

MAINE STATE LEGISLATURE

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STATE OF MAINE
124TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed during the Second Regular Session of the 124th Maine Legislature coming from the

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

April 2010

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STATE OF MAINE

124TH LEGISLATURE
SECOND 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 Second Regular Session of the 124th Maine Legislature.

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:

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

The effective date for non-emergency legislation enacted in the Second Regular Session of the 124th Legislature is Monday, July 12, 2010. 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

This resolve provides for legislative review of Chapter 15: Batterer Intervention Program Certification, a major substantive rule of the Department of Corrections. The updated rule makes technical changes to the Batterer Intervention Program Certification.

Enacted Law Summary

Resolve 2009, chapter 170 provides for legislative review of Chapter 15: Batterer Intervention Program Certification, a major substantive rule of the Department of Corrections. The updated rule makes technical changes to the Batterer Intervention Program Certification.

Resolve 2009, chapter 170 was finally passed as an emergency measure effective March 24, 2010.

LD 1777 An Act To Display the Homeland Security Advisory System at Public Transportation Facilities

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PILON NUTTING J	ONTP	

This bill requires the posting of information about the federal Homeland Security Advisory System and its color-coded threat conditions in publicly accessible locations in public transportation facilities.

LD 1789 An Act Containing the Recommendations of the Criminal Law Advisory Commission

PUBLIC 608

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-742

This bill amends the Maine Juvenile Code to specify that restitution for juvenile offenders is the same as restitution for adult offenders under the Maine Revised Statutes, Title 17-A, chapter 54, except that section 1329, the restitution default provision, does not apply to juvenile offenders. Although section 1329 does not apply to juvenile offenders, enforcement of a restitution order imposed in a juvenile case is available pursuant to Title 15, section 3314, subsection 7, enforcement of a dispositional order.

The bill amends the Maine Juvenile Code to provide the court the authority to employ upon any default in payment of a fine or restitution the levying of execution or the taking of other measures authorized for the collection of unpaid civil judgments to collect the unpaid fine or restitution. A levy of execution does not affect confinement ordered as a punitive sanction and does not discharge a juvenile confined as a remedial sanction until the full amount of the fine or restitution has been paid. The amendment is modeled on Title 17-A, section 1304, subsection 4 and Title 17-A, section 1329, subsection 4.

The bill amends laws regarding dissemination of sexually explicit material and possession of sexually explicit material by clarifying that the age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of dissemination or possession of the sexually explicit visual image or material.

Joint Standing Committee on Criminal Justice and Public Safety

The bill clarifies the law regarding the offense of aiding escape by striking the term "contraband" from the offense and replacing that term with the relevant portion of the current definition of "contraband." The bill deletes from the law regarding the offense of trafficking in prison contraband the current reference to the definition of "contraband" in Title 17-A, section 756 and defines "contraband" in Title 17-A, section 757, subsection 2 using the relevant portion that is repealed in Title 17-A, section 756, subsection 2.

The bill enacts Title 17-A, section 1177 in chapter 48 of the Maine Criminal Code addressing victims' rights to provide notice to victims of the existence of Title 16, sections 53A, 53B and 53C, to clarify that certain communications by victims to sexual assault counselors, victim advocates, victim witness advocates or victim witness coordinators are privileged from disclosure.

The bill specifies that, in the context of dissemination of sexually explicit material, and possession of sexually explicit material for purposes of determining a period of probation, it is not the age of the person depicted at the time of the alleged dissemination or possession of the sexually explicit visual image or material that the State must plead and prove, but rather the age of the victim at the time the sexually explicit conduct occurred.

The bill clarifies that if a court orders as a condition of probation that the convicted person forfeit and pay a specific amount of restitution, that order, as a matter of law, also constitutes the imposition of restitution as a sentencing alternative and no additional stand-alone order in this regard is necessary.

The bill gives the court where a warrant of arrest is executed the same authority to conduct the default hearing as the court located where the warrant is issued. The court where a warrant of arrest is executed may exercise its discretion as to whether to hold the hearing or instead return the offender to the issuing court for that purpose.

The bill clarifies the statutes concerning default by adding a reference to Title 17-A, chapter 54-C following the reference to "community service work."

The bill amends the provision regarding time and method of restitution to reflect the new Title 17-A, section 1326-F, which addresses restitution deducted from judgment in civil action, and Title 17-A, section 1329, which addresses what happens when a defendant defaults in payment of restitution. The changes comprehensively address any offender who has completed any term of commitment to the Department of Corrections or any period of probation and still has not paid the restitution ordered by the court in full.

The bill amends the provision regarding income withholding orders to expressly allow probation officers to apply for income withholding orders when an offender owing restitution receives a sentence that includes a period of probation, making this provision consistent with the recent amendment to Title 17-A, section 1326-A, which leaves to the Department of Corrections the determination for probationers of the time and method of restitution payment.

The bill enacts a new section that comprehensively addresses the situation in which an offender who has completed the term of commitment to the Department of Corrections or the period of probation still has not paid the restitution ordered by the court in full. It provides notice to former Department of Corrections' clients still owing restitution that the duty to pay remains; requires that monetary compensation continue to be paid to the Department of Corrections; and requires that, unless otherwise modified by the court, the time and method of payment determined by the Department of Corrections during the former term of commitment or period of probation continues to control.

The bill amends the statutes concerning default to ensure that restitution payments are made to the same agency to which the restitution was required to be paid under Title 17-A, section 1326-A or 1326-F.

Joint Standing Committee on Criminal Justice and Public Safety

Committee Amendment "A" (H-742)

This amendment includes by reference to the Maine Revised Statutes, Title 16, section 53-B, subsection 3 and section 53-C, subsection 3 certain exceptions to disclosure privileges in a provision of the bill making certain communications made by victims privileged from disclosure. This amendment also clarifies the duties of the Department of Corrections in regard to overseeing payment of restitution by offenders who are no longer incarcerated or on probation.

Enacted Law Summary

Public Law 2009, chapter 608 implements recommendations from the Criminal Law Advisory Commission. Public Law 2009, chapter 608 amends the Maine Juvenile Code to specify that restitution for juvenile offenders is the same as restitution for adult offenders under the Maine Revised Statutes, Title 17-A, chapter 54, except that section 1329, the restitution default provision, does not apply to juvenile offenders. Although section 1329 does not apply to juvenile offenders, enforcement of a restitution order imposed in a juvenile case is available pursuant to Title 15, section 3314, subsection 7, enforcement of a dispositional order.

Public Law 2009, chapter 608 amends the Maine Juvenile Code to provide the court the authority to employ upon any default in payment of a fine or restitution the levying of execution or the taking of other measures authorized for the collection of unpaid civil judgments to collect the unpaid fine or restitution. A levy of execution does not affect confinement ordered as a punitive sanction and does not discharge a juvenile confined as a remedial sanction until the full amount of the fine or restitution has been paid.

Public Law 2009, chapter 608 amends laws regarding dissemination of sexually explicit material and possession of sexually explicit material by clarifying that the age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of dissemination or possession of the sexually explicit visual image or material.

Public Law 2009, chapter 608 clarifies the law regarding the offense of aiding escape by striking the term "contraband" from the offense and replacing that term with the relevant portion of the current definition of "contraband." The bill deletes from the law regarding the offense of trafficking in prison contraband the current reference to the definition of "contraband" in Title 17-A, section 756 and defines "contraband" in Title 17-A, section 757, subsection 2 using the relevant portion that is repealed in Title 17-A, section 756, subsection 2.

Public Law 2009, chapter 608 enacts Title 17-A, section 1177 in chapter 48 of the Maine Criminal Code addressing victims' rights to provide notice to victims of the existence of Title 16, sections 53A, 53B and 53C, to clarify that certain communications by victims to sexual assault counselors, victim advocates, victim witness advocates or victim witness coordinators are privileged from disclosure.

Public Law 2009, chapter 608 specifies that, in the context of dissemination of sexually explicit material, and possession of sexually explicit material for purposes of determining a period of probation, it is not the age of the person depicted at the time of the alleged dissemination or possession of the sexually explicit visual image or material that the State must plead and prove, but rather the age of the victim at the time the sexually explicit conduct occurred.

Public Law 2009, chapter 608 clarifies that if a court orders as a condition of probation that the convicted person forfeit and pay a specific amount of restitution, that order, as a matter of law, also constitutes the imposition of restitution as a sentencing alternative and no additional stand-alone order in this regard is necessary.

Public Law 2009, chapter 608 gives the court where a warrant of arrest is executed the same authority to

Joint Standing Committee on Criminal Justice and Public Safety

conduct the default hearing as the court located where the warrant is issued. The court where a warrant of arrest is executed may exercise its discretion as to whether to hold the hearing or instead return the offender to the issuing court for that purpose.

Public Law 2009, chapter 608 clarifies the statutes concerning default by adding a reference to Title 17-A, chapter 54-C following the reference to "community service work."

Public Law 2009, chapter 608 amends the provision regarding time and method of restitution to reflect the new Title 17-A, section 1326-F, which addresses restitution deducted from judgment in civil action, and Title 17-A, section 1329, which addresses what happens when a defendant defaults in payment of restitution. The changes comprehensively address any offender who has completed any term of commitment to the Department of Corrections or any period of probation and still has not paid the restitution ordered by the court in full.

Public Law 2009, chapter 608 amends the provision regarding income withholding orders to expressly allow probation officers to apply for income withholding orders when an offender owing restitution receives a sentence that includes a period of probation, making this provision consistent with the recent amendment to Title 17-A, section 1326-A, which leaves to the Department of Corrections the determination for probationers of the time and method of restitution payment.

Public Law 2009, chapter 608 enacts a new section that comprehensively addresses the situation in which an offender who has completed the term of commitment to the Department of Corrections or the period of probation still has not paid the restitution ordered by the court in full. It provides notice to former Department of Corrections' clients still owing restitution that the duty to pay remains; requires that monetary compensation continue to be paid to the Department of Corrections; and requires that, unless otherwise modified by the court, the time and method of payment determined by the Department of Corrections during the former term of commitment or period of probation continues to control.

Public Law 2009, chapter 608 amends the statutes concerning default to ensure that restitution payments are made to the same agency to which the restitution was required to be paid under Title 17-A, section 1326-A or 1326-F, 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 court.

LD 1817 An Act To Implement the Recommendations of the Working Group Concerning Domestic Violence and Firearms

INDEF PP

Sponsor(s)

Committee Report

Amendments Adopted

This bill implements the recommendations of the working group concerning domestic violence and firearms established under Resolve 2009, chapter 86.

Specifically, the bill authorizes a law enforcement officer to seize firearms from a person upon arrest for certain crimes of domestic violence, including: murder; assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members; domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct; violating a court-ordered consent agreement or protection from abuse order or aggravated assault on a family or