

MAINE STATE LEGISLATURE

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*State Of Maine
122nd Legislature*

*First Regular Session and
First Special Session*

Bill Summaries

*Joint Standing Committee
on
Criminal Justice and Public Safety*

August 2005

Members:

Sen. Bill Diamond, Chair

Sen. John M. Nutting

Sen. Dean F. Clukey

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Maine State Legislature

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122nd Legislature
First Regular Session and First Special Session

Summary of Legislation Considered by the Joint Standing Committees
August 2005

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing select committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills considered by the committees. It is organized by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. A subject index for each committee is included immediately before the bill summaries for that committee, and a numerical index by LD number is included at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

- CARRIED OVER Bill Carried Over to Second Regular Session
CON RES XXX..... Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES..... House & Senate disagree; bill died
DIED IN CONCURRENCE..... One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT..... Action incomplete when session ended; bill died
EMERGENCY..... Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE..... Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE..... Bill failed to get majority vote
FAILED MANDATE ENACTMENT..... Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY..... Ruled out of order by the presiding officers; bill died
INDEF PP..... Bill Indefinitely Postponed
ONTP..... Ought Not To Pass report accepted
OTP ND..... Committee report Ought To Pass In New Draft
OTP ND/NT..... Committee report Ought To Pass In New Draft/New Title
P&S XXX..... Chapter # of enacted Private & Special Law
PUBLIC XXX..... Chapter # of enacted Public Law
RESOLVE XXX..... Chapter # of finally passed Resolve
UNSIGNED..... Bill held by Governor
VETO SUSTAINED..... Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is June 29, 2005; and for non-emergency legislation enacted in the First Special Session is September 17, 2005.

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6. It relaxes the current requirement that a juvenile cannot be held in excess of 24 hours, excluding weekends and holidays, in approved jail or other secure detention facilities used for adults. Public Law 2005, chapter 328 extends the time period from 24 hours to 48 hours, which is consistent with revised federal regulations.
7. It prohibits the detention of any juvenile arrested for non-juvenile offenses.
8. It specifies that the determination of credit already served by a juvenile is determined by the Department of Corrections.
9. It adds a provision similar to the adult provision for suspension of an operator's license for using a motor vehicle for drug trafficking, by specifying that a driver's license may not be suspended for more than one year following an adjudication for drug trafficking in which a motor vehicle was used.
10. It repeals a reference to a juvenile proceeding in current law under sexual abuse of a minor, which makes no sense since the crime can only be committed by persons at least 18 years of age.
11. It repeals a reference to an outdated Executive Order relating to the membership of the Juvenile Justice Advisory Group.
12. It ensures appropriate mental health services be provided to juveniles who are detained and committed by expanding the possible range of mental health placements to less restrictive alternatives beyond psychiatric hospitalization. Public Law 2005, chapter 328 allows placement of a juvenile, with the juvenile's consent, in a licensed residential care facility providing a mental health treatment program as an alternative to psychiatric hospitalization.
13. It makes the provisions regarding juveniles held in observation status the same at Mountain View Youth Development Center as at Long Creek Youth Development Center, which includes constant staff observation if necessary to prevent imminent harm.
14. It specifies that the Commissioner of the Department of Corrections may issue arrest warrants for juveniles who violate provisions of community reintegration or aftercare status.
15. It makes technical changes to ensure that the statutory purposes of the Long Creek Youth Development Center and the Mountain View Youth Development Center are consistent.
16. It repeals a reference to an outdated Executive Order relating to the membership of the Juvenile Justice Advisory Group.

LD 1505

An Act To Amend the Sentencing Laws

**PUBLIC 265
EMERGENCY**

Sponsor(s)
DIAMOND
BLANCHETTE

Committee Report
OTP

Amendments Adopted

LD 1505 proposed to do the following:

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1. Amend the provision regarding authorized sentences to allow the court to impose a fine along with any other sentencing alternative, except unconditional discharge, deferred disposition and a fine with administrative release;
2. Amend the provision regarding authorized sentences to allow the court to impose a sentencing alternative that includes a split sentence of imprisonment with administrative release as authorized in Title 17-A, chapter 54-G;
3. Amend Title 17-A, §1172, sub-§1 regarding victim notification by adding a reference to "deferred disposition" in and by enacting a new ¶F that imposes a new duty on the attorney for the State when practicable to make a good faith effort to inform a crime victim of the right to comment on the proposed early termination of probation, early termination of administrative release or conversion of probation to administrative release;
4. Enact Title 17-A, §1174-A, which imposes a new duty on the attorney for the State after receiving notice of a motion seeking early termination of probation or early termination of administrative release or seeking to convert probation to administrative release to disclose to the court any attempts made to notify the victim of the motion and any objection to the motion by the victim. It also proposed to provide the victim a right to be heard on the motion in the event that a hearing is held by the court and the victim is physically present in the courtroom;
5. Amend Title 17-A, §1201, subsection 1, paragraph A-1 by enacting a new subparagraph (1) authorizing probation following conviction for certain Class D and Class E crimes relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode, and as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not never been placed on probation pursuant to this subparagraph. The availability of probation provides the impetus for the attorney for the State to forego the felony in favor of a misdemeanor disposition;
6. Enact a new provision authorizing probation following conviction for a Class D crime of stalking. Currently, probation is authorized for Class D stalking only if committed against a family or household member. It also proposed to enact a new provisions authorizing probation following conviction for a Class D crime in Title 17-A, chapter 45 relating to schedule W drugs and following a conviction for a Class D or E crime under the repeat OUI offender laws;
7. Amend probation laws by imposing on a person on probation the duty to bring a motion if at any time during the period of probation the probationer cannot meet a requirement imposed by the court or a community reparations board;
8. Amend probation conversion laws in 3 ways. First, the bill proposed to replace the word "application" with the word "motion," which more accurately describes the process for modification. Second, the bill proposed to authorize the court to convert a period of probation imposed for the Class C crime of operating after habitual offender revocation to a period of administrative release. Third, the bill proposed that a motion to convert probation to administrative release sought by the probationer, the probation officer or the court on its own motion is contingent upon notice of the motion being provided to the attorney for the State as well as the probation officer;

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9. Amend probation termination laws in 2 ways. The bill proposed to replace the word "application" with the word "motion." The bill also proposed that a motion for termination of probation and discharge sought by the probationer, the probation officer or the court on its own motion is contingent upon notice of the motion being provided to the attorney for the State as well as the probation officer;
10. Enact a provision that imposes on the person granted a deferred disposition the duty to bring a motion at any time during the period of deferment if the person cannot meet a deferment requirement imposed by the court;
11. Clarify which party has the burden of proof and what that burden is by expressly providing that at the hearing on final disposition at the conclusion of the period of deferment the person granted a deferred disposition must demonstrate compliance with the court-imposed deferment requirements by a preponderance of the evidence. Second, it proposed to change current law by providing that in the event the person granted a deferred disposition meets the person's burden of proof, the sentence to be imposed by the court is any sentence alternative authorized for the crime that was either agreed to in writing at the time the sentencing was originally deferred or as amended by agreement of the parties in writing subsequently but prior to the actual sentence being imposed, instead of immediate disposition of unconditional discharge;
12. Clarify which party has the burden of proof by expressly providing that at the hearing on the State's motion to terminate the remainder of the period of deferment and impose sentence the State must demonstrate that the person granted a deferred disposition has inexcusably failed to comply with a court-imposed deferment requirement;
13. Simplify the summons process and the arrest warrant process for persons on deferred disposition;
14. Make a person who has been convicted of operating after habitual offender revocation eligible for a sentence alternative that includes a period of administrative release;
15. Enact a provision that imposes on the person placed on administrative release the duty to bring a motion if at any time during the period of administrative release the person cannot meet a requirement of administrative release imposed by the court;
16. Amend Title 17-A, section 1349-B, subsection 1 in 2 regards. First, the bill proposed to include a reference to the Class C crime of operating after habitual offender revocation, pursuant to Title 29-A, section 2557, as a crime for which, following conviction, the person is eligible for a sentence alternative that includes a period of administrative release. Second, the bill proposed create the new sentencing alternative of a split sentence of imprisonment with administrative release. Currently, only a wholly suspended term of imprisonment could be accompanied by a period of administrative release;
17. Simplify the summons process and the arrest warrant process for persons on administrative release;
18. Empower the Commissioner of Corrections to provide for necessary assessment and supervision procedures and direct the use of adult probation resources and staff to the management of adult probationers with a high risk of offending; and
19. Amend the law relative to supervision of persons by probation and parole or intensive supervision program officers by providing that the purpose of supervision of each person placed under the officer's supervision is to ensure that departmental resources are directed to the management of persons with a high risk of reoffending.

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Enacted law summary

Public Law 2005, chapter 265 codifies the recommendations of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, which was established pursuant to Public Law 2003, chapter 451 and Public Law 2003, chapter 707.

Public Law 2005, chapter 265 does the following.

1. It amends the provision regarding authorized sentences to specify that a fine may be imposed along with any other sentencing alternative, except unconditional discharge, deferred disposition and a fine with administrative release. It also creates a new authorized sentence by allowing the court to impose a sentencing alternative that includes a split sentence of imprisonment with administrative release as authorized in Title 17-A chapter 54-G.
2. It amends Title 17-A, §1172, sub-§1 regarding victim notification by adding a reference to "deferred disposition" and by enacting a new provision that imposes a new duty on the attorney for the State when practicable to make a good faith effort to inform a crime victim of the right to comment on the proposed early termination of probation, early termination of administrative release or conversion of probation to administrative release.
3. It enacts Title 17-A, §1174-A, which imposes a new duty on the attorney for the State after receiving notice of a motion seeking early termination of probation or early termination of administrative release or seeking to convert probation to administrative release to disclose to the court any attempts made to notify the victim of the motion and any objection to the motion by the victim. It also provides the victim a right to be heard on the motion in the event that a hearing is held by the court and the victim is physically present in the courtroom.
4. It amends Title 17-A, §1201, sub-§1, ¶A-1 by enacting a new sub-¶(1) authorizing probation following conviction for certain Class D and Class E crimes relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode, and as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not never been placed on probation pursuant to this sub-¶. The availability of probation provides the impetus for the attorney for the State to forego the felony in favor of a misdemeanor disposition.
5. It also enacts a new sub-¶(4) to ¶A-1 authorizing probation following conviction for a Class D crime of stalking. Currently, probation is authorized for Class D stalking only if committed against a family or household member. It enacts a new sub-¶(6) to ¶A-1 authorizing probation following conviction for a Class D crime in Title 17-A, chapter 45 relating to a schedule W drug. Finally, it enacts a new sub-¶(7) to ¶A-1 authorizing probation following a conviction for a Class D or E crime under Title 29-A, §2411, sub-§1-A, ¶B (repeat OUI offender).
6. It amends Title 17-A, §1202, sub-§2 by imposing on a person on probation the duty to bring a motion pursuant to the subsection if the probationer, at any time during the period of probation, cannot meet a requirement imposed by the court or a community reparations board.
7. It amends Title 17-A, §1202, sub-§2-A regarding probation conversion in 3 ways. First, the word "application" is replaced by the word "motion," which more accurately describes the process for modification.

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Second, a court is authorized to convert a period of probation imposed for the Class C crime of operating after habitual offender revocation, pursuant to Title 29-A, §2557, to a period of administrative release. Third, a conversion from probation to administrative release by a court sought by the probationer, the probation officer or the court on its own motion is made contingent upon notice of the motion being provided to the attorney for the State as well as the probation officer.

8. It amends Title 17-A, §1202, sub-§3 regarding probation termination in 2 ways. Again the word "application" is replaced by the word "motion." Second, a termination of probation and discharge by a court sought by the probationer, the probation officer or the court on its own motion is made contingent upon notice of the motion being provided to the attorney for the State as well as the probation officer.
9. It enacts Title 17-A, §1348-A, sub-§3, which imposes on the person granted a deferred disposition the duty to bring a motion pursuant to §1348-A, sub-§2 if, at any time during the period of deferment, the person cannot meet a deferment requirement imposed by the court.
10. It amends Title 17-A, §1348-B, sub-§ 1 in 2 ways. First, it clarifies which party has the burden of proof and what that burden is by expressly providing that at the hearing on final disposition at the conclusion of the period of deferment the person granted a deferred disposition must demonstrate compliance with the court-imposed deferment requirements by a preponderance of the evidence. Second, it changes current law by providing that in the event the person granted a deferred disposition meets the person's burden of proof, the sentence to be imposed by the court is any sentence alternative authorized for the crime that was either agreed to in writing at the time the sentencing was originally deferred or as amended by agreement of the parties in writing subsequently but prior to the actual sentence being imposed instead of immediate disposition of unconditional discharge.
11. It amends Title 17-A, section 1348-B, subsection 2 to clarify which party has the burden of proof by expressly providing that at the hearing on the State's motion to terminate the remainder of the period of deferment and impose sentence the State must demonstrate that the person granted a deferred disposition has inexcusably failed to comply with a court-imposed deferment requirement.
12. It amends Title 17-A, §1348-B, sub-§5, repeals §1348-B, sub-§6 and enacts §1348-B, sub-§7, simplifying the summons process and the arrest warrant process for persons on deferred disposition. To obtain the presence of the person granted a deferred disposition at the hearing on final disposition at the conclusion of the period of deferment, the summons process is contemplated. If the person fails to appear after having been served with a summons, the court may then issue a warrant of arrest of the person. To obtain the presence of the person granted a deferred disposition at the hearing on the State's motion to terminate the remainder of the period of deferment and impose sentence, both the arrest warrant process and the summons process are available to the State in order to obtain the appearance of the person.
13. It enacts Title 17-A, §1349-A, sub-§2-A, which imposes on the person placed on administrative release the duty to bring a motion under section 1349-A, subsection 2 if, at any time during the period of administrative release, the person cannot meet a requirement of administrative release imposed by the court.
14. It amends Title 17-A, section 1349-B, subsection 1 in 2 regards. First, it includes a reference to the Class C crime of operating after habitual offender revocation, pursuant to Title 29-A, section 2557, as a crime for which, following conviction, the person is eligible for a sentence alternative that includes a period of administrative release. Second, it creates the new sentencing alternative of a split sentence of imprisonment with administrative release.

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- 15. It amends Title 17-A, §1349-D to simplify the summons process and the arrest warrant process for persons on administrative release. To obtain the presence of a person who was placed on administrative release at the hearing on the motion to revoke administrative release filed by the State, both the summons process and the arrest warrant process are available to the State.
- 16. It amends Title 19-A, §4002, sub-§4 to expressly make the definition of "family and household members" contained therein applicable to: Title 17-A, §1201, eligibility for probation; §1202, period of probation; and §1253, calculation of period of imprisonment.
- 17. It enacts Title 34-A, §5402, sub-§3, ¶F, which empowers the Commissioner of Corrections to provide for necessary assessment and supervision procedures and direct the use of adult probation resources and staff to the management of adult probationers with a high risk of offending.
- 18. It amends Title 34-A, §5404, sub-§3, ¶A relative to supervision of persons by probation and parole or intensive supervision program officers by providing that the purpose of supervision of each person placed under the officer's supervision is to ensure that departmental resources are directed to the management of persons with a high risk of reoffending.

Public Law 2005, chapter 265 was enacted as an emergency measure effective May 31, 2005.

LD 1508 An Act To Regulate Fire Alarm Contractors CARRIED OVER

<u>Sponsor(s)</u> NASS R		<u>Committee Report</u>		<u>Amendments Adopted</u>
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LD 1508 proposed to require that fire alarm system contractors in the State be licensed by the Commissioner of Public Safety.

This bill was carried over by H.P. 1203 to the next special or regular session of the 122nd Legislature.

LD 1516 An Act To Eliminate the 3-step Sentencing Procedure Relating to ONTP
the Imposition of Sentencing Alternatives That Include
Imprisonment

<u>Sponsor(s)</u>		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1516 proposed to remove from the Maine Revised Statutes, Title 17-A the statutory requirement that courts engage in a specific 3-step process for determining sentences of imprisonment with respect to murder and Class A, B and C crimes. The 3-step process was enacted by the Legislature in 1995 and is based, almost verbatim, upon the so-called Hewey analysis first set forth by the Maine Law Court in the 1993 case of State v. Hewey, 622 A.2d 1151 (Me. 1993).

Specifically, the bill proposed to repeal and replace Title 17-A, section 1252-C, which required trial courts to follow the 3-step Hewey analysis when imposing sentences of imprisonment for murder and Class A, B and C offenses. The new section proposed to provide that when imposing such sentences, trial courts must adhere to the procedure set forth in the Maine Rules of Criminal Procedure, Rule 32(a)(3), which requires that reasons for a