

MAINE STATE LEGISLATURE

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STATE OF MAINE
123RD LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills and adopted amendments and laws enacted or finally passed during the First Regular Session of the 123rd Maine Legislature coming from the

**JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE
AND PUBLIC SAFETY**

July 2007

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STATE OF MAINE

123RD LEGISLATURE

FIRST REGULAR SESSION

LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS



This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 123rd Maine Legislature, which was in session from December 6, 2006 to June 21, 2007.

The *Digest* is arranged alphabetically by committee, and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

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:

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 (or Accepted ONTP report).....	Ought Not To Pass report accepted
OTP-ND.....	Committee report Ought To Pass In New Draft
P&S XXX.....	Chapter # of enacted Private & Special Law
PASSED.....	Joint Order passed in both bodies
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 that the effective date for non-emergency legislation enacted in the First Regular Session is **September 20, 2007**. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

Joint Standing Committee on Criminal Justice and Public Safety

LD 1736

An Act To Amend the Laws Relating to Probation and Supervised Release for Sex Offenders and To Make Necessary Changes to the Maine Criminal Code

PUBLIC 344

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PLUMMER	OTP-AM	H-421

This bill amends the law relating to probation and supervised release for sex offenders as follows.

Section 1 of the bill sets out explicitly the "plead and prove" requirement that federal constitutional law requires whenever the available sentencing alternatives depend on the crime committed. This is something that the State has to do now.

Section 2 of the bill provides that if a stay of execution is given by a court on a term of imprisonment on a split sentence, the court may revoke the subsequent probation for criminal conduct committed during the stay or for failure to report as ordered. Under present law a judge is prohibited from imposing a term of imprisonment after a split sentence, so if during the stay the offender engages in new criminal conduct or fails to report, the court can only make the new sentence concurrent. This section is intended to deter new criminal conduct or the failure to report by allowing for a probation part of an original sentence to be revoked in order to allow the sentencing judge the option of making new jail time run consecutively instead of concurrently.

Section 3 clarifies that if probation is partially revoked on more than one occasion on the same sentence the periods of imprisonment imposed are successive and that a period of imprisonment imposed on a partial revocation does not commence until the initial unsuspended portion of imprisonment has been fully served. This is intended to clarify what occurs in 2 situations: 1) The offender is serving the unsuspended portion of a sentence and as a result of past behavior presently discovered or present behavior while incarcerated, a portion of the suspended sentence is being vacated; or 2) The offender's behavior while on probation results in 2 or more partial revocations of the suspended portion of the sentence. Section 3 clarifies that in both of these cases the vacated portions of the sentence that have been ordered by the court must be served successively and not concurrently, since there is only one sentence at issue.

Sections 4 and 5 make the grounds for revocation of supervised release by sex offenders the same as revocation of probation.

Section 6 is intended to allow the sentencing alternative of administrative release along with the requirement of paying a fine.

Section 7 makes an initial appearance on an administrative release revocation consistent with the time for an initial appearance for a probation revocation: within 5 days after arrest, instead of 14 days.

Section 8 authorizes probation officers to see pharmacy records of probationers and others under the officers' supervision as the result of a court order. This is the same authority granted to other law enforcement officers for offenders under their supervision.

Section 9 gives probation officers the power to arrest for obstruction of government administration those who interfere with them while they are performing their official functions.

Section 10 makes it clear that probable cause determinations for persons transferred from other jurisdictions for probation or parole supervision in Maine are conducted administratively, since the Maine courts had no role in the initial determination of the imposition of supervision or the revoking of supervision and therefore have no standing to conduct probable cause hearings involving these transferred offenders.

Joint Standing Committee on Criminal Justice and Public Safety

Committee Amendment "A" (H-421)

Because current law authorizes sentencing alternatives of both a fine and imprisonment followed by administrative release, this amendment repeals unnecessary language in the Maine Revised Statutes, Title 17-A, section 1349. The amendment also amends Title 17-A, section 1349-A, subsection 1 and section 1349-B, subsection 2 to be consistent with regard to authorizing the use of administrative release for Class C operating after habitual offender revocation and aggravated operating after habitual offender revocation. The amendment adds district attorneys to the list of those who may show pharmacy records to law enforcement officers other than those listed. Finally, the amendment strikes from the bill the provision granting probation officers the power to arrest for obstruction of government administration while they are performing their official duties.

Enacted Law Summary

Public Law 2007, chapter 344 amends the law relating to probation and supervised release for sex offenders as follows.

1. It sets out explicitly the "plead and prove" requirement that federal constitutional law requires whenever the available sentencing alternatives depend on the crime committed.
2. It provides that if a stay of execution is given by a court on a term of imprisonment on a split sentence, the court may revoke the subsequent probation for criminal conduct committed during the stay or for failure to report as ordered. Under present law a judge is prohibited from imposing a term of imprisonment after a split sentence, so if during the stay the offender engages in new criminal conduct or fails to report, the court can only make the new sentence concurrent. This section is intended to deter new criminal conduct or the failure to report by allowing for a probation part of an original sentence to be revoked in order to allow the sentencing judge the option of making new jail time run consecutively instead of concurrently.
3. It clarifies that if probation is partially revoked on more than one occasion on the same sentence the periods of imprisonment imposed are successive and that a period of imprisonment imposed on a partial revocation does not commence until the initial unsuspended portion of imprisonment has been fully served. This clarifies what occurs in 2 situations: 1) The offender is serving the unsuspended portion of a sentence and as a result of past behavior presently discovered or present behavior while incarcerated, a portion of the suspended sentence is being vacated; or 2) The offender's behavior while on probation results in 2 or more partial revocations of the suspended portion of the sentence. In both of these cases the vacated portions of the sentence that have been ordered by the court must be served successively and not concurrently, since there is only one sentence at issue.
4. It makes the grounds for revocation of supervised release by sex offenders the same as revocation of probation.
5. Because current law authorizes sentencing alternatives of both a fine and imprisonment followed by administrative release, Public Law 2007, chapter 344 repeals unnecessary language in the Maine Revised Statutes, Title 17-A, section 1349. The amendment also amends Title 17-A, section 1349-A, subsection 1 and section 1349-B, subsection 2 to be consistent with regard to authorizing the use of administrative release for Class C operating after habitual offender revocation and aggravated operating after habitual offender revocation.
6. It makes an initial appearance on an administrative release revocation consistent with the time for an initial appearance for a probation revocation: within 5 days after arrest, instead of 14 days.
7. It authorizes probation officers to see pharmacy records of probationers and others under the officers' supervision as the result of a court order. This is the same authority granted to other law enforcement officers for offenders under their supervision. Public Law 2007, chapter 344 also adds district attorneys to the list of those who may show pharmacy records to law enforcement officers other than those listed.
8. It makes clear that probable cause determinations for persons transferred from other jurisdictions for probation or

Joint Standing Committee on Criminal Justice and Public Safety

parole supervision in Maine are conducted administratively, since the Maine courts had no role in the initial determination of the imposition of supervision or the revoking of supervision and therefore have no standing to conduct probable cause hearings involving these transferred offenders.

LD 1749 An Act To Create Indeterminate Sentencing and a Forensic Review Board for Repeat Sexual Assault Offenders and Sexually Violent Offenders

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DIAMOND	ONTP	

This bill implements the recommendations of the Department of Corrections made as directed by Resolve 2005, chapter 132. The bill proposes to do the following:

1. Create new sentencing alternative of an indeterminate sentence for repeat sexual assault offenders and sexually violent offenders with a minimum mandatory sentence of at least 20 years;
2. Create a 5-member forensic board appointed by the Governor; the board's duties include: holding hearings, issuing subpoenas, compelling attendance of witnesses, compelling production of documents, administering oaths and taking testimony; and
3. Specify that a person who served a minimum term of years of a sentence is eligible for review by board; upon receipt of application for review, the Department of Corrections must submit a report to board and a hearing would be held to determine if continued imprisonment is appropriate or if conditional release is. If a person is released and violates a condition of that release, the person is arrested and another hearing is held.

LD 1752 An Act To Clarify the Law for Failing To Comply with the Requirements of the Sex Offender Registration and Notification Act of 1999

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PLOWMAN	ONTP	

This bill clarifies that a person may not seek post-conviction review of a violation of the sex offender registration requirements of the Sex Offender Registration and Notification Act of 1999 for post-conviction review of the underlying sex offense or sexually violent offense that constitutes an element of the registration violation. The bill also clarifies that for purposes of a violation of a duty or rule under the Sex Offender Registration and Notification Act of 1999, "just cause" raised in the context of an affirmative defense means a physical or mental incapacity that makes a person unable to comply with a duty imposed under that Act or a rule adopted pursuant to that Act.

LD 1807 An Act To Provide for Civil Commitment for Sexually Violent Predators and To Prohibit Sex Offenders from Residing Together

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PLOWMAN	ONTP	

This bill provides a procedure for the commitment of a person determined to be a sexually violent predator if a court finds that the person has a mental abnormality or personality disorder that makes it likely that the person will engage