by a victim, as described in Title 16, section 53-A, subsection 2, to a sexual assault counselor, as defined in Title 16, section 53-A, subsection 1, paragraph B, are privileged from disclosure as provided in Title 16, section 53-A, subsection 2.

2. To advocate. Communications by a victim, as defined in Title 16, section 53-B, subsection 1, paragraph B, to an advocate, as defined in Title 16, section 53-B, subsection 1, paragraph A, are privileged from disclosure as provided in Title 16, section 53-B, subsection 2, subject to exceptions in Title 16, section 53-B, subsection 3.

3. To victim witness advocate or victim witness coordinator. Communications by a victim, as defined in Title 16, section 53-C, subsection 1, paragraph B, to a victim witness advocate or a victim witness coordinator, as defined in Title 16, section 53-C, subsection 1, paragraph C, are privileged from disclosure as provided in Title 16, section 53-C, subsection 2, subject to exceptions in Title 16, section 53-C, subsection 3.

PART 7

ADMINISTRATION OF IMPOSED SENTENCES OF IMPRISONMENT

CHAPTER 81

ADMINISTRATION OF IMPOSED SENTENCES OF IMPRISONMENT

§2301. Definitions

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

1. Family or household member. "Family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.

2. Jail. "Jail" means a county or regional jail.

3. Sentence of imprisonment. "Sentence of imprisonment" means:

A. A term of imprisonment, none of which is suspended;

B. An unsuspended portion of a split sentence of imprisonment either before or after revocation of probation or administrative release;

C. An unsuspended portion of a wholly suspended term of imprisonment with probation or with administrative release after revocation of that probation or administrative release; or

D. Any court-ordered time in the custody of the Department of Corrections after revocation of a period of supervised release.

§2302. General provisions

1. Deduction for each day in execution of sentence of imprisonment. An individual committed to the custody of the Department of Corrections or a jail whose sentence of imprisonment has commenced pursuant to section 2303 must receive a day-for-day deduction from that individual's sentence of imprisonment for each day the individual is in execution of that sentence. This day-for-day deduction may not be withdrawn. Prior to the day-for-day deduction being given, the sentence must first be reduced by any deduction for time detained to which the individual is entitled pursuant to section 2305.

2. Start of consecutive sentence. A consecutive sentence may not begin until the sentence involving imprisonment that the consecutive sentence immediately follows in time has been fully served.

3. Application of deduction for concurrent sentences. While an individual is in execution of concurrent sentences pursuant to subsection 1, a day-for-day deduction must be accorded on all the sentences simultaneously.

4. Application of deduction for consecutive sentences. While an individual is in execution of a consecutive sentence pursuant to subsection 1, a day-for-day deduction may be accorded on only one sentence at a time.

§2303. Commencement of sentence of imprisonment

1. Commitment to Department of Corrections. The sentence of imprisonment of an individual committed to the custody of the Department of Corrections to serve that sentence commences on the date on which that individual is received into the correctional facility designated as the initial place of confinement by the Commissioner of Corrections or the commissioner's designee pursuant to section 2304. That day is counted as the first full day of the sentence.

2. Commitment to specified jail. The sentence of imprisonment of an individual committed to the custody of a jail to serve that sentence commences on the date on which that individual is received into the jail specified in the sentence. That day is counted as the first full day of the sentence if the term of imprisonment, or the unsuspended portion of the term of imprisonment, is over 30 days; otherwise, a deduction is accorded only for the portion of that day for which the individual is actually in execution of the sentence.

3. Commitment with concurrent sentence of imprisonment from another jurisdiction. When an individual is sentenced to a concurrent sentence of imprisonment as authorized by section 1608, subsection 6, the provisions of this chapter apply and must be administered by the chief administrative officer of this State's correctional facility when the individual is committed to the custody of the Department of Corrections or by the jail administrator of a jail in this State when the individual is committed to the custody of the jail. If the individual is released from imprisonment under the sentence of the other jurisdiction prior to the termination of this State's sentence, the individual shall serve the remainder of this State's sentence at the appropriate correctional facility or jail in this State.

§2304. Notification of commitment to Department of Corrections

At the time of sentencing, the sheriff or the sheriff's designee shall notify the Commissioner of Corrections or the commissioner's designee that an individual has been committed to the Department of Corrections and shall inquire as to the correctional facility to which the individual must be delivered by the sheriff or the sheriff's designee. The commissioner or the commissioner's designee has complete discretion to determine the initial place of confinement. In making this determination, the commissioner or the commissioner's designee shall review all relevant information, including any available mental health information. The commissioner or the commissioner's designee

shall immediately inform the sheriff or the sheriff's designee of the location of the correctional facility to which the individual must be transported.

§2305. Deductions from sentence of imprisonment for time detained

1. Deductions for detention permitted. An individual sentenced to imprisonment who has been detained for the conduct for which that sentence is imposed while awaiting trial, during trial, post-trial while awaiting sentencing or post-sentencing prior to the date on which the sentence commenced either to await transportation to the place of imprisonment specified or pursuant to court order, and not in execution of any other sentence of confinement, must receive a day-for-day deduction from the total term of imprisonment required under that sentence if that individual is detained in:

A. This State in a correctional facility, mental health institute or jail or in any local lockup; or

B. Another jurisdiction in a federal, state or county institution, local lockup or similar facility, including any detention resulting from being a fugitive from justice, as defined by Title 15, section 201, subsection 4, unless the individual has simultaneously been detained for non-Maine conduct.

For the purpose of calculating the day-for-day deduction specified by this subsection, "day" means 24 hours, except that for an individual who commits a crime on or after October 15, 2011, who has been detained for the conduct for which the individual is sentenced to a term of imprisonment of 96 hours or less, any portion of a day detained short of 24 hours must also be deducted from the total term of imprisonment required under that sentence.

2. Deductions for detention not permitted. An individual who, in addition to being detained pursuant to subsection 1, has been simultaneously detained for conduct for which the individual is sentenced to a consecutive sentence may not receive a day-for-day deduction from the consecutive sentence for the period of simultaneous detention except for any period of detention that is longer than the total term of imprisonment required under the sentence to be served prior to the consecutive sentence.

3. Timing of application of deductions. The total term required under a sentence of imprisonment is reduced by the total deduction under this section prior to applying any of the other deductions specified in this chapter or in Title 30-A, section 1606.

4. Additional deduction when warranted for crime committed on or after August 1, 2004. An individual may receive a deduction of up to 2 days per calendar month in addition to the day-for-day deduction provided pursuant to subsection 1 if:

A. The individual commits a crime on or after August 1, 2004 and is sentenced to a term of imprisonment for that crime; and

B. The individual is entitled to a day-for-day deduction pursuant to subsection 1 and the individual's conduct during that period of detention is such that the additional deduction is determined to be warranted in the discretion of the chief administrative officer of the facility in which the individual has been detained.

Deductions under this subsection must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 15 days	up to 1
16 to 31 days	up to 2

5. Deduction for detention may not be withdrawn. A deduction for detention to which the individual is entitled may not be withdrawn.

6. Transporter's duty to provide statement of time detained. The sheriff or the sheriff's designee shall furnish to the administrator of the facility to which the individual is being delivered and the attorney for the State, within 30 days of delivery, a statement showing the length of that detention. The administrator shall use the statement furnished to determine the day-for-day deduction to which the individual is entitled pursuant to subsections 1 and 4, if any, unless, within 15 days of its receipt, the attorney for the State furnishes a revised statement to the administrator.

§2306. Deductions for time detained; special circumstances

1. Time detained for failure to appear for a default hearing. An individual arrested and detained for failing to appear for a hearing to explain nonpayment of a fine, a county jail reimbursement fee or restitution or to explain nonperformance of community service work who subsequently is committed by the court conducting the default hearing to the custody of a jail for an unexcused default must receive a day-for-day deduction from the length of the confinement specified in the court's order for each day detained as a result of the arrest pursuant to section 1711, subsection 4; section 1751, subsection 6; section 2015, subsection 3; or section 2033, subsection 6.

2. Arrest and detention pending probation or administrative release revocation proceeding. If an individual is detained in a correctional facility, mental health institute or jail pending a probation or administrative release revocation proceeding and is not in execution of any other sentence of confinement, that period of detention must be deducted from the time the individual is required to serve under that portion of the sentence for which the suspension of execution was

vacated as a result of the probation or administrative release revocation. An individual who is simultaneously detained for conduct for which the individual receives a consecutive term of imprisonment is not entitled to receive a day-for-day deduction from the consecutive term of imprisonment for the period of simultaneous detention except for any period of detention that is longer than the term of imprisonment to be served prior to the consecutive sentence.

§2307. Discretionary deductions for individual who commits crime on or after August 1, 2004, except for certain listed crimes

1. Application. The provisions of this section apply only to an individual who, on or after August 1, 2004, commits a crime and is sentenced to imprisonment for that crime, except for the following:

A. Murder;

B. A crime listed under chapter 11;

C. A crime listed under section 556;

D. A crime listed under section 854, excluding subsection 1, paragraph A, subparagraph (1);

E. A crime listed under chapter 12; or

F. A crime against a family or household member listed under chapter 9 or 13 or section 506-B, 554, 555 or 758.

2. Discretionary 4 days per month deduction based on conduct. For an individual who commits a crime and is subsequently in the custody of the Department of Corrections or a jail in execution of a sentence of imprisonment for that crime, up to 4 days per calendar month may be deducted from that sentence, calculated from the date of its commencement, if that individual's conduct during that calendar month is such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the correctional facility or the jail administrator.

Deductions under this subsection must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 7 days	up to 1
8 to 15 days	up to 2
16 to 23 days	up to 3
24 to 31 days	up to 4

3. Discretionary 3 days per month deduction based on fulfillment of assigned responsibilities for individual in custody of Department of Corrections or jail. For an individual who commits a crime and is subsequently in the custody of the Department of Corrections or a jail in execution of a sentence of imprisonment for that crime, in addition to the days of deduction provided for in subsection 2, up to 3 days per calendar month may be deducted from that sentence, calculated from the date of its commencement, if that individual's fulfillment of responsibilities assigned in the individual's transition plan for work, education or rehabilitation programs during that calendar month is such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the correctional facility or the jail administrator.

Deductions under this subsection must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 10 days	up to 1
11 to 20 days	up to 2
21 to 31 days	up to 3

4. Discretionary 2 days per month deduction based on fulfillment of assigned responsibilities only for individual in custody of Department of Corrections. For an individual who commits a crime and is subsequently in the custody of the Department of Corrections in execution of a sentence of imprisonment for that crime, in addition to the days of deduction provided for in subsections 2 and 3, up to 2 days per calendar month also may be deducted from that sentence, calculated from the date of its commencement, if that individual's fulfillment of responsibilities assigned in the individual's transition plan for community work, education or rehabilitation programs during that calendar month is such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the correctional facility.

Deductions under this subsection must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 15 days	up to 1
16 to 31 days	up to 2

5. Withdrawal of discretionary deductions. Any portion of the time deducted from the sentence of an individual pursuant to subsection 2, 3 or 4 may be withdrawn by the chief administrative officer of the correctional facility for a disciplinary offense or for the violation of any law of the State in accordance with Title 34-A, section 3032 and the rules adopted under that section or by the jail administrator in accordance with jail disciplinary procedures. Deductions may be withdrawn for months already served or yet to be served by the individual up to and including the maximum authorized for that sentence.

6. Restoration of discretionary deductions. The chief administrative officer of the correctional

facility or the jail administrator may restore any portion of deductions that have been withdrawn under subsection 5 if the individual's later conduct and fulfillment of responsibilities assigned in the individual's transition plan for work, education or rehabilitation programs are such that the restoration is determined to be warranted in the discretion of the chief administrative officer or the jail administrator.

7. Calculation of deduction for work in excess of 8 hours. The Commissioner of Corrections or the sheriff may establish policy and guidelines for crediting hours of participation in work in excess of 8 hours in a day toward another day for the purpose of calculating deductions from a sentence under subsections 3 and 4.

8. Calculation of deductions following imposition of new or revised sentence of imprisonment for same offense. When a judgment of conviction involving a term of imprisonment is vacated or a sentence involving a term of imprisonment is revised or reviewed and a new sentence involving a term of imprisonment is thereafter imposed upon the individual for the same offense, the day-for-day deduction must be accorded on the new sentence both for each day the individual served in execution of the initial sentence pursuant to section 2302, subsection 1 and for all previously earned deductions specified in this section and Title 30-A, section 1606. Prior to the day-for-day deduction being given on the new sentence, the new sentence must be reduced by any deductions specified in section 2305 previously or subsequently received. The deductions applied to the new sentence must be calculated in accordance with this section.

§2308. Discretionary deductions based on conduct and fulfillment of responsibilities for individuals who commit certain crimes on or after August 1, 2004

1. Application. The provisions of this section apply only to an individual who commits on or after August 1, 2004 one or more of the following crimes and is sentenced to imprisonment for that crime:

A. Murder;

B. A crime listed under chapter 11;

C. A crime listed under section 556;

D. A crime listed under section 854, excluding subsection 1, paragraph A, subparagraph (1);

E. A crime listed under chapter 12; or

F. A crime against a family or household member listed under chapter 9 or 13 or section 506-B, 554, 555 or 758.

2. Commitment to Department of Corrections or specified jail; discretionary 5 days per month deduction. For an individual who commits a crime and is in the custody of the Department of Corrections or a jail in execution of a sentence of imprisonment for that crime, up to 5 days per calendar month may be deducted from that sentence, calculated from the date of its commencement, if that individual's conduct, participation in programs and fulfillment of assigned responsibilities during that calendar month are such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the correctional facility or the jail administrator.

Deductions under this subsection must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 6 days	up to 1
7 to 12 days	up to 2
13 to 18 days	up to 3
19 to 24 days	up to 4
25 to 31 days	up to 5

3. Withdrawal of discretionary deductions. Any portion of the time deducted from the sentence of an individual pursuant to subsection 2 may be withdrawn by the chief administrative officer of the correctional facility for a disciplinary offense or for the violation of any law of the State in accordance with Title 34-A, section 3032 and the rules adopted under that section or by the jail administrator in accordance with jail disciplinary procedures. Deductions may be withdrawn for months already served or yet to be served by the individual up to and including the maximum authorized for that sentence.

4. Restoration of discretionary deductions. The chief administrative officer of the correctional facility or the jail administrator may restore any portion of deductions that have been withdrawn under subsection 3 if the individual's later conduct, participation in programs and fulfillment of assigned responsibilities are such that the restoration is determined to be warranted in the discretion of the chief administrative officer or jail administrator.

5. Calculation of deduction for work in excess of 8 hours. The Commissioner of Corrections or the sheriff may establish policy and guidelines for crediting hours of participation in work in excess of 8 hours in a day toward another day for the purpose of calculating deductions from a sentence under subsection 2.

6. Calculation of deductions following imposition of new or revised sentence of imprisonment for same offense. When a judgment of conviction involving a term of imprisonment is vacated or a sentence involving a term of imprisonment is revised or reviewed and a new sentence involving a term of imprisonment is thereafter imposed upon the individual for the same offense, the day-for-day deduction must be accorded on the new sentence both for each day the

individual served in execution of the initial sentence pursuant to section 2302, subsection 1 and for all previously earned deductions specified in this section and Title 30-A, section 1606. Prior to the day-for-day deduction being given on the new sentence, the new sentence must be reduced by any deductions specified in section 2305 previously or subsequently received. The deductions applied to the new sentence must be calculated in accordance with this section.

§2309. Discretionary deductions based on conduct and participation for individual who committed crime on or after October 1, 1995 but before August 1, 2004

1. Application. This section applies only to an individual who committed a crime on or after October 1, 1995 but before August 1, 2004 and was sentenced to imprisonment for that crime.

2. Commitment to Department of Corrections or jail; discretionary 5 days per month deduction. For an individual who committed a crime on or after October 1, 1995, but before August 1, 2004, and is in the custody of the Department of Corrections or a jail in execution of a sentence of imprisonment for that crime, up to 5 days per calendar month may be deducted from that sentence, calculated from the date of its commencement, if that individual's conduct, participation in programs and fulfillment of assigned responsibilities during that calendar month are such that the deduction is determined to be warranted in the discretion of the chief administrative officer of the correctional facility or the jail administrator.

Deductions under this subsection must be calculated as follows for partial calendar months:

Days of partial month	Maximum deduction available
1 to 6 days	up to 1
7 to 12 days	up to 2
13 to 18 days	up to 3
19 to 24 days	up to 4
25 to 31 days	up to 5

3. Withdrawal of discretionary deductions. Any portion of the time deducted from the sentence of an individual pursuant to subsection 2 may be withdrawn by the chief administrative officer of the correctional facility for a disciplinary offense or for the violation of any law of the State in accordance with Title 34-A, section 3032 and the rules adopted under that section or by the jail administrator in accordance with jail disciplinary procedures. Deductions may be withdrawn for months already served or yet to be served by the individual up to and including the maximum authorized for that sentence.

4. Restoration of discretionary deductions. The chief administrative officer of the correctional facility or the jail administrator may restore any portion of deductions that have been withdrawn under subsection 3 if the individual's later conduct, participation in programs and fulfillment of assigned responsibilities are such that the restoration is determined to be warranted in the discretion of the chief administrative officer or jail administrator.

5. Calculation of deduction for work in excess of 8 hours. The Commissioner of Corrections or the sheriff may establish policy and guidelines for crediting hours of participation in work in excess of 8 hours in a day toward another day for the purpose of calculating deductions from a sentence under subsection 2.

6. Calculation of deductions following imposition of new or revised sentence of imprisonment for same offense. When a judgment of conviction involving a term of imprisonment is vacated or a sentence involving a term of imprisonment is revised or reviewed and a new sentence involving a term of imprisonment is thereafter imposed upon the individual for the same offense, the day-for-day deduction must be accorded on the new sentence both for each day the individual served in execution of the initial sentence pursuant to section 2302, subsection 1 and for all previously earned deductions specified in subsection 2 and Title 30-A, section 1606. Prior to the day-for-day deduction being given on the new sentence, the new sentence must be reduced by any deductions specified in section 2305 previously or subsequently received. The deductions applied to the new sentence must be calculated in accordance with this section.

§2310. Deductions for individual who committed crime before October 1, 1995 and was sentenced on or after October 1, 1983

1. Application. This section applies only to an individual who committed a crime on or after May 1, 1976 but before October 1, 1995 and who was sentenced on or after October 1, 1983 to imprisonment for that crime.

2. Deduction for individual sentenced to imprisonment for more than 6 months. Beginning October 1, 1983, an individual sentenced to imprisonment for more than 6 months must receive a deduction of 10 days per month for observing all rules of the Department of Corrections and the correctional facility where that individual is confined or the jail where that individual is confined. The period from which the deduction is made must be calculated from the first day the individual is received into the custody of the department or the jail and includes the full length of any imprisonment ordered to be served. This deduction does not apply to any suspended portion of the individual's sentence. For the purpose of calculating the deduction under this subsection, a month is 30 days and a year is 12 months.

Deductions under this subsection must be calculated as follows for partial months:

Days of partial month	Maximum deduction available
0 to 2 days	0
3 to 5 days	1
6 to 8 days	2
9 to 11 days	3
12 to 14 days	4
15 to 17 days	5
18 to 20 days	6
21 to 23 days	7
24 to 26 days	8
27 to 29 days	9
30 days	10

3. Deduction for individual sentenced to imprisonment for 6 months or less. Beginning October 1, 1983, an individual sentenced to imprisonment for 6 months or less must receive a deduction of 3 days per month for observing all the rules of the Department of Corrections and the correctional facility where that individual is confined or the jail where that individual is confined. The period from which the deduction is made must be calculated from the first day the individual is received into the custody of the department or the jail and includes the full length of any imprisonment order to be served. This deduction does not apply to any suspended imprisonment portion of an individual's sentence. For the purpose of calculating the deduction under this subsection, a month is 30 days.

Deductions under this subsection must be calculated as follows for partial months:

Days of partial month	Maximum deduction available
0 to 7 days	0
8 to 15 days	1
16 to 23 days	2
24 to 30 days	3

4. Withdrawal of deductions. Any portion of the time deducted from the sentence of an individual pursuant to subsection 2 or 3 may be withdrawn by the chief administrative officer of the correctional facility or the jail administrator for the infraction of any rule of the correctional facility or jail, for any misconduct or for the violation of any law of the State. The withdrawal of a deduction may be made at the discretion of the chief administrative officer or jail administrator, in accordance with policies and guidelines established by the Department of Corrections or by the jail administrator in accordance with jail disciplinary procedures.

5. Restoration of deductions. The chief administrative officer of the correctional facility or the jail administrator may restore any portion of the deductions that have been withdrawn pursuant to subsection 4 if the individual's later conduct and outstanding effort are determined in the discretion of the chief administrative officer or jail administrator to warrant that restoration.

6. Commitment to Department of Corrections or jail; additional 3 days per month deduction not subject to withdrawal. An individual in the custody of the Department of Corrections or a jail in execution of a sentence of imprisonment for a crime committed before October 1, 1995 may earn and have deducted up to 3 days per month in addition to the deduction provided pursuant to subsections 2 and 3 if the individual is assigned to or participates in work, education or other responsibilities within the correctional facility or jail or a program that are determined to be of sufficient importance to warrant those deductions in the discretion of the chief administrative officer of the correctional facility or the jail administrator in accordance with policy and guidelines established by the Department of Corrections or sheriff. A deduction awarded under this subsection may not be withdrawn by the chief administrative officer or the jail administrator. For the purpose of calculating a deduction under this subsection, "month" means a calendar month.

Deductions made under this subsection must be calculated as follows for partial months:

Days of partial month	Maximum deduction available
1 to 10 days	up to 1
11 to 20 days	up to 2
21 to 31 days	up to 3

7. Commitment to Department of Corrections for crime committed before October 1, 1995; additional 2 days per month deduction not subject to withdrawal. An individual in the custody of the Department of Corrections in execution of a sentence of imprisonment for a crime committed before October 1, 1995 may earn and have deducted up to 2 days per month in addition to the days of deductions provided for in subsections 2, 3 and 6 if the individual is assigned to and participates in minimum security or community programs administered by the department. These deductions may also apply if the individual is assigned to or participates in minimum security or community programs through agencies providing services to the department. These deductions may be authorized for work and responsibilities, to include public restitution, that are considered to be of sufficient importance to warrant those deductions in the

discretion of the chief administrative officer of the correctional facility in accordance with department policy and guidelines. A deduction awarded under this subsection may not be withdrawn by the chief administrative officer. For the purpose of calculating a deduction under this subsection, "month" means a calendar month.

Deductions made under this subsection must be calculated as follows for partial months:

Days of partial month	Maximum deduction available
1 to 15 days	up to 1
16 to 31 days	up to 2

8. Calculation of deduction for work in excess of 8 hours. The Commissioner of Corrections or the sheriff may establish policy and guidelines for crediting hours of participation in work in excess of 8 hours in a day toward another day for the purpose of calculating deductions from a sentence of imprisonment under subsections 6 and 7.

9. Calculation of deductions following imposition of new or revised sentence of imprisonment for same offense. When a judgment of conviction involving a term of imprisonment is vacated or a sentence involving a term of imprisonment is revised or reviewed and a new sentence involving a term of imprisonment is thereafter imposed upon the individual for the same offense, the day-for-day deduction must be accorded on the new sentence both for each day the individual served in execution of the initial sentence pursuant to section 2302, subsection 1 and for all previously earned deductions specified in subsections 2, 3, 6 and 7 and Title 30-A, section 1606. Prior to the day-for-day deduction being given on the new sentence, the new sentence must be reduced by any deductions specified in section 2305 previously or subsequently received. The deductions applied to the new sentence must be calculated in accordance with this section.

§2311. Deductions for individual who committed crime before October 1, 1995 and was sentenced prior to October 1, 1983

1. Application. This section applies only to an individual who committed a crime on or after May 1, 1976 but before October 1, 1995 and who was sentenced prior to October 1, 1983 to imprisonment for that crime.

2. Deductions based on law in effect at time of offense. Unless otherwise specifically provided by law, deductions based on conduct and participation from a sentence that was imposed prior to October 1, 1983 must be calculated in accordance with the laws in effect on the date the offense was committed. When a judgment of conviction involving a term of imprisonment is vacated or a sentence involving a term of imprisonment is revised or reviewed and a new sentence involving a term of imprisonment is thereafter imposed for the same offense, calculation of deductions based on conduct and participation must be in accordance with the laws in effect on the date that offense was committed.

§2312. Deductions applicable to concurrent sentences resulting from new criminal conduct while on probation or administrative release

1. Revocation of probation or administrative release by court before conviction and sentence for new criminal conduct. An individual whose probation or administrative release is revoked by a court for new criminal conduct must receive a deduction for the time the individual serves as a result of the revocation from the sentence that is the result of a conviction for the new criminal conduct if:

A. The new criminal conduct is committed during the probation or administrative release;

B. The revocation of probation or administrative release occurs before the conviction for the new criminal conduct;

C. The individual is subsequently convicted of a crime arising out of the new criminal conduct; and

D. Concurrent sentences are imposed by the court that do not commence on the same date.

2. Revocation of probation or administrative release by court after conviction and sentence for new criminal conduct. An individual whose probation or administrative release is revoked by a court following a conviction for new criminal conduct must receive a deduction for the time the individual serves as a result of the conviction for the new criminal conduct from the time the individual is required to serve as a result of the revocation if:

A. The new criminal conduct is committed during the probation or administrative release;

B. The revocation of probation or administrative release occurs after the conviction for the new criminal conduct;

C. The individual is subsequently convicted of a crime arising out of the new criminal conduct; and

D. Concurrent sentences are imposed by the court that do not commence on the same date.

§2313. Deductions relative to parole eligibility for individual sentenced prior to effective date of Maine Criminal Code

An individual convicted of an offense committed prior to May 1, 1976 and sentenced under the law then in effect may elect to have that individual's parole eligibility calculated using the deductions based on con-

duct and participation available to individuals sentenced under this Code. The election must result in the application of deductions pursuant to section 2310. The parole eligibility and deductions based on conduct and participation of an individual who does not so elect must be calculated in accordance with the laws in effect on the date the offense was committed. This section may not be construed to compel or permit discharge of any individual sooner than the discharge would have occurred under the law in effect on the date the offense was committed.

§2314. Release from imprisonment

1. Unconditional release and discharge. An individual committed to the custody of the Department of Corrections or a jail in execution of a sentence of imprisonment must be unconditionally released and discharged upon the expiration of that individual's sentence, as determined after the deductions afforded that individual under this chapter, except that release is subject to the following provisions.

A. If the applicable calculations for an individual committed to the custody of the Department of Corrections fix the release and discharge date on a Saturday, Sunday or legal holiday, that individual may be released and discharged on the last regular business day of the correctional facility preceding that Saturday, Sunday or legal holiday.

B. If the length of the term of imprisonment to be served by an individual committed to the custody of a jail is 8 days or more, that individual may be released at any time on the final day of imprisonment, in accordance with jail release procedures; otherwise, that individual may not be released until the sentence expires.

2. Release of individual sentenced prior to effective date of Maine Criminal Code. An individual in the custody of the Department of Corrections pursuant to a sentence imposed under the law in effect prior to May 1, 1976 must be released and discharged according to the law as it was in force prior to May 1, 1976 and such law continues in force for this purpose as if this Code were not enacted.

PART B

Sec. B-1. 17-A MRSA §2, sub-§§5-C and 5-D are enacted to read:

5-C. Concurrent sentence. "Concurrent sentence" means a sentence involving imprisonment that runs at the same time as one or more other sentences involving imprisonment while an individual is simultaneously in execution of each of them. A sentence involving imprisonment does not need to be imposed at the same time or begin or end at the same time as another sentence to be a concurrent sentence.

5-D. Consecutive sentence. "Consecutive sentence" means a sentence involving imprisonment that immediately follows in time another sentence involving imprisonment. A sentence is not a consecutive sentence with respect to another sentence if an individual is in execution of both sentences at any time. A sentence involving imprisonment does not need to be imposed at the same time as another sentence to be a consecutive sentence.

Sec. B-2. 17-A MRSA §2, sub-§7-A is enacted to read:

7-A. Day. "Day," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 24 hours.

Sec. B-3. 17-A MRSA §2, sub-§14-A is enacted to read:

14-A. Individual. "Individual" means a human being.

Sec. B-4. 17-A MRSA §2, sub-§15-A is enacted to read:

15-A. Jail. "Jail" means a specially constructed or modified facility designated by law or regularly used for detention for a period of up to 12 months.

Sec. B-5. 17-A MRSA §2, sub-§17-A is enacted to read:

17-A. Month. "Month," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 30 days.

Sec. B-6. 17-A MRSA §2, sub-§23-B is enacted to read:

23-B. Split sentence. "Split sentence" means a sentence involving imprisonment, an initial portion of which is served and the remainder of which is suspended, accompanied by probation or administrative release.

Sec. B-7. 17-A MRSA §2, sub-§§26 and 27 are enacted to read:

26. Week. "Week," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 7 days.

27. Year. "Year," for purposes of imposing imprisonment or probation, administrative release or supervised release, means 365 days.

Sec. B-8. 17-A MRSA §6, sub-§1, as amended by PL 1989, c. 502, Pt. D, §9, is further amended to read:

1. The provisions of Parts 1 ~~and 3~~, 6 and 7 and chapter 7 are applicable to crimes defined outside this code, unless the context of the statute defining the crime clearly requires otherwise.

Sec. B-9. 17-A MRSA §201, sub-§2, as amended by PL 2001, c. 383, §8 and affected by §156, is further amended to read:

2. Murder. The sentence for murder is as authorized in chapter ~~51~~ 63.

Sec. B-10. 17-A MRSA §207, sub-§3, as enacted by PL 2005, c. 12, Pt. JJ, §1, is amended to read:

3. Minimum fine. For a violation under subsection 1, the court shall impose a sentencing alternative that involves a fine of not less than $300, which may not be suspended except as provided in subsection 4.

Sec. B-11. 17-A MRSA §207, sub-§4 is enacted to read:

4. Finding by court necessary to impose other than minimum fine. In the case of an individual, the court may suspend all or a portion of a minimum fine under subsection 3 or impose a lesser fine other than the mandatory fine if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:

A. Reliable evidence of financial hardship on the part of the individual and the individual's family and dependents;

B. Reliable evidence of special needs of the individual or the individual's family and dependents;

C. Reliable evidence of the individual's income and future earning capacity and the individual's assets and financial resources from whatever source;

D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and

E. The impact of imposition of the mandatory fine on the individual's reasonable ability to pay restitution under chapter 69.

Sec. B-12. 17-A MRSA §253, sub-§6, as amended by PL 2001, c. 383, §20 and affected by §156, is repealed.

Sec. B-13. 17-A MRSA §253, sub-§7, as enacted by PL 1997, c. 768, §2, is repealed.

Sec. B-14. 17-A MRSA §253-A is enacted to read:

§253-A. Special sentencing provisions for gross sexual assault

1. Any term of years; nonmandatory sentence alternative. If the State pleads and proves that the defendant is a repeat sexual assault offender, the court may impose a definite term of imprisonment for any term of years. The court also may impose as part of the sentence either a period of probation of any term of years pursuant to section 1804, subsection 4 or a period of supervised release of any term of years pursuant to section 1881, subsection 2, paragraph A.

As used in this subsection, "repeat sexual assault offender" means a person who commits a new gross sexual assault after having been convicted previously and sentenced for any of the following:

A. Gross sexual assault, formerly denominated as gross sexual misconduct;

B. Rape;

C. Attempted murder accompanied by sexual assault;

D. Murder accompanied by sexual assault; or

E. Conduct substantially similar to a crime listed in paragraphs A to D that is a crime under the laws of another jurisdiction.

For purposes of determining whether a defendant is a repeat sexual assault offender, the date of sentencing is the date of the oral pronouncement of the sentence by the trial court, even if an appeal is taken.

"Accompanied by sexual assault" as used with respect to attempted murder, murder and crimes involving substantially similar conduct in another jurisdiction is satisfied if it was definitionally an element of the crime or was pleaded and proved.

2. Any term of years; mandatory sentence alternative. If the State pleads and proves that a crime under section 253 was committed against an individual who had not yet attained 12 years of age, the court shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A, the court shall select a definite term of at least 20 years. The court shall also impose as part of the sentence a period of supervised release to immediately follow that definite term of imprisonment as mandated by section 1881, subsection 1.

3. Aggravating sentencing factors. The court shall treat the following as an aggravating sentencing factor.

A. If the State pleads and proves that a Class A crime of gross sexual assault was committed by an individual who had previously been convicted and sentenced for a Class B or Class C crime of unlawful sexual contact, or an essentially similar crime in another jurisdiction, the court, in determining the appropriate sentence, shall treat as an aggravating sentencing factor that prior conviction.

B. If the State pleads and proves that a violation of section 253, subsection 1 or 2 was committed in a safe children zone, the court, in determining the appropriate sentence, shall treat this as an aggravating sentencing factor.

C. In using a sentencing alternative involving a term of imprisonment for an individual convicted of violating section 253, a court, in determining the maximum period of incarceration as the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B, shall treat each prior Maine conviction for a violation of section 253 as an aggravating sentencing factor.

(1) When the sentencing class for a prior conviction under section 253 is Class A, the court shall enhance the basic period of incarceration by a minimum of 4 years of imprisonment.

(2) When the sentencing class for a prior conviction under section 253 is Class B, the court shall enhance the basic period of incarceration by a minimum of 2 years of imprisonment.

(3) When the sentencing class for a prior conviction under section 253 is Class C, the court shall enhance the basic period of incarceration by a minimum of one year of imprisonment.

D. In arriving at the final sentence as the 3rd step in the sentencing process specified in section 1602, subsection 1, paragraph C, the court may not suspend that portion of the maximum term of incarceration based on a prior conviction.

Sec. B-15. 17-A MRSA §282, sub-§3 is enacted to read:

3. Aggravating sentencing factor of victim under 12 years of age. If the State pleads and proves that a crime under this section was committed against an individual who had not attained 12 years of age, the court, in determining the appropriate sentence, shall treat the age of the victim as an aggravating sentencing factor.

Sec. B-16. 17-A MRSA §1125 is enacted to read:

§1125. Mandatory minimum term of imprisonment for certain drug offenses

1. Minimum term of imprisonment. Except as otherwise provided in subsections 2 and 3, for a person convicted of violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A the minimum term of imprisonment, which may not be suspended, is as follows:

A. When the sentencing class is Class A, the minimum term of imprisonment is 4 years;

B. When the sentencing class is Class B, the minimum term of imprisonment is 2 years; and

C. With the exception of a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the sentencing class is Class C, the minimum term of imprisonment is one year.

2. Finding by court necessary to impose other than mandatory minimum term of imprisonment. The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in subsection 1 if:

A. The court finds by substantial evidence that:

(1) Imposition of a minimum unsuspended term of imprisonment under subsection 1 will result in substantial injustice to the individual. In making this determination, the court shall consider, among other considerations, whether the individual did not know and reasonably should not have known that the victim was less than 18 years of age;

(2) Failure to impose a minimum unsuspended term of imprisonment under subsection 1 will not have an adverse effect on public safety; and

(3) Failure to impose a minimum unsuspended term of imprisonment under subsection 1 will not appreciably impair the effect of subsection 1 in deterring others from violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A; and

B. The court finds that the individual's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under subsection 1 would frustrate the general purposes of sentencing set forth in section 1501.

If the court imposes a sentence under this subsection, the court shall state in writing or on the record its reasons for its findings and for imposing a sentence under this subsection rather than under subsection 1.

3. Reduced mandatory minimum term of imprisonment. If the court imposes a sentence under subsection 2, the minimum term of imprisonment, which may not be suspended, is as follows:

A. When the sentencing class is Class A, the minimum term of imprisonment is 9 months;

B. When the sentencing class is Class B, the minimum term of imprisonment is 6 months; and

C. With the exception of trafficking or furnishing marijuana under section 1105-A or 1105-C, when the sentencing class is Class C, the minimum term of imprisonment is 3 months.

Sec. B-17. 17-A MRSA §1126 is enacted to read:

§1126. Special sentencing provisions regarding fines for certain drug offenses

1. Fine based on value of scheduled drugs at time of offense. As authorized by section 1706, subsection 3, if the State pleads and proves the value at the time of the commission of a crime of a scheduled drug that is the basis for a conviction under section 1103, 1105-A, 1105-B, 1105-C, 1105-D, 1106 or 1107-A, the convicted person may be sentenced to pay a fine in an amount up to the value, as pleaded and proved by the State, of that scheduled drug.

2. Mandatory minimum fine barring court finding exceptional circumstances. In addition to any other authorized sentencing alternative specified in section 1502, subsection 2 for individuals or section 1502, subsection 7 for organizations, the court shall impose a minimum fine of $400, none of which may be suspended, except as provided in subsection 3, for an individual convicted of a crime under section 1103; 1104; 1105-A; 1105-B; 1105-C; 1105-D; 1106; 1107-A; 1108; 1109; 1110; 1111; 1111-A, subsection 4-A; 1116; 1117; or 1118.

3. Finding by court necessary to impose other than minimum fine. In the case of an individual, the court may suspend all or a portion of a minimum fine under subsection 2 or impose a fine less than the minimum fine specified in subsection 2 if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:

A. Reliable evidence of financial hardship on the part of the individual and the individual's family and dependents;

B. Reliable evidence of special needs of the individual or the individual's family and dependents;

C. Reliable evidence of the individual's income and future earning capacity and the individual's assets and financial resources from whatever source;

D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and

E. The impact of imposition of the mandatory fine on the individual's reasonable ability to pay restitution under chapter 69.

Sec. B-18. 29-A MRSA §2412-A, sub-§3, as amended by PL 2003, c. 673, Pt. TT, §5, is further amended to read:

3. Minimum mandatory sentences for certain suspension. If the suspension was for OUI or an OUI offense, the court shall impose a minimum fine of $600, a term of imprisonment of 7 consecutive days and a suspension of license of not less than one year nor more than 3 years consecutive to the original suspension. The penalties may not be suspended except as provided in subsection 3-A.

A. If the person has a prior conviction for violating this section within a 10-year period and was subject to the minimum mandatory sentences, then the following minimum penalties, which may not be suspended by the court, apply in the event the suspension was for OUI:

(1) A minimum fine of $1,000, a term of imprisonment of 30 consecutive days and a suspension of license for not less than one year nor more than 3 years consecutive to the original suspension in the event of one prior conviction;

(2) A minimum fine of $2,000, a term of imprisonment of 60 consecutive days and a suspension of license for not less than one year nor more than 3 years consecutive to the original suspension in the event of 2 prior convictions; or

(3) A minimum fine of $3,000, a term of imprisonment of 6 months and a suspension of license for not less than one year nor more than 3 years consecutive to the original suspension in the event of 3 or more prior convictions. The sentencing class for this offense is ~~a~~ Class C ~~crime~~.

B. For all other suspensions, the minimum fine for a first offense is $250, which may not be suspended by the court. The minimum fine for 2nd and subsequent offenses is $500, which may not be suspended by the court.

A separate reading of the allegation and a separate trial are not required under this subsection.

Sec. B-19. 29-A MRSA §2412-A, sub-§3-A is enacted to read:

3-A. Finding by court necessary to impose other than minimum fine. In the case of an individual, the court may suspend all or a portion of a minimum fine under subsection 3 or impose a fine less than the minimum fine specified in subsection 3 if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:

A. Reliable evidence of financial hardship on the part of the offender and the offender's family and dependents;

B. Reliable evidence of special needs of the offender or the offender's family and dependents;

C. Reliable evidence of the offender's income and future earning capacity and the offender's assets and financial resources from whatever source;

D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and

E. The impact of imposition of the mandatory fine on the offender's reasonable ability to pay restitution under Title 17-A, chapter 69.

PART C

Sec. C-1. 7 MRSA §616-A, sub-§2-A, as enacted by PL 2003, c. 452, Pt. B, §7 and affected by Pt. X, §2, is amended to read:

2-A. Criminal violation. A person may not intentionally or knowingly violate this subchapter or Title 22, chapter 258-A, a rule adopted under this subchapter or Title 22, chapter 258-A or a restriction of a registration issued pursuant to this subchapter. A person who violates this subsection commits a Class E crime. Notwithstanding Title 17-A, ~~sections 1252 and 1301~~ section 1604, subsection 1 and sections 1704 and 1705, the court may impose a sentencing alternative of a fine of not more than $7,500 or a term of imprisonment of not more than 30 days, or both, for each violation. Prosecution under this subsection is by summons and not by warrant. A prosecution under this subsection is separate from an action brought pursuant to subsection 2.

Sec. C-2. 7 MRSA §3952-A, sub-§2, as enacted by PL 2017, c. 404, §12, is amended to read:

2. Dangerous dog finding. If, upon hearing, the court finds that a dog is a dangerous dog, the court shall impose a fine and may order any one or more of the following that the court determines is appropriate:

A. Order the dog to be euthanized if the court finds that the dog:

(1) Has killed, maimed or inflicted serious bodily injury upon a person or has a history of a prior assault or a prior finding by the court of being a dangerous dog; and

(2) Presents a clear threat to public safety;

B. Order that the owner or keeper of the dog, if that person has previously been adjudicated of having violated this section, may not own, possess or have on that person's premises any dogs for a period of time, which may be permanent;

C. Order the owner or keeper of the dog, if the owner or keeper is allowed to keep the dog, or any other person keeping the dog, to post dangerous dog signs, visible from all directions and provided by the department, around the entrance of the premises where the dog resides and to notify in writing any service provider that has a reasonable expectation to be on the property that the dog has been determined to be a dangerous dog. The owner or keeper is responsible for the cost of the signs;

D. Order the dog confined in a secure enclosure. For the purposes of this paragraph, "secure enclosure" means a fence or structure of at least 6 feet in height forming or making an enclosure suitable to prevent the entry of young children and suitable to confine a dangerous dog in conjunction with other measures that may be taken by the owner or keeper. The secure enclosure must be locked, be designed with secure sides and be designed to prevent the animal from escaping from the enclosure. The enclosure may also be designed with a secure top and bottom if determined necessary by the court. The court shall specify the length of the period of confinement and may order permanent confinement;

E. Order that the owner or keeper of a dog confined to a secure enclosure pursuant to paragraph D may not allow the dog outside of the secure enclosure unless:

(1) It is necessary to obtain veterinary care for the dog or to comply with orders of the court; and

(2) The dog is securely muzzled with a basket-style muzzle, restrained by a leash not more than 3 feet in length with a minimum tensile strength of 300 pounds and under the direct control of the dog owner or keeper;

F. Order the dog to be securely muzzled with a basket-style muzzle, restrained by a leash not more than 3 feet in length with a minimum tensile strength of 300 pounds and under the direct control of the dog owner or keeper whenever the dog is off the owner's or keeper's premises;

G. Order the dog to be spayed or neutered;

H. Order the dog to be microchipped within 60 days of the court order;

I. Order the owner or keeper of the dog to obtain a minimum of $100,000 in liability insurance for the life of the dog;

J. Order the owner or keeper of the dog to have the dog evaluated by a certified canine behaviorist or certified dog trainer and to attend dog training classes; and

K. Order the owner or keeper of the dog to immediately notify the sheriff, a local law enforcement officer or an animal control officer if the dog escapes.

The court may order restitution in accordance with Title 17-A, chapter ~~54~~ 69 for any damages inflicted upon a person or a person's property by a dog determined to be a dangerous dog under this subsection.

Sec. C-3. 9-B MRSA §466, sub-§11, ¶A, as amended by PL 2003, c. 452, Pt. D, §1 and affected by Pt. X, §2, is further amended to read:

A. A person responsible for an act or omission expressly declared to be a criminal offense by statutes pertaining to the supervision of financial institutions and for which no other penalty has been provided by statute commits a Class E crime, except notwithstanding Title 17-A, section ~~1301~~ 1704, a fine of not more than $5,000 may be imposed upon ~~a natural person~~ an individual.

Sec. C-4. 10 MRSA §1174, sub-§3, ¶R, as amended by PL 1995, c. 65, Pt. A, §15 and affected by §153 and Pt. C, §15, is further amended to read:

R. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first furnishing notification of the termination to the new motor vehicle dealer as follows:

(1) Notification under this paragraph ~~shall~~ must be in writing, ~~shall~~ must be by certified mail or personally delivered to the new motor vehicle dealer and ~~shall~~ must contain:

(a) A statement of intention to terminate the franchise, cancel the franchise or not to renew the franchise;

(b) A statement of the reasons for the termination, cancellation or nonrenewal; and

(c) The date on which the termination, cancellation or nonrenewal takes effect;

(2) The notice described in this paragraph ~~shall~~ may not be less than 90 days prior to the effective date of the termination, cancellation or nonrenewal; or

(3) The notice described in this paragraph ~~shall~~ may not be less than 15 days prior to the effective date of the termination, cancellation or nonrenewal with respect to any of the following:

(a) Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or ~~receivorship~~ receivership law;

(b) The business operations of the franchised motor vehicle dealer have been abandoned or closed for 7 consecutive business days unless the closing is due to an act of God, strike or labor difficulty;

(c) Conviction of or plea of nolo contendere of a franchised motor vehicle dealer, or one of its principal owners, of any Class A, B or C crime, as defined in the Maine Criminal Code, Title 17-A, in which a sentence of imprisonment of one year or more is imposed under Title 17-A, sections ~~1251~~ 1603 and ~~1252~~ 1604; or

(d) Revocation of the franchised motor vehicle dealer's license pursuant to Title 29-A, section 903;

Sec. C-5. 10 MRSA §1243, sub-§3, ¶Q, as enacted by PL 1997, c. 473, §3, is amended to read:

Q. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new personal sports mobile dealer as follows:

(1) Notification under this paragraph must be in writing and must be delivered personally or by certified mail to the new personal sports mobile dealer and must contain:

(a) A statement of intention to terminate, cancel, not continue or not renew the franchise;

(b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and

(c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;

(2) The notice required in this paragraph may not be given less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal, except as provided in subparagraph (3); or

(3) The notice required in this paragraph may not be given less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:

(a) Insolvency of the new personal sports mobile dealer or filing of any petition by or against the new personal sports mobile dealer under any bankruptcy or receivership law;

(b) The business operations of the personal sports mobile dealer have been abandoned or closed for 14 consecutive business days unless the closing is due to an act of God, strike or labor difficulty; or

(c) Conviction of or plea of nolo contendere of a personal sports mobile dealer or one of its principal owners of any Class A, Class B or Class C crime, as defined in Title 17-A, in which a sentence of imprisonment of one year or more is imposed under Title 17-A, sections ~~1251~~ 1603 and ~~1252~~ 1604; or

Sec. C-6. 10 MRSA §1434, sub-§3, ¶Q, as enacted by PL 1997, c. 427, §2, is amended to read:

Q. To cancel, terminate, fail to renew or refuse to continue any dealership relationship with a licensed new recreational vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or dealer agreement or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new recreational vehicle dealer as follows:

(1) Notification must be in writing and delivered personally or by certified mail to the new recreational vehicle dealer and contain:

(a) A statement of intent to terminate the dealer agreement, cancel the dealer agreement, not continue the dealer agreement or not to renew the dealer agreement;

(b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and

(c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;

(2) Notification may not be less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal; or

(3) Notification may not be less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:

(a) Insolvency of the new recreational vehicle dealer or filing of any petition by or against the new recreational vehicle dealer under any bankruptcy or receivership law;

(b) The business operations outlined by the dealer agreement have been abandoned or closed for 14 consecutive business days unless the closing is due to an act of God, a strike or labor difficulty;

(c) Conviction of or plea of nolo contendere of a recreational vehicle dealer or one of its principal owners of any Class A, Class B or Class C crime, as defined in Title 17-A, in which a sentence of imprisonment of 60 days or more is imposed under Title 17-A, sections ~~1251~~ 1603 and ~~1252~~ 1604;

(d) Revocation of the recreational vehicle dealer's license pursuant to Title 29-A, section 903; or

(e) A determination that there was a material fraudulent misrepresentation by the dealer to the manufacturer, distributor or wholesaler; or

Sec. C-7. 10 MRSA §1434-A, sub-§2, ¶B, as enacted by PL 2009, c. 562, §18, is amended to read:

B. The notice period under this subsection may be reduced to not less than 30 days' prior written notice of termination, cancellation or nonrenewal if good cause exists. Good cause exists for purposes of this paragraph when:

(1) A dealer or one of its owners is convicted of or enters a plea of nolo contendere to murder or a Class A, Class B or Class C crime for which a sentence of imprisonment of one year or more is imposed under Title 17-A, section ~~1251~~ 1603 or ~~1252~~ 1604;

(2) A dealer abandons or closes the dealer's business operations for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty or other cause over which the dealer has no control;

(3) There is a significant misrepresentation by the dealer materially affecting the business relationship between the dealer and the manufacturer or distributor;

(4) The dealer's license has been suspended or revoked or has not been renewed;

(5) There is a declaration by the dealer of bankruptcy or insolvency or the occurrence of an assignment for the benefit of creditors or bankruptcy; or

(6) A dealer fails to notify in writing the manufacturer or distributor at least 30 days prior to entering into a dealer agreement with a manufacturer or distributor of a competing, similar line make.

The notice requirements of this paragraph do not apply if the reason for termination, cancellation or nonrenewal is the dealer's insolvency, the occurrence of an assignment for the benefit of creditors or the dealer's bankruptcy.

Sec. C-8. 10 MRSA §1434-A, sub-§3, ¶C, as enacted by PL 2009, c. 562, §18, is amended to read:

C. For purposes of this subsection, good cause for termination, cancellation or nonrenewal exists when:

(1) A manufacturer or distributor is convicted of, or enters a plea of nolo contendere to, murder or a Class A, Class B or Class C crime for which a sentence of imprisonment of one year or more is imposed under Title 17-A, section ~~1251~~ 1603 or ~~1252~~ 1604;

(2) The business operations of the manufacturer or distributor have been abandoned or closed for 10 consecutive business days, unless the closing is due to an act of God, strike, labor difficulty or other cause over which the manufacturer or distributor has no control;

(3) There is a significant misrepresentation by the manufacturer or distributor materially affecting the business relationship between the dealer and the manufacturer or distributor; or

(4) There is a declaration by the manufacturer or distributor of bankruptcy or insolvency or the occurrence of an assignment for the benefit of creditors or bankruptcy.

Sec. C-9. 12 MRSA §6004, last ¶, as amended by PL 2005, c. 507, §1, is further amended to read:

Any period of confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date. Any period of confinement is subject to Title 17-A, section ~~1253, subsection 2~~ 2305, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but is not subject to Title 17-A, section ~~1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10~~ 2305, subsection 4; section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; or section 2310, subsections 3, 6 and 7. If the court suspends the period of confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter ~~54-G~~ 67, subchapter 2, and revocation of the administrative release is governed by the provisions of that ~~chapter~~ subchapter.

Sec. C-10. 12 MRSA §6073, sub-§3, as amended by PL 1995, c. 157, §1, is further amended to read:

3. Penalty. Any person who violates subsection 2-A or who knowingly and willfully violates subsection 2 is guilty of a Class D crime, except that, notwithstanding Title 17-A, sections 4-A ~~and 1301~~, 1704 and 1705, the court shall impose a fine of not less than $1,000 and restitution may be ordered made to the owner of the lease in an amount set by the court pursuant to Title 17-A, chapter 69.

Sec. C-11. 12 MRSA §6432, sub-§5, as amended by PL 2013, c. 468, §18, is further amended to read:

5. Penalty for possession. Possession of lobsters other than caught by the method specified in subsection 1 is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part ~~3~~ 6, the court shall impose a fine of $500 for each violation and, in addition, a fine of $100 for each lobster involved, up to and including the first 5, and a fine of $200 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000.

Sec. C-12. 12 MRSA §6436, sub-§5, as amended by PL 2013, c. 468, §19, is further amended to read:

5. Penalty for possession of egg-bearing lobsters. Possession of lobsters in violation of subsection 1, paragraph A is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part ~~3~~ 6, the court shall impose a fine of $1,000 for each violation and, in addition, a fine of $200 for each lobster involved, up to and including the first 5, and a fine of $400 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $2,500 or more than $10,000.

Sec. C-13. 12 MRSA §6436, sub-§6, as amended by PL 2013, c. 468, §20, is further amended to read:

6. Penalty for possession of v-notched lobsters. Possession of lobsters in violation of subsection 1, paragraph B is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part ~~3~~ 6, the court shall impose a fine of $500 for each violation and, in addition, a fine of $100 for each lobster involved, up to and including the first 5, and a fine of $400 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000.

Sec. C-14. 12 MRSA §6952-A, sub-§4, as amended by PL 2013, c. 468, §42, is further amended to read:

4. Penalty for possession. A violation of this section is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part ~~3~~ 6, the court shall impose a fine of $500 for each violation and, in addition, a fine of $100 for each lobster involved, up to and including the first 5, and a fine of $200 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000.

Sec. C-15. 12 MRSA §6957, sub-§2, as amended by PL 1995, c. 169, §2, is further amended to read:

2. Penalty. A violation of subsection 1 is a Class D crime~~, except that, notwithstanding Title 17-A, section 1301~~. In addition to any other authorized sentencing alternative, the court shall impose a minimum fine of $1,000 that may not be suspended.

Sec. C-16. 12 MRSA §8004, last ¶, as amended by PL 2005, c. 507, §2, is further amended to read:

Any period of confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date. Any period of confinement is subject to Title 17-A, section ~~1253, subsection 2~~ 2305, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but is not subject to Title 17-A, section ~~1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10~~ 2305, subsection 4; section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; or section 2310, subsections 3, 6 and 7. If the court suspends the period of confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter ~~54-G~~ 67, subchapter 2, and revocation of the administrative release is governed by the provisions of that ~~chapter~~ subchapter.

Sec. C-17. 12 MRSA §9321, sub-§6, as amended by PL 2003, c. 556, §1, is further amended to read:

6. Penalty. Notwithstanding section 9701, any person who engages in out-of-door burning in violation of this article, or who fails to comply with any stated permit condition or restriction, commits a Class E crime. In addition, if the State proves that while in violation that person's out-of-door fire resulted in fire suppression costs to municipal or State Government, the court, as part of any sentence imposed, may order restitution, pursuant to Title 17-A, chapter ~~54~~ 69, to be paid to the government entities incurring the suppression costs. For each violation of this article:

A. The monetary award for restitution to a municipality may not exceed $25,000; and

B. The total combined monetary award for restitution to municipalities and State Government may not exceed $125,000.

When bringing an action under this article, the State shall, to the fullest extent permitted by law, seek restitution of fire suppression costs incurred by state governmental entities relating to the violation.

Sec. C-18. 12 MRSA §9601, sub-§1, as amended by PL 1991, c. 528, Pt. E, §11 and affected by Pt. RRR and amended by c. 591, Pt. E, §11, is further amended to read:

1. Illegal operation. A person is guilty of illegal operation of power-driven equipment if that person knowingly:

A. Operates power-driven equipment in, through or within 1,000 feet of forest lands without an approved spark arrester;

B. Requires the operation of power-driven equipment in, through or within 1,000 feet of forest lands without an approved spark arrester; or

C. Permits the operation of power-driven equipment owned by that person in, through or within 1,000 feet of forest lands without an approved spark arrester.

For the purposes of this section, "power-driven equipment" means vehicles, tools or other equipment with an internal combustion engine, but does not include boat motors.

Notwithstanding section 9701, any person who violates this subsection commits a Class E crime. In addition, if the State proves that while in violation of this section fires resulting from that person's power-driven equipment resulted in fire suppression costs to municipal or State Government, the court, as part of any sentence imposed, may, pursuant to Title 17-A, chapter ~~54~~ 69, order restitution to be paid to the government entities incurring the suppression costs in an amount not to exceed the limitations established in section 9321.

Sec. C-19. 12 MRSA §10608, last ¶, as amended by PL 2005, c. 507, §3, is further amended to read:

Any period of confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date. Any period of confinement is subject to Title 17-A, section ~~1253, subsection 2~~ 2305, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but is not subject to Title 17-A, section ~~1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10~~ 2305, subsection 4; section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; or section 2310, subsections 3, 6 and 7. If the court suspends the period of confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter ~~54-G~~ 67, subchapter 2, and revocation of the administrative release is governed by the provisions of that ~~chapter~~ subchapter.

Sec. C-20. 12 MRSA §12509, sub-§1, as affected by PL 2003, c. 614, §9 and amended by c. 655,

Pt. B, §256 and affected by §422, is further amended to read:

1. Permit required. Except as otherwise authorized pursuant to this Part, a person may not introduce, import or transport any live fish or gametes into the State or receive or have in that person's possession fish or gametes so introduced, imported or transported without a valid permit issued under this section.

A person who violates this subsection commits a Class E crime, except that, notwithstanding Title 17-A, section ~~1301~~ 1704, the fine may not be less than $1,000 nor more than $10,000.

Sec. C-21. 12 MRSA §12510, sub-§1, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, is amended to read:

1. Permit required. Except as otherwise authorized pursuant to this Part, a person may not introduce fish of any kind into any inland waters without a valid permit issued under this section. A person who violates this subsection commits a Class E crime, except that, notwithstanding Title 17-A, section ~~1301~~ 1704, the fine may not be less than $1,000 or more than $10,000.

Sec. C-22. 12 MRSA §12511, sub-§1, as enacted by PL 2003, c. 655, Pt. B, §257 and affected by §422, is amended to read:

1. Permit required. Except as otherwise authorized pursuant to this Part, a person may not introduce fish or fish spawn into a private pond without a valid permit issued under this section. A person who violates this subsection commits a Class E crime, except that, notwithstanding Title 17-A, section ~~1301~~ 1704, the fine may not be less than $1,000 nor more than $10,000.

Sec. C-23. 12 MRSA §12512, sub-§1, as enacted by PL 2003, c. 655, Pt. B, §257 and affected by §422, is amended to read:

1. Permit required. Except as otherwise authorized pursuant to this Part, a person may not take and transport within the limits of the State fish taken in the State for breeding or advertising purposes without a valid permit issued under this section. A person who violates this subsection commits a Class E crime, except that, notwithstanding Title 17-A, section ~~1301~~ 1704, the fine may not be less than $1,000 nor more than $10,000.

Sec. C-24. 12 MRSA §13157-A, sub-§25, ¶B, as enacted by PL 2005, c. 397, Pt. E, §26, is amended to read:

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 or more than $500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

(3) In addition to any penalties imposed under this subsection, the court may, subject to section 9321 and Title 17-A, chapter ~~54~~ 69, order restitution for fire suppression costs incurred by state or municipal government entities in suppressing a fire caused by an ATV operating without a working spark arrester.

Sec. C-25. 13 MRSA §1035, as amended by PL 2007, c. 112, §1, is further amended to read:

§1035. Penalties

Except as otherwise provided in this chapter, a person who fails to comply with or violates any of the provisions of this chapter in respect to the establishment, maintenance or operation of a cemetery, community mausoleum, crematory or columbarium or to the disposal of dead human bodies commits a Class E crime except that, notwithstanding Title 17-A, ~~section 1301~~ sections 1704 and 1705, the fine may not be less than $100 or more than $500.

Sec. C-26. 14 MRSA §158-B, sub-§1, as amended by PL 2007, c. 275, §1, is further amended to read:

1. Liability limited. A charitable organization or other entity approved pursuant to Title 15, section 3301 or 3314 or pursuant to Title 17-A, section ~~1345~~ 2031 is not liable for a claim arising from death or injury to a person or damage to property caused by a juvenile or adult participating in a supervised work or service program, performing community service or providing restitution under Title 15, section 3301 or 3314 or under Title 17-A, section ~~1345~~ 2031, including a claim arising from death or injury to the juvenile or adult or damage to the adult's or juvenile's property.

Sec. C-27. 14 MRSA §752-E, sub-§§1 and 2, as enacted by PL 1997, c. 320, §1, are amended to read:

1. Limitation period. Actions based upon a criminal offense in which, as that offense is defined, there is a victim, as defined in Title 17-A, section ~~1171~~ 2101, subsection 2, brought by or on behalf of a victim against the offender must be commenced within the limitation period otherwise provided or within 3 years of the time the victim discovers or reasonably should have discovered any profits from the crime, whichever occurs later.

2. Notice to victims. A person or organization that knowingly pays or agrees to pay any profits from

a criminal offense in which, as that offense is defined, there is a victim to a person charged with or convicted of that crime shall make reasonable efforts to notify every victim, as defined in Title 17-A, section ~~1171~~ 2101, subsection 2, of the payment or agreement to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from the crime. Reasonable efforts must include, but are not limited to, seeking information about victims from court records and the prosecuting attorney and mailing notice by certified mail to victims whose address is known and publishing, at least once every 6 months for 3 years, in newspapers of general circulation in the area where the crime occurred a legal notice to unknown victims or victims whose address is unknown.

Sec. C-28. 14 MRSA §5602, as enacted by PL 2001, c. 421, Pt. A, §1 and affected by Pt. C, §1, is amended to read:

§5602. Restitution

The court may order a person adjudicated as having committed a civil violation to pay restitution as part of the judgment. Title 17-A, chapter ~~54~~ 69 applies to the determination, ordering, payment and enforcement of an order of restitution.

Sec. C-29. 15 MRSA §224-A, sub-§2, as amended by PL 2015, c. 431, §5, is further amended to read:

2. Funding. The Extradition and Prosecution Expenses Account in each prosecutorial district is funded by bail forfeited to and recovered by the State pursuant to the Maine Rules of Unified Criminal Procedure, Rule 46. Whenever bail is so forfeited and recovered by the State and if it is not payable as restitution pursuant to Title 17-A, section ~~1329~~ 2015, subsection ~~3-A~~ 4, the district attorney shall determine whether it or a portion of it is deposited in the Extradition and Prosecution Expenses Account for that district attorney's prosecutorial district, but in no event may the account exceed $30,000. Any bail so forfeited and recovered and not deposited in the Extradition and Prosecution Expenses Account must be deposited in the General Fund. Any unexpended balance in the Extradition and Prosecution Expenses Account of a prosecutorial district established by this section may not lapse but must be carried forward into the next year.

Sec. C-30. 15 MRSA §812, sub-§2, as amended by PL 2007, c. 475, §4, is further amended to read:

2. Notification to victims and law enforcement officers. Whenever practicable, before submitting a negotiated plea to the court, the attorney for the State shall make a good faith effort to inform the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime or a violation of Title 17-A, chapter 9, 11, 12 or 13 and, with respect to victims, shall comply with Title 17-A, section ~~1172~~ 2102, subsection 1, paragraphs A and B relative to informing victims of the details of and their right to comment on a plea agreement.

Sec. C-31. 15 MRSA §1004, as amended by PL 2015, c. 431, §11, is further amended to read:

§1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229, post-conviction review proceedings under sections 2121 to 2132, probation revocation proceedings under Title 17-A, sections ~~1205 to 1208~~ 1809 to 1814, supervised release revocation proceedings under Title 17-A, section ~~1233~~ 1883 or administrative release revocation proceedings under Title 17-A, sections ~~1349 to 1349-F~~ 1851 to 1857, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively. This chapter does not apply to a person arrested for a juvenile crime as defined in section 3103 or a person under 18 years of age who is arrested for a crime defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section 3103.

Sec. C-32. 15 MRSA §1023, sub-§4, ¶B-1, as enacted by PL 2011, c. 640, Pt. A, §1, is amended to read:

B-1. Set preconviction bail for a defendant alleged to have committed any of the following offenses against a family or household member as defined in Title 19-A, section 4002, subsection 4:

(1) A violation of a protection from abuse order provision set forth in Title 19-A, section 4006, subsection 5, paragraph A, B, C, D, E or F or Title 19-A, section 4007, subsection 1, paragraph A, A-1, A-2, B, C, D, E or G;

(2) Any Class A, B or C crime under Title 17-A, chapter 9;

(3) Any Class A, B or C sexual assault offense under Title 17-A, chapter 11;

(4) Kidnapping under Title 17-A, section 301;

(5) Criminal restraint under Title 17-A, section 302, subsection 1, paragraph A, subparagraph (4) or Title 17-A, section 302, subsection 1, paragraph B, subparagraph (2);

(6) Domestic violence stalking that is a Class C crime under Title 17-A, section 210-C, subsection 1, paragraph B;

(7) Domestic violence criminal threatening that is a Class C crime under Title 17-A, section 209-A, subsection 1, paragraph B or domestic violence criminal threatening that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section ~~1252~~ 1604, subsection ~~4~~ 5, paragraph A;

(8) Domestic violence terrorizing that is a Class C crime under Title 17-A, section 210-B, subsection 1, paragraph B or domestic violence terrorizing that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section ~~1252~~ 1604, subsection ~~4~~ 5, paragraph A; or

(9) Domestic violence reckless conduct that is a Class C crime under Title 17-A, section 211-A, subsection 1, paragraph B or domestic violence reckless conduct that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section ~~1252~~ 1604, subsection ~~4~~ 5, paragraph A;

Sec. C-33. 15 MRSA §1094, first ¶, as amended by PL 2007, c. 31, §2, is further amended to read:

When a defendant who has been admitted to either preconviction or post-conviction bail in a criminal case fails to appear as required or has violated the conditions of release, the court shall declare a forfeiture of the bail. The obligation of the defendant and any sureties may be enforced in such manner as the Supreme Judicial Court shall by rule provide and in accordance with section 224-A and Title 17-A, section ~~1329~~ 2015, subsection ~~3-A~~ 4. The rules adopted by the Supreme Judicial Court must provide for notice to the defendant and any sureties of the consequences of failure to comply with the conditions of bail.

Sec. C-34. 15 MRSA §1094, sub-§2-A, as enacted by PL 2017, c. 221, §1, is amended to read:

2-A. Violation of unsecured preconviction bail. If the court determines that an offender has violated unsecured preconviction bail and that the violation is not excused, the court shall enter an order of forfeiture of bail, which may not exceed the amount of the unsecured bail previously set. The attorney for the State may take action to collect the amount forfeited using measures authorized for the collection of unpaid restitution under Title 17-A, section ~~1326-A~~ 2006, including, but not limited to, entering into agreements with the offender for payment over a set period of time not to exceed one year. In order to satisfy an order of forfeiture entered under this subsection, pursuant to Title 36, section 5276-A, the State Tax Assessor may withhold tax refunds owed to an offender.

Sec. C-35. 15 MRSA §1105, as amended by PL 2017, c. 407, Pt. A, §53, is further amended to read:

§1105. Substance use disorder treatment program

As a condition of post-conviction release, the court may impose the condition of participation in a substance use disorder treatment program for a period not to exceed 24 months pursuant to Title 4, chapter 8. Upon request of the Department of Corrections, the court may require the defendant to pay a substance use testing fee as a requirement of participation in the substance use disorder treatment program. If at any time the court finds probable cause that a defendant released with a condition of participation in a substance use disorder treatment program has intentionally or knowingly violated any requirement of the defendant's participation in the substance use disorder treatment program, the court may suspend the order of bail for a period of up to 7 days for any such violation. The defendant must be given an opportunity to personally address the court prior to the suspension of an order of bail under this section. A period of suspension of bail is a period of detention under Title 17-A, section ~~1253, subsection 2~~ 2305. This section does not restrict the ability of the court to take actions other than suspension of the order of bail for the violation of a condition of participation in a substance use disorder treatment program or the ability of the court to entertain a motion to revoke bail under section 1098 and enter any dispositional order allowed under section 1099-A. If the court orders participation in a substance use disorder treatment program under this section, upon sentencing the court shall consider whether there has been compliance with the program.

Sec. C-36. 15 MRSA §1707, as repealed and replaced by PL 1987, c. 616, is amended to read:

§1707. Record to designated facility

Whenever a person is convicted of a crime and sentenced to a term of imprisonment ~~which~~ that is to be served in the custody of the Department of Corrections, the clerk of the court shall make and forward to the head of the correctional facility designated as the initial place of confinement by the Commissioner of Corrections pursuant to Title 17-A, section ~~1258~~ 2304, a record containing copies of the docket entries and charging instrument, together with a statement of any fact or facts ~~which~~ that the presiding justice may ~~deem~~ determine to be important or necessary for a full comprehension of the case. This record ~~shall~~ must be delivered to the head of the designated correctional facility within 10 days of the date the prisoner is received

at that facility. At the time a person, so sentenced, is delivered to the designated correctional facility, a copy of the judgment and commitment ~~shall~~ must be given to the receiving officer at that facility.

Sec. C-37. 15 MRSA §2121, sub-§2, as amended by PL 2017, c. 148, §2, 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~~ 2305 and default in payment of a fine or restitution. It does not include the following Title 17-A, Part ~~3~~ 6 court proceedings: revocation of probation, revocation of supervised release for sex offenders or revocation of administrative release. It does not include the following administrative actions: calculations of ~~good time and meritorious good time credits~~ deductions 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~~ 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; section 2310, subsections 3, 6 and 7; and section 2311; disciplinary proceedings resulting in a withdrawal of ~~good time credits or similar~~ deductions under Title 17-A, section ~~1253, subsections 6, 8, 9 and 10~~ 2307, subsection 5; section 2308, subsection 3; section 2309, subsection 3; section 2310, subsection 4; and section 2311; 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 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 placement on community reintegration status granted pursuant to Title 34-A, section 3810 or former section 4112.

Sec. C-38. 15 MRSA §2124, sub-§1, ¶C-1, as enacted by PL 2011, c. 601, §7, is amended to read:

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~~ 2305;

Sec. C-39. 15 MRSA §2124, sub-§1, ¶E, as amended by PL 2011, c. 601, §7, is further amended to read:

E. A fine 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 ~~1303-B~~ 1710 or inexcusably defaulted in payment of any portion. A fine includes any imposed monetary fees, surcharges and assessments, however designated;

Sec. C-40. 15 MRSA §2124, sub-§1, ¶F, as amended by PL 2013, c. 266, §2, is further 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~~ 2014 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~~ 2017;

Sec. C-41. 15 MRSA §2137, sub-§1, as enacted by PL 2005, c. 659, §1 and affected by §6, is amended to read:

1. Motion. A person who has been convicted of and sentenced for a crime under the laws of this State that carries the potential punishment of imprisonment of at least one year and for which the person is in actual execution of either a pre-Maine Criminal Code sentence of imprisonment, including parole, or a sentencing alternative pursuant to Title 17-A, section ~~1152~~ 1502, subsection 2 that includes a term of imprisonment or is subject to a sentence of imprisonment that is to be served in the future because another sentence must be served first may file a written postjudgment of conviction motion in the underlying criminal proceeding moving the court to order DNA analysis of evidence in the control or possession of the State that is related to the underlying investigation or prosecution that led to the person's conviction and a new trial based on the results of that analysis as authorized by this chapter. For criminal proceedings in which DNA testing was conducted before September 1, 2006, the person may file a written postjudgment of conviction motion in the underlying criminal proceeding moving the court for a new trial based on the results of the DNA testing already conducted using the standard set forth in this chapter if the DNA test results show that the person is not the source of the evidence.

Sec. C-42. 15 MRSA §2151, sub-§3, as enacted by PL 1999, c. 731, Pt. ZZZ, §24 and affected by §42, is amended to read:

3. Restitution. As limited by Title 17-A, section ~~1330-A~~ 2017.

Sec. C-43. 15 MRSA §2252, sub-§4, as enacted by PL 2015, c. 354, §1, is amended to read:

4. Other state convictions. The eligible criminal conviction is the only criminal conviction of the person in this State, and the person has not had a criminal charge dismissed as a result of a deferred disposition pursuant to Title 17-A, chapter ~~54-F~~ 67, subchapter 4 and has not been adjudicated as having committed a

juvenile crime for which the hearing was open to the general public under section 3307;

Sec. C-44. 15 MRSA §3007, as enacted by PL 1999, c. 280, §1, is amended to read:

§3007. Victims' rights

In addition to any rights given to victims of juvenile crimes in this Part, the victim of a juvenile crime has the rights that a victim has under Title 17-A, section ~~1175~~ 2106.

Sec. C-45. 15 MRSA §3312, sub-§1, as amended by PL 1995, c. 253, §3, is further amended to read:

1. Evidence of proper disposition. After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interests of the juvenile and the public. Such evidence must include, but is not necessarily limited to, the social study and written report, if ordered prepared under section 3311, subsection 3, and other reports as provided in section 3311, subsection 1. Any person who would be entitled to address the court pursuant to Title 17-A, section ~~1257~~ 2104 if the conduct for which the juvenile has been adjudicated had been committed by an adult, as provided in that section, must be accorded notice of the dispositional hearing and the right to address the court. The Maine Rules of Evidence do not apply in dispositional hearings.

Sec. C-46. 15 MRSA §3314, sub-§1, ¶E, as corrected by RR 2009, c. 2, §35, is amended to read:

E. The court may require the juvenile to make restitution for any damage to the victim or other authorized claimant as compensation for economic loss upon reasonable conditions that the court determines appropriate. For the purposes of this paragraph, the provisions of Title 17-A, chapter ~~54~~ 69 apply, except that section ~~1329~~ 2015 does not apply. Enforcement of a restitution order is available pursuant to subsection 7. If the restitution was a condition of probation, the attorney for the State may, with written consent of the juvenile community corrections officer, file a motion to revoke probation.

Sec. C-47. 15 MRSA §3314, sub-§1, ¶G, as amended by PL 2017, c. 377, §2, is further amended to read:

G. Except for a violation of section 3103, subsection 1, paragraph H, the court may impose a fine, subject to Title 17-A, sections ~~1301~~ 1701 to ~~1304~~ 1711, except that there is no mandatory minimum fine amount. For the purpose of this section, juvenile offenses defined in section 3103, subsection 1, paragraphs B and C are subject to a fine of up to $1,000.

Sec. C-48. 15 MRSA §3314, sub-§1, ¶H, as amended by PL 2007, c. 96, §5, is further amended to read:

H. The court may order the juvenile to serve a period of confinement that may not exceed 30 days, with or without an underlying suspended disposition of commitment to a Department of Corrections juvenile correctional facility, which confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date but may be served intermittently as the court may order and must be ordered served in a facility approved or operated by the Department of Corrections exclusively for juveniles. The court may order such a disposition to be served as a part of and with a period of probation that is subject to such provisions of Title 17-A, section ~~1204~~ 1807 as the court may order and that must be administered pursuant to Title 34-A, chapter 5, subchapter 4. Revocation of probation is governed by the procedure contained in subsection 2. Any disposition under this paragraph is subject to Title 17-A, section ~~1253, subsection 2~~ 2305 except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but is not subject to Title 17-A, section ~~1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10~~ 2305, subsection 4; section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; or section 2310, subsections 3, 6 and 7. For purposes of calculating the commencement of the period of confinement, credit is accorded only for the portion of the first day for which the juvenile is actually confined; the juvenile may not be released until the juvenile has served the full term of hours or days imposed by the court. When a juvenile is committed for a period of confinement, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that reasonable efforts are not necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a period of confinement.

Sec. C-49. 15 MRSA §3314, sub-§2, as amended by PL 2007, c. 695, Pt. A, §19, is further amended to read:

2. Suspended disposition. The court may impose any of the dispositional alternatives provided in subsection 1 and may suspend its disposition and place the juvenile on a specified period of probation that is subject to such provisions of Title 17-A, section ~~1204~~ 1807 as the court may order and that is administered

pursuant to the provisions of Title 34-A, chapter 5, subchapter 4, except that the court may not impose the condition set out in Title 17-A, section ~~1204~~ 1807, subsection ~~1-A~~ 5. The court may impose as a condition of probation that a juvenile must reside outside the juvenile's home in a setting satisfactory to the juvenile community corrections officer if the court determines that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and that continuation in the juvenile's home would be contrary to the welfare of the juvenile. Imposition of such a condition does not affect the legal custody of the juvenile.

Modification of probation is governed by the procedures contained in Title 17-A, section ~~1202, subsection 2~~ 1804, subsections 7 and 8. Termination of probation is governed by the procedures contained in Title 17-A, section ~~1202~~ 1804, subsection ~~3~~ 10. Revocation of probation is governed by the procedures contained in Title 17-A, sections ~~1205, 1205-B, 1205-C and 1206~~ 1809 to 1812, except that this subsection governs the court's determinations concerning probable cause and continued detention and those provisions of Title 17-A, section ~~1206~~ 1812, subsection ~~7-A~~ 6 allowing a vacating of part of the suspension of execution apply only to a suspended fine under subsection 1, paragraph G or a suspended period of confinement under paragraph H. A suspended commitment under subsection 1, paragraph F may be modified to a disposition under subsection 1, paragraph H. When a revocation of probation results in the imposition of a disposition under subsection 1, paragraph F or a period of confinement under subsection 1, paragraph H, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a particular disposition upon a revocation of probation. If the juvenile is being detained for an alleged violation of probation, the court shall review within 48 hours following the detention, excluding Saturdays, Sundays and legal holidays, the decision to detain the juvenile. Following that review, the court shall order the juvenile's release unless the court finds that there is probable cause to believe that the juvenile has violated a condition of probation and finds, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention under section 3203-A, subsection 4, paragraph C. When a court orders continued detention, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders continued detention.

Sec. C-50. 15 MRSA §3314, sub-§6, as amended by PL 2015, c. 485, §1, is further amended to read:

6. Forfeiture of firearms. As part of every disposition in every proceeding under this code, every firearm that constitutes the basis for an adjudication for a juvenile crime that, if committed by an adult, would constitute a violation of section 393; Title 17-A, section 1105-A, subsection 1, paragraph C-1; Title 17-A, section 1105-B, subsection 1, paragraph C; Title 17-A, section 1105-C, subsection 1, paragraph C-1; Title 17-A, section 1105-D, subsection 1, paragraph B-1; or Title 17-A, section 1118-A, subsection 1, paragraph B and every firearm used by the juvenile or any accomplice during the course of conduct for which the juvenile has been adjudicated to have committed a juvenile crime that would have been forfeited pursuant to Title 17-A, section ~~1158-A~~ 1504 if the criminal conduct had been committed by an adult must be forfeited to the State and the juvenile court shall so order unless another person satisfies the court prior to the dispositional hearing and by a preponderance of the evidence that the other person had a right to possess the firearm, to the exclusion of the juvenile, at the time of the conduct that constitutes the juvenile crime. Rules adopted by the Attorney General that govern the disposition of firearms forfeited pursuant to Title 17-A, section ~~1158-A~~ 1504 govern forfeitures under this subsection.

Sec. C-51. 15 MRSA §3314-A, as amended by PL 2009, c. 93, §13, is further amended to read:

§3314-A. Period of probation; modification and discharge

The period of probation of a juvenile, its modification and discharge, is as provided by Title 17-A, section ~~1202~~ 1804, except that the period of probation of a juvenile convicted of a juvenile crime as defined by section 3103, subsection 1, paragraph B, C or E may not exceed one year. The period of probation may extend beyond the juvenile's 21st birthday.

Sec. C-52. 15 MRSA §5821, sub-§3-B, as enacted by PL 2013, c. 328, §2, is amended to read:

3-B. Forfeiture of firearms used in the commission of certain acts. In addition to the provisions of subsection 3-A and Title 17-A, section ~~1158-A~~ 1504, this subsection controls the forfeiture of firearms used in the commission of certain acts.

A. Except as provided in paragraph B, a firearm is subject to forfeiture to the State if the firearm is used by a person to commit a criminal act that in fact causes serious bodily injury or death to another human being and, following that act, the person either commits suicide or attempts to commit suicide and the attempt results in the person's becoming incompetent to stand trial or the person is killed or rendered incompetent to stand trial as the result of a justifiable use of deadly force by a law enforcement officer. Except as provided in paragraph B, a property right does not exist in the firearm subject to forfeiture.

B. A firearm that is used in the commission of a criminal act described in paragraph A is exempt from forfeiture under this subsection if the firearm belongs to another person who is the rightful owner from whom the firearm has been stolen and the other person is not a principal or accomplice in the criminal act. In that case, the firearm must be transferred to the other person unless that person is otherwise prohibited from possessing a firearm under applicable law.

A firearm subject to forfeiture pursuant to this subsection that is declared by a court to be forfeited pursuant to section 5822 must be promptly destroyed, or caused to be promptly destroyed, by the law enforcement agency that has custody of the firearm.

Sec. C-53. 15 MRSA §6101, sub-§1, ¶B, as amended by PL 1995, c. 680, §2, is further amended to read:

B. The victim's right to be advised of the existence of a negotiated plea agreement before that agreement is submitted to the court pursuant to Title 17-A, section ~~1173~~ 2103;

Sec. C-54. 15 MRSA §6101, sub-§1, ¶D, as amended by PL 1995, c. 680, §2, is further amended to read:

D. The victim's right to make a statement or submit a written statement at the time of sentencing pursuant to Title 17-A, section ~~1174~~ 2104 upon conviction of the defendant; and

Sec. C-55. 17 MRSA §1031, sub-§1-B, as amended by PL 2005, c. 281, §8 and c. 397, Pt. F, §1, is further amended to read:

1-B. Aggravated cruelty to animals. A person is guilty of aggravated cruelty to animals if that person, in a manner manifesting a depraved indifference to animal life or suffering, intentionally, knowingly or recklessly:

A. Causes extreme physical pain to an animal;

B. Causes the death of an animal; or

C. Physically tortures an animal.

Violation of this subsection is a Class C crime. Notwithstanding Title 17-A, ~~section 1301~~ sections 1704 and 1705, the court shall impose a fine of not less than $1,000 and not more than $10,000 for a first or subsequent violation of this subsection. The sentencing provisions in subsection 3-B also apply to a person convicted of aggravated cruelty to animals.

Sec. C-56. 17 MRSA §2512, sub-§4, as enacted by PL 2005, c. 546, §1, is amended to read:

4. Restitution. In addition to any penalties imposed pursuant to subsection 3 and, when appropriate, in accordance with the requirements of Title 17-A, chapter ~~54~~ 69, the court shall order restitution to the landowner on the basis of an adequate factual foundation. The amount of restitution may be determined by using the measured volume of the harvested forest products as listed on the measurement tally sheet or stumpage sheet in accordance with Title 10, section 2364-A, subsection 2 and by the terms of the sales contract according to the measurement procedures set forth in Title 10, section 2363-A that are applicable to a sale of wood.

Any restitution ordered and paid must be deducted from the amount of any restitution awarded in a civil action brought by the owner or the State against the offender based on the same facts.

Sec. C-57. 17-A MRSA §8, sub-§2-A, as enacted by PL 2013, c. 392, §2, is amended to read:

2-A. A prosecution for a Class A, Class B or Class C crime involving unlawful sexual contact or gross sexual assault must be commenced within 8 years after it is committed.

This subsection does not apply to a Class D crime enhanced to a Class C crime pursuant to section ~~1252~~ 1604, subsection ~~4-A~~ 5, paragraph B.

Sec. C-58. 17-A MRSA §152-A, sub-§2, as enacted by PL 2001, c. 413, §2, is amended to read:

2. Aggravated attempted murder is a Class A crime except that, notwithstanding section ~~1252~~ 1604, subsection ~~2~~ 1, paragraph A, the sentence for aggravated attempted murder is imprisonment for life or a definite period of imprisonment for any term of years. The existence of an aggravating circumstance serves only as a precondition for the court to consider a life sentence.

Sec. C-59. 17-A MRSA §210-A, sub-§1, ¶C, as amended by PL 2015, c. 470, §11, is further amended to read:

C. The actor violates paragraph A and has one or more prior convictions in this State or another jurisdiction. Notwithstanding section 2, subsection 3-B, as used in this paragraph, "another jurisdiction" also includes any Indian tribe.

Violation of this paragraph is a Class C crime. In determining the sentence for a violation of this paragraph the court shall impose a sentencing alternative pursuant to section ~~1152~~ 1502, subsection 2 that includes a term of imprisonment. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least one year.

For the purposes of this paragraph, "prior conviction" means a conviction for a violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary, emergency, interim or final protective order; an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe; or a court-approved consent agreement. Section 9-A governs the use of prior convictions when determining a sentence;

Sec. C-60. 17-A MRSA §210-A, sub-§1, ¶E, as amended by PL 2015, c. 470, §12, is further amended to read:

E. The actor violates paragraph C and at least one prior conviction was for a violation of paragraph D.

Violation of this paragraph is a Class B crime. In determining the sentence for a violation of this paragraph the court shall impose a sentencing alternative pursuant to section ~~1152~~ 1502, subsection 2 that includes a term of imprisonment. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least 2 years.

Sec. C-61. 17-A MRSA §401, sub-§3, as amended by PL 2001, c. 383, §55 and affected by §156, is further amended to read:

3. A person may be convicted both of burglary and of the crime that the person committed or attempted to commit after entering or remaining in the structure, but sentencing for both crimes is governed by section ~~1256~~ 1608.

Sec. C-62. 17-A MRSA §755, sub-§1-E, as enacted by PL 2011, c. 464, §15, is amended to read:

1-E. A person is guilty of escape from the community confinement monitoring program granted pursuant to Title 30-A, section 1659-A if without official permission the person intentionally:

A. Leaves or fails to return within 12 hours to that person's residence or other designated area in which that person is monitored. Violation of this paragraph is a Class C crime; or

B. Violates paragraph A and at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this paragraph is a Class B crime.

A sentence imposed for a violation of this section is subject to the requirements of section ~~1256, subsection 1~~ 1609.

Sec. C-63. 17-A MRSA §755, sub-§3, as amended by PL 1985, c. 210, is further amended to read:

3. As used in this section, "official custody" means arrest, custody in, or on the way to or from a courthouse or a jail, police station, house of correction, or any institution or facility under the control of the Department of Corrections, or under contract with the department for the housing of persons sentenced to imprisonment, the custody of any official of the department, the custody of any institution in another jurisdiction pursuant to a sentence imposed under the authority of section ~~1253~~ 2303, subsection ~~1-A~~ 3 or any custody pursuant to court order. A person on a parole or probation status is not, for that reason alone, in "official custody" for purposes of this section.

Sec. C-64. 17-A MRSA §853-A, sub-§1, ¶A, as enacted by PL 2001, c. 383, §99 and affected by §156, is amended to read:

A. The person engages in prostitution as defined in section 851. Violation of this paragraph is a Class E crime, except that the sentencing alternative may include only the penalties provided in section ~~1301~~ 1704, subsection 5 and section 1705, subsection 5; or

Sec. C-65. 19-A MRSA §2152, sub-§11, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

11. Confidentiality of information; unlawful dissemination; penalty. All information collected in connection with the department's child support enforcement activity and medical support recoupment pursuant to this section is confidential and available only for the use of appropriate departmental personnel and legal counsel for the department in carrying out their functions. A person is guilty of unlawful dissemination if that person knowingly disseminates information in violation of this subsection. Unlawful dissemination is a Class E crime~~, which~~ that, notwithstanding Title 17-A, section ~~1252~~ 1604, subsection ~~2~~ 1, paragraph E, is punishable by a fine of not more than $500 or by imprisonment for not more than 30 days.

Sec. C-66. 19-A MRSA §4002, sub-§4, as amended by PL 2015, c. 296, Pt. C, §24 and affected by Pt. D, §1, 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, 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 Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 1094-B, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, ~~1201, 1202~~ 1802, 1804 and ~~1253~~ 2301, subsection 1 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. C-67. 22 MRSA §4008, sub-§4, as amended by PL 1989, c. 502, Pt. D, §18, is further amended to read:

4. Unlawful dissemination; penalty. A person is guilty of unlawful dissemination if ~~he~~ the person knowingly disseminates records ~~which~~ that are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime~~, which~~ that, notwithstanding Title 17-A, section ~~1252~~ 1604, subsection ~~2~~ 1, paragraph E, is punishable by a fine of not more than $500 or by imprisonment for not more than 30 days.

Sec. C-68. 25 MRSA §3503-A, as amended by PL 2003, c. 657, §11, is further amended to read:

§3503-A. Disposal of firearms and ammunition

Notwithstanding any other provision of this chapter, a police department or other law enforcement agency retaining firearms and ammunition covered by this chapter, Title 15, section 3314 or chapter 517, or Title 17-A, section ~~1158-A~~ 1504 may auction the firearms to federally licensed firearms dealers or the public, use the firearms and ammunition for training purposes or destroy the firearms and ammunition.

Sec. C-69. 27 MRSA §375, sub-§2, as amended by PL 1999, c. 748, §2, is further amended to read:

2. Penalty. ~~Notwithstanding Title 17-A, sections 4-A and 1301, a~~ A violation of this chapter is a Class E crime for which a fine of not less than $250 must be adjudged. The unlawful excavation for any one day constitutes a separate violation. The court also may order the defendant to pay an amount equal to the reasonable cost of a proper archaeological excavation had the area that was unlawfully excavated been properly excavated. The Director of the Maine Historic Preservation Commission, in the name of the people of this State through the Attorney General, may in addition to other remedies provided bring an action for an injunction seeking one or more of the following remedies:

A. To restrain a violation of this chapter; or

B. To enjoin future unlawful excavation.

Sec. C-70. 28-A MRSA §2081, sub-§1, ¶¶C and D, as amended by PL 2003, c. 452, Pt. P, §9 and affected by Pt. X, §2, are further amended to read:

C. Procure, or in any way aid or assist in procuring, furnish, give, sell or deliver liquor to a visibly intoxicated person. Violation of this paragraph is a Class E crime, except notwithstanding Title 17-A, ~~section 1301~~ sections 1704 and 1705, the fine may not be more than $500; or

D. Procure, or in any way assist in procuring, furnish, give, sell or deliver imitation liquor for or to a minor, or allow a minor under that person's control or in a place under that person's control to possess or consume imitation liquor. Violation of this paragraph is a Class E crime, except notwithstanding Title 17-A, ~~section 1301~~ sections 1704 and 1705, the fine may not be more than $500.

Sec. C-71. 28-A MRSA §2088, sub-§3, ¶B, as enacted by PL 2005, c. 259, §1, is amended to read:

B. A person who violates this subsection after having been previously adjudicated as violating this subsection commits a Class E crime for which a fine of not less than $1,000 and, notwithstanding Title 17-A, section ~~1301~~ 1704, subsection 5 and section 1705, subsection 5, not more than $5,000 must be imposed. In addition to a fine imposed under this subsection, if the person is a licensee under chapter 19, 43 or 45, the court may suspend that person's license for up to one year. A violation under this paragraph is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. C-72. 28-A MRSA §2089, sub-§2, ¶B, as enacted by PL 2015, c. 205, §1, is amended to read:

B. A person who violates this subsection after having been previously adjudicated as violating this subsection commits a Class E crime for which a fine of not less than $1,000 and, notwithstanding Title 17-A, section ~~1301~~ 1704, subsection 5 and section 1705, subsection 5, not more than $5,000 must be imposed. In addition to a fine imposed under this subsection, if the person is a licensee under chapter 19, 43, 45, 51 or 55, the court may suspend that person's license for up to one year in accordance with chapter 33. A violation under this paragraph is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. C-73. 29-A MRSA §115, last ¶, as amended by PL 2005, c. 507, §17, is further amended to read:

Any period of confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date. Any period of confinement is subject to Title 17-A, section ~~1253, subsection 2~~ 2305, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but is not subject to Title 17-A, section ~~1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10~~ 2305, subsection 4; section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; or section 2310, subsections 3, 6 and 7. If the court suspends the period of confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter ~~54-G~~ 67, subchapter 2, and revocation of the administrative release is governed by the provisions of that ~~chapter~~ subchapter.

Sec. C-74. 29-A MRSA §2054, sub-§4, as amended by PL 1997, c. 162, §1, is further amended to read:

4. Right-of-way. An authorized emergency vehicle operated in response to, but not returning from, a call or fire alarm or operated in pursuit of an actual or suspected violator of the law has the right-of-way when emitting a visual signal using an emergency light and an audible signal using a bell or siren. On the approach of any such vehicle, the operator of every other vehicle shall immediately draw that vehicle as near as practicable to the right-hand curb, parallel to the curb and clear of any intersection and bring it to a standstill until the authorized emergency vehicle has passed. A violation of this subsection is a Class E crime that~~, notwithstanding Title 17-A, section 1301,~~ is punishable by a minimum fine of $250 for the first offense and for a 2nd offense occurring within 3 years of the first offense a mandatory 30-day suspension of a driver's license.

Sec. C-75. 29-A MRSA §2308, sub-§6, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

6. Penalty. A violation of this section is a Class E crime ~~which, notwithstanding Title 17-A, section 1301,~~ that is punishable by a $250 minimum fine for the first offense and a mandatory 30-day suspension of a driver's license for a 2nd offense occurring within 3 years of the first offense.

Sec. C-76. 30-A MRSA §1557-B, sub-§4, ¶B, as enacted by PL 2015, c. 335, §16, is amended to read:

B. The prisoner becomes eligible for ~~meritorious good time~~ deductions as provided in Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311 for a prisoner sentenced to imprisonment in a county jail;

Sec. C-77. 30-A MRSA §1557-B, sub-§4, ¶C, as enacted by PL 2015, c. 335, §16, is amended to read:

C. The prisoner becomes eligible for release and discharge as provided in Title 17-A, section ~~1254~~ 2314, subsection 1 for a prisoner sentenced to imprisonment in a county jail;

Sec. C-78. 30-A MRSA §1605, sub-§1, ¶G, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

G. To work or provide service to the victim of the crime in accordance with Title 17-A, chapter ~~54~~ 69, but only with the express approval of the victim.

Sec. C-79. 30-A MRSA §1605, sub-§5, ¶D, as amended by PL 2003, c. 413, §4, is further amended to read:

D. Payments, either in full or ratably, of restitution, and of the prisoners' obligations, acknowledged in writing, in accordance with Title 17-A, chapter ~~54~~ 69, or that have been reduced to judgment;

Sec. C-80. 30-A MRSA §1606, sub-§2, as amended by PL 2013, c. 519, §9, is further amended to read:

2. Sentence prorated. Inmates participating in a public works-related project or an improvement of property owned by a charitable organization under this section may have their sentences to the jail prorated at the rate of up to one day removed from the sentences for every 16 hours of participation in the project, except that inmates committed to the custody of the sheriff for nonpayment of fines under Title 17-A, section ~~1304~~ 1711 must have their sentences prorated at the rate that is applicable to the individual inmate pursuant to Title 17-A, section ~~1304~~ 1711, subsection ~~3~~ 4, paragraph A, subparagraph (1).

Sec. C-81. 30-A MRSA §1659-A, sub-§2, ¶E, as enacted by PL 2009, c. 391, §6, is amended to read:

E. The inmate serves a minimum of 1/3 of the term of imprisonment, or, in the case of a split sentence, a minimum of 1/3 of the unsuspended portion, prior to participating in a community confinement monitoring program. In calculating the amount of time served, ~~good time or~~ deductions earned under Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311

and time reductions earned for charitable or public works projects under section 1606 must be counted; and

Sec. C-82. 30-A MRSA §3972, sub-§8, as enacted by PL 2013, c. 398, §1, is amended to read:

8. Violations. A dealer who violates any of the requirements of this section is guilty of a Class E crime except as specified in subsection 2, paragraph E. A court may award restitution pursuant to Title 17-A, section ~~1325~~ 2005 to any victim, including a dealer, who suffers an economic loss as the result of a violation of this section.

Sec. C-83. 32 MRSA §11304, sub-§1, as amended by PL 1989, c. 542, §78, is further amended to read:

1. Knowing violation. Any person who knowingly violates any provision of this chapter or any rule or order of the administrator under this chapter ~~shall be~~ is guilty of a Class C crime, ~~provided~~ except that, notwithstanding Title 17-A, ~~section 1301~~ sections 1704 and 1705, the maximum fine ~~shall be~~ is $10,000 or any higher amount ~~which~~ that does not exceed twice the pecuniary gain derived from the crime by the defendant pursuant to Title 17-A, section 1706, subsection 1.

Sec. C-84. 32 MRSA §13731, sub-§3, as enacted by PL 1987, c. 710, §5, is amended to read:

3. Violation. Any person who violates this chapter commits a Class E crime and, notwithstanding Title 17-A, ~~section 1301~~ sections 1704 and 1705, may be punished by a fine of not more than $1,000. Each violation of each section of this chapter constitutes a separate offense.

Sec. C-85. 32 MRSA §15223, sub-§4, as enacted by PL 2001, c. 573, Pt. B, §27 and affected by §36, is amended to read:

4. Class of crime; enhanced fine. Criminal operation of an elevator or tramway is a Class E crime. However, notwithstanding Title 17-A, section ~~1301~~ 1704, subsection ~~1-A, paragraph E~~ 5 or Title 17-A, section ~~1301~~ 1705, subsection ~~3, paragraph E~~ 5, the court may impose an enhanced fine. The fine amount above that authorized under Title 17-A, section ~~1301~~ 1704, subsection 5 or Title 17-A, section 1705, subsection 5 is based solely on the number of days of criminal operation pleaded and proved by the State. For each day of criminal operation pleaded and proved, the court may increase the fine amount by up to $100 for each of those days.

Sec. C-86. 32 MRSA §15223, sub-§5, as enacted by PL 2001, c. 573, Pt. B, §27 and affected by §36, is amended to read:

5. Imposition of sentence without enhanced fine. Nothing in subsection 3 or 4 may be construed to restrict a court, in imposing any authorized sentencing alternative, including a fine in an amount authorized under Title 17-A, section ~~1301~~ 1704, subsection ~~1-A, paragraph E~~ 5 or Title 17-A, section ~~1301~~ 1705, subsection ~~3, paragraph E~~ 5, from considering the number of days of illegal operation, along with any other relevant sentencing factor, which need not be pleaded or proved by the State.

Sec. C-87. 34-A MRSA §3032, sub-§4, as amended by PL 1997, c. 464, §11, is further amended to read:

4. Withdrawal of deductions. All punishments involving ~~loss of good time or withdrawal of~~ deductions subject to being withdrawn must be first approved by the chief administrative officer.

Sec. C-88. 34-A MRSA §3035, first ¶, as amended by PL 1991, c. 314, §40, is further amended to read:

The commissioner may adopt, implement and establish rules for rehabilitative programs, including work release, ~~restitution and~~ furlough and restitution, as authorized by Title 17-A, chapter ~~54~~ 69, within the facilities under the commissioner's control.

Sec. C-89. 34-A MRSA §3035, sub-§4, ¶B, as corrected by RR 2009, c. 2, §93, is amended to read:

B. Interference with a rehabilitative program or furlough is a Class E crime, except that, notwithstanding Title 17-A, section 1604, subsection 1, paragraph E, the court may sentence a person to imprisonment for not more than 11 months.

Sec. C-90. 34-A MRSA §3035, sub-§5, as amended by PL 1991, c. 314, §40, is further amended to read:

5. Time served before furlough. No furlough may be granted until the client has served 50% of the original sentence imposed, after consideration of any ~~good time~~ deductions that the client has received and retained under Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311. This section does not apply to furloughs granted under subsection 2, paragraph B or C.

Sec. C-91. 34-A MRSA §3036-A, sub-§2, ¶B, as amended by PL 2001, c. 141, §1, is further amended to read:

B. A prisoner may not be transferred to supervised community confinement until the prisoner has served at least 2/3 of the term of imprisonment imposed or, in the case of a split sentence, at least 2/3 of the unsuspended portion, after consideration of any deductions that the prisoner has received and retained under Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section

2307; section 2308; section 2309; section 2310; or section 2311 if the term of imprisonment or, in the case of a split sentence, the unsuspended portion is more than 5 years. A prisoner may not be transferred to supervised community confinement until the prisoner has served at least 1/2 of the term of imprisonment imposed or, in the case of a split sentence, at least 1/2 of the unsuspended portion after consideration of any deductions that the prisoner has received and retained under Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311 if the term of imprisonment or, in the case of a split sentence, the unsuspended portion is 5 years or less.

Sec. C-92. 34-A MRSA §3036-A, sub-§2, ¶C, as amended by PL 2007, c. 240, Pt. ZZZ, §2, is further amended to read:

C. Except as provided in paragraph C-1, a prisoner may not be transferred to supervised community confinement unless the prisoner has no more than 18 months remaining on the term of imprisonment or, in the case of a split sentence, on the unsuspended portion, after consideration of any deductions that the prisoner has received and retained under Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311.

Sec. C-93. 34-A MRSA §3036-A, sub-§2, ¶C-1, as enacted by PL 2003, c. 711, Pt. A, §22 and affected by Pt. D, §2, is amended to read:

C-1. If the commissioner determines that the average statewide probation case load is no more than 90 probationers to one probation officer, then a prisoner may be transferred to supervised community confinement if that prisoner has no more than 2 years remaining on the term of imprisonment or, in the case of a split sentence, on the unsuspended portion, after consideration of any deductions that the prisoner has received and retained under Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311.

Sec. C-94. 34-A MRSA §3036-A, sub-§4, ¶A, as enacted by PL 1991, c. 845, §4, is amended to read:

A. Any condition that may be imposed as a condition of probation pursuant to Title 17-A, section ~~1204~~ 1807; and

Sec. C-95. 34-A MRSA §3036-A, sub-§9, as amended by PL 1997, c. 464, §12, is further amended to read:

9. Probation violation; revocation. If a prisoner on supervised community confinement violates a condition of supervised community confinement imposed on the prisoner and if the violation conduct is also a violation of a condition of probation imposed as part of the sentence the prisoner is serving while on supervised community confinement, a probation officer may file with any court a motion for revocation of probation and the court may revoke probation as specified in Title 17-A, section ~~1206~~ 1812.

Sec. C-96. 34-A MRSA §3042, sub-§3, ¶C, as enacted by PL 1983, c. 459, §6, is amended to read:

C. A certificate of the commissioner, warden or other official having custody of the prisoner stating:

(1) The term of commitment under which the prisoner is held;

(2) The time already served on the sentence;

(3) The time remaining to be served;

(4) The ~~amount of good time earned~~ total of deductions received and retained;

(5) The time of parole eligibility of the prisoner; and

(6) Any decisions of the State Parole Board relating to the prisoner.

Sec. C-97. 34-A MRSA §3047, sub-§2, as amended by PL 2007, c. 102, §9, is further amended to read:

2. Money. May give the prisoner an amount equal to the net salary of a single wage earner with no dependents for 40 hours of work at the state minimum wage less all applicable state and federal deductions ~~provided~~ except that any amount in excess of $50 may not be provided by the General Fund, except that the commissioner may not give money to a prisoner who:

A. Has, within the 6 months prior to the date of parole or discharge, transferred from the department's general client account to any person more than $500, excluding any money transferred for the support of dependents; or

B. Has, on the date of parole or discharge, more than $500 in personal assets.

Money received by the prisoner under this subsection is not subject to section 3032, subsection 5-A or 5-B or Title 17-A, section ~~1330~~ 2016, subsection 2;

Sec. C-98. 34-A MRSA §3061, sub-§1, as amended by PL 2017, c. 148, §7, is further amended to read:

1. Transfer. The commissioner may transfer any client from one correctional or detention facility or program, including prerelease centers, work release centers, halfway houses, supervised community confinement or specialized treatment facilities, to another. A juvenile may not be transferred to another facility or program for adult offenders and an adult offender may

not be transferred to another facility or program for juveniles, except that an adult offender may be housed in the Long Creek Youth Development Center or the Mountain View Correctional Facility pursuant to section 4117 or Title 17-A, section ~~1259~~ 1611.

Sec. C-99. 34-A MRSA §3061, sub-§2, ¶B, as repealed and replaced by PL 1983, c. 581, §§26 and 59, is amended to read:

B. The person becomes eligible for release and discharge as provided in Title 17-A, section ~~1254~~ 2314.

Sec. C-100. 34-A MRSA §3063-C, sub-§4, ¶¶B and C, as enacted by PL 2015, c. 335, §28, are amended to read:

B. The prisoner becomes eligible for ~~meritorious good time or~~ deductions as provided in Title 17-A, section ~~1253~~ 2302, subsection 1; section 2305; section 2307; section 2308; section 2309; section 2310; or section 2311 for a prisoner committed to the department;

C. The prisoner becomes eligible for release and discharge as provided in Title 17-A, section ~~1254~~ 2314, subsection 1 for a prisoner committed to the department;

Sec. C-101. 34-A MRSA §3802, sub-§1, ¶I, as enacted by PL 2007, c. 686, §4, is amended to read:

I. To confine juveniles committed to a juvenile correctional facility pursuant to Title 17-A, section ~~1259~~ 1611.

Sec. C-102. 34-A MRSA §5001, sub-§6, as enacted by PL 1983, c. 459, §6, is amended to read:

6. Parole. "Parole" is a release procedure by which a person may be released from a correctional facility by the State Parole Board prior to the expiration of ~~his~~ the person's maximum term, parole status being in effect under Title 17-A, section ~~1254~~ 2314, subsection ~~3~~ 2, with all provisions of prior laws governing parole continuing in effect.

Sec. C-103. 34-A MRSA §5211, sub-§2, as enacted by PL 1983, c. 459, §6, is amended to read:

2. Restitution. The board may authorize and impose as a condition of parole that the person make restitution to ~~his~~ the person's victim or other authorized claimant in accordance with Title 17-A, chapter ~~54~~ 69.

Sec. C-104. 34-A MRSA §9603, sub-§1, as enacted by PL 1983, c. 459, §6, is amended to read:

1. Trial pending. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, ~~he shall~~ the prisoner must be brought to trial within 180 days after ~~he shall have~~ the prisoner has caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of ~~his~~ the prisoner's imprisonment and ~~his~~ the prisoner's request for final disposition to be made of the indictment, information or complaint, ~~provided~~ except that, for good cause shown in open court, the prisoner or ~~his~~ the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner ~~shall~~ must be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the ~~amount of good time earned~~ total of deductions received and retained, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner.

Sec. C-105. 34-A MRSA §9604, sub-§2, as enacted by PL 1983, c. 459, §6, is amended to read:

2. Certificate. Upon receipt of the officer's written request as provided in subsection 1, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the ~~amount of good time earned~~ total of deductions received and retained, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

Sec. C-106. 34-A MRSA §9605, sub-§6, as enacted by PL 1983, c. 459, §6, is amended to read:

6. Time on sentence. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence ~~shall continue~~ continues to run, but ~~good time shall be~~ deductions for good behavior and program participation are earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction ~~which~~ that imposed the sentence ~~may~~ allow.

Sec. C-107. 34-A MRSA §11273, sub-§3, as amended by PL 2013, c. 133, §33, is further amended to read:

3. Conditional release. "Conditional release" means supervised release of a registrant or an offender from institutional confinement for placement on probation, parole, supervised release for sex offenders,

supervised community confinement, home release monitoring or release under Title 15, section 104-A or Title 17-A, chapter ~~54-G~~ 67, subchapter 2.

Sec. C-108. 34-B MRSA §1203-A, sub-§7, ¶B, as enacted by PL 1989, c. 227, §1, is amended to read:

B. Notwithstanding Title 17-A, sections 4-A ~~and 1301~~, 1704 and 1705, unlicensed operation of a mental health service facility is punishable by a fine of not more than $500 or by imprisonment for not more than 60 days.

Sec. C-109. 34-B MRSA §1220, sub-§1, ¶A, as corrected by RR 1997, c. 1, §27, is amended to read:

A. To provide reports in a timely fashion on behalf of the department in response to any requests made by a court pursuant to Title 17-A, section ~~1204~~ 1807, subsection ~~4~~ 5 and to undertake or cause to be undertaken such inquiries or evaluations as are necessary to complete the reports;

Sec. C-110. 34-B MRSA §1220, sub-§1, ¶C, as enacted by PL 1997, c. 422, §3, is amended to read:

C. To receive any notice of imposition of a condition of probation given pursuant to Title 17-A, section ~~1204~~ 1807, subsection ~~4~~ 5 and to assess or to obtain an assessment of the appropriateness and availability of the mental health services necessary for an individual to meet the conditions of probation imposed.

Sec. C-111. 36 MRSA §112-A, sub-§4, as enacted by PL 2007, c. 539, Pt. OO, §4, is amended to read:

4. Accounting. The creditor agency shall credit the account of the debtor with the full amount of the collected debt, including the collection fee retained by, or reimbursed to, the assessor, except that the collection fee may not be credited to the account of an individual required to make restitution as provided in Title 17-A, section ~~1152~~ 1502, subsection ~~2-A~~ 4.

Sec. C-112. 36 MRSA §5276-A, sub-§6, as amended by PL 2005, c. 389, §9, is further amended to read:

6. Accounting. The creditor agency shall credit the account of the individual whose refund has been set off with the full amount of the setoff, including the collection fee retained by, or reimbursed to, the State Tax Assessor, except that the collection fee may not be credited to the account of an individual required to make restitution as provided in Title 17-A, section ~~1152~~ 1502, subsection ~~2-A~~ 4.

Sec. C-113. 37-B MRSA §806, sub-§3, as repealed and replaced by PL 2003, c. 452, Pt. V, §2 and affected by Pt. X, §2, is amended to read:

3. Criminal penalties. The following penalties apply to the following violations.

A. A person who intentionally, knowingly or recklessly fails to comply with the reporting requirements of section 798, subsection 1 commits a Class C crime and, notwithstanding Title 17-A, section ~~1301~~ 1704, subsection 3 and section 1705, subsection 4, is subject to a fine of not more than $25,000.

B. A person who violates paragraph A when the person has a prior conviction for violation of paragraph A commits a Class C crime and, notwithstanding Title 17-A, section ~~1301~~ 1704, subsection 3 and section 1705, subsection 4, is subject to a fine of not more than $50,000. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Sec. C-114. 38 MRSA §344-A, sub-§4, as enacted by PL 1991, c. 471, is amended to read:

4. Penalty. Notwithstanding section 349, any person who knowingly violates subsection 3 is guilty of a Class D crime. Notwithstanding Title 17-A, ~~sections~~ section 4-A ~~and 1301~~, section 1704, subsection 4 and section 1705, subsection 5, the fine for each violation may not be less than $5,000 nor more than $25,000.

Sec. C-115. 38 MRSA §349, sub-§1, as amended by PL 2003, c. 452, Pt. W, §2 and affected by Pt. X, §2, is further amended to read:

1. Criminal penalties. Except as otherwise specifically provided, a person who intentionally, knowingly, recklessly or with criminal negligence violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, commits a Class E crime. Notwithstanding Title 17-A, section ~~1301~~ 1704, subsection 5 and section 1705, subsection 5, the fine for a violation of this subsection may not be less than $2,500 and not more than $25,000 for each day of the violation, except that the minimum amount for knowing violations is $5,000 for each day of violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.

Sec. C-116. 38 MRSA §349, sub-§3, as repealed and replaced by PL 2003, c. 452, Pt. W, §4 and affected by Pt. X, §2, is amended to read:

3. Falsification and tampering. A person may not knowingly:

A. Make a false statement, representation or certification in an application, record, report, plan or

other document filed or required to be maintained by any law administered by the department or by any order, rule, license, permit, approval or decision of the board or commissioner;

B. Tamper with or render inaccurate a monitoring device or method required by any law or by any order, rule, license, permit, approval or decision of the board or commissioner; or

C. Fail to comply with an information submittal required by the commissioner pursuant to section 568, subsection 3 or section 1364, subsection 3.

A person who violates this subsection commits a Class E crime. Notwithstanding Title 17-A, section ~~1301~~ 1704, subsection 5, a fine for a violation of this subsection may not be more than $10,000.

Sec. C-117. 38 MRSA §1316-M, sub-§4, as amended by PL 2003, c. 452, Pt. W, §10 and affected by Pt. X, §2, is further amended to read:

4. Transporting without license or manifest; penalties. A person who transports scrap tires without a license or without a manifest as required by department rules commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The minimum fines for transporting scrap tires without a license or without a manifest are as follows:

A. For a vehicle with a registered gross weight of up to 12,000 pounds, $500;

B. For a vehicle with a registered gross weight of between 12,001 and 34,000 pounds, $2,000; and

C. For a vehicle with a registered gross weight of over 34,000 pounds, $4,500.

This minimum fine may not be suspended, but it may be reduced by the amount of the disposal fee paid by the transporter for disposal of the truckload of tires at a licensed waste facility. Notwithstanding Title 17-A, section ~~1301~~ 1704, the maximum fine under this subsection is not more than $10,000 per violation.

Sec. C-118. 38 MRSA §1316-M, sub-§5, as enacted by PL 2003, c. 452, Pt. W, §11 and affected by Pt. X, §2, is amended to read:

5. Transporting after summons or arrest. A person who, after being issued a summons or arrested for a violation of the license or manifest requirements, transports the scrap tires to an unlicensed, nonexempt waste facility commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. Notwithstanding Title 17-A, ~~section 1301~~ sections 1704 and 1705, the maximum fine under this subsection is not more than $25,000 per violation.

Sec. C-119. 38 MRSA §1319-T, as amended by PL 1991, c. 548, Pt. A, §32, is further amended to read:

§1319-T. Criminal provisions

In addition to being subject to civil penalties as provided by section 349, subsection 2 and to criminal penalties as provided in section 349, subsection 3, conduct described in subsections 1 and 2 is subject to criminal penalties as follows.

1. Penalty provisions. Any person is guilty of a Class C crime and may be punished accordingly if that person, with respect to any substance or material that has been identified as hazardous waste by the board and that the person believes may be harmful to human health or knows or has reason to know has been so identified, knowingly:

A. Transports any such substance or material without, in fact, having a proper license or permit as may be required under this subchapter;

B. Transports any such substance or material to a waste facility knowing or consciously disregarding a risk that such facility does not have a proper license or permit as may be required under this subchapter;

C. Handles any such substance or material without, in fact, having obtained a proper license or permit to do so as may be required under this subchapter; or

D. Handles any such substance or material at any location knowing or consciously disregarding a risk that such location does not have a proper license or permit as may be required under this subchapter for such treatment, storage or disposal.

Notwithstanding Title 17-A, section ~~1301~~ 1704, subsection ~~1, paragraph A-1~~ 3 or Title 17-A, section ~~1301~~ 1705, subsection ~~3, paragraph D~~ 4, the fine for such violation may not exceed $50,000 for each day of such violation. In a prosecution under paragraph B or D, the conscious disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

2. Class D crimes. A person is guilty of a Class D crime if, with respect to any substance or material that, in fact, has been identified as hazardous waste by the board and that the person knows or has reason to believe has been so identified or may be harmful to human health, that person knowingly:

A. Establishes, constructs, alters or operates any waste facility for any such substance or material without, in fact, having obtained a proper license

or permit as may be required under this subchapter;

B. Handles or transports any substance or material identified as hazardous waste by the board in any manner that violates the terms of any condition, order, rule, license, permit, approval or decision of the board or commissioner with respect to the handling or transporting of that substance or material; or

C. Gives custody or possession of any such substance or material to any other person whom that person knows or has reason to believe:

(1) Does not have a license or permit to transport or handle such substance or material as may be required under this subchapter; or

(2) Will transport or handle such substance or material in violation of this subchapter or rules adopted under it.

A person who violates the provisions of this subsection may be punished accordingly, except that, notwithstanding Title 17-A, section ~~1301~~ 1704, subsection ~~1, paragraph B,~~ 4 or Title 17-A, section ~~1301~~ 1705, subsection ~~3, paragraph E~~ 5, the fine for such violation may not exceed $25,000 for each day of the violation.

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

Effective May 16, 2019.

CHAPTER 114

H.P. 297 - L.D. 388

An Act To Recognize Employee Background Checks Conducted for Out-of-state Schools Eligible for Maine Tuition Assistance

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

Whereas, this legislation must take effect before the expiration of the 90-day period so that it applies to the next school year; 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. 20-A MRSA §5808, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§5808. Schools outside state

The tuition payment for students educated in whole in another state or country may not exceed the average per pupil cost in all secondary schools of this State. The legislative body of the school administrative unit may vote to authorize its school board to pay a larger tuition rate.

For an out-of-state secondary school that serves a student who resides in a school administrative unit that does not maintain a secondary school, the tuition payment may not be withheld solely because persons regularly employed in that school do not meet the requirements of section 6103, as long as those persons are required to meet background check standards in that state determined by the commissioner to be equivalent to the requirements of section 6103. The commissioner shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Notwithstanding any other provision of law to the contrary, an out-of-state secondary school that was included on the list of approved out-of-state secondary schools maintained by the department for the 2017-2018 school year must continue to receive tuition payments under this section for any student who was enrolled at that school for the 2018-2019 school year. Tuition payments must continue for such a student until that student graduates or terminates enrollment.

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

Effective May 16, 2019.

CHAPTER 115

H.P. 380 - L.D. 523

An Act To Permit the Indoor Production of Industrial Hemp

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

Whereas, this legislation must take effect before the expiration of the 90-day period to help ensure industrial hemp producers do not lose a year of production; and