

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**  
125<sup>TH</sup> LEGISLATURE  
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

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

June 2012

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# STATE OF MAINE

125<sup>TH</sup> LEGISLATURE  
SECOND REGULAR SESSION



## LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125<sup>th</sup> Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD 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 LD is noted to the right of the LD title. The following describes the various final actions.

|   |  |
|---|--|
| <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; legislation died</i>                         |
| <i>DIED BETWEEN HOUSES</i> .....                          | <i>House &amp; Senate disagreed; legislation died</i>                                    |
| <i>DIED IN CONCURRENCE</i> .....                          | <i>defeated in each house, but on different motions; legislation died</i>                |
| <i>DIED ON ADJOURNMENT</i> .....                          | <i>action incomplete when session ended; legislation died</i>                            |
| <i>EMERGENCY</i> .....                                    | <i>enacted law takes effect sooner than 90 days after session adjournment</i>            |
| <i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i> ..... | <i>emergency failed to receive required 2/3 vote</i>                                     |
| <i>FAILED, ENACTMENT or FINAL PASSAGE</i> .....           | <i>failed to receive final majority vote</i>   |
| <i>FAILED, MANDATE ENACTMENT</i> .....                    | <i>legislation proposing local mandate failed required 2/3 vote</i>                      |
| <i>HELD BY GOVERNOR</i> .....                             | <i>Governor has not signed; final disposition to be determined at subsequent session</i> |
| <i>LEAVE TO WITHDRAW</i> .....                            | <i>sponsor's request to withdraw legislation granted</i>                                 |
| <i>NOT PROPERLY BEFORE THE BODY</i> .....                 | <i>ruled out of order by the presiding officer; legislation died</i>                     |
| <i>INDEF PP</i> .....                                     | <i>indefinitely postponed; legislation died</i>  |
| <i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ... | <i>ought-not-to-pass report accepted; legislation died</i>                               |
| <i>P&amp;S XXX</i> .....                                  | <i>chapter # of enacted private &amp; 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>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 125<sup>th</sup> Legislature is Thursday, August 30, 2012. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

***Joint Standing Committee on Criminal Justice and Public Safety***

This bill prohibits a person acting on behalf or under the authority of the State or a political subdivision of the State from prohibiting or restricting the otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency. This bill also removes the power of the Governor to suspend or limit the sale, dispensing and transportation of firearms during a declared state of emergency.

**Enacted Law Summary**

Public Law 2011, chapter 626 prohibits a person acting on behalf or under the authority of the State or a political subdivision of the State from prohibiting or restricting the otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency. It also removes the power of the Governor to suspend or limit the sale, dispensing and transportation of firearms during a declared state of emergency.

Public Law 2011, chapter 626 was enacted as an emergency measure effective April 12, 2012.

**LD 1861**

**An Act To Amend Statutory Post-conviction Review**

**PUBLIC 601**

Sponsor(s)

Committee Report

Amendments Adopted

OTP-AM

H-857

This bill is proposed by the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, chapter 55 and makes a number of changes to post-conviction review.

1. It replaces the outdated phrase "mental disease or defect" with the word "insanity" to be consistent with Title 15, section 103, Title 17-A, sections 39 and 40 and the Maine Rules of Criminal Procedure, Rule 11(a) and Rule 11A(h).
2. It expands the term "assigned justice" to also include "judge" to more accurately reflect to whom a post-conviction case may be assigned.
3. It makes a significant change regarding remedial relief for errors in calculations of good time, meritorious good time and similar deductions pursuant to Title 17-A, section 1253. Remedial relief relative to such administrative actions by the custodian is no longer obtainable by way of post-conviction review. Remedial relief, if any, must now be obtained by way of available administrative remedies pursuant to the Maine Administrative Procedure Act. Current administrative remedies provide for an adequate hearing process and for review of final custodian action pursuant to the Maine Rules of Civil Procedure, Rule 80B or Rule 80C, making access to post-conviction review relief unnecessary and duplicative.
4. It makes clear that remedial relief for errors in calculations of deductions relative to time detained pursuant to Title 17-A, section 1253, subsection 2 remains governed by post-conviction review. Unlike the calculations for deductions for good time and similar types of deductions, the custodian does not make the calculations but instead relies upon a statement from either the transporter of the prisoner or the attorney for the State.
5. In addition to the current unavailability of post-conviction review relative to a revocation of probation proceeding, it clarifies that such is also the case with respect to court proceedings involving the revocation of intensive supervision, supervised release for sex offenders and administrative release. Each such court proceeding is provided in the Maine Criminal Code with a statutorily created hearing process and appellate review, making access to post-conviction relief unnecessary and duplicative.

## ***Joint Standing Committee on Criminal Justice and Public Safety***

6. It clarifies what other administrative actions must be addressed by way of the available administrative remedies rather than by way of post-conviction review.
7. It eliminates the outdated reference to proceedings before the Appellate Division of the Supreme Judicial Court.
8. It replaces the word "are" with the word "were" in Title 15, section 2122 in the context of the remedies formerly available pursuant to former statutory post-conviction habeas corpus. The word "were" was incorrectly changed to "are" by Public Law 1997, chapter 399, section 1.
9. For the purpose of notice, it adds *audita querela* to the list of common law remedies that were abolished in Maine with the advent of the post-conviction review statute. The Maine Law Court recently held in *State v. Blakesley*, 2010 ME 19, & para; 23, 989 A.2d 746, 751-52 that, assuming without deciding whether *audita querela* was potentially available in criminal matters before the advent of the post-conviction statute, *audita querela* was abolished by that statute.
10. It amends Title 15, section 2123, subsection 2 to be gender-neutral.
11. It enacts Title 15, section 2123-A to clarify that administrative actions excluded from the definition of "post-sentencing proceeding" in Title 15, section 2121, subsection 2 are subject to review in the manner provided by the Maine Administrative Procedure Act, which is the exclusive method of review of those actions, replacing any previous common law or statutory method of review.
12. It amends Title 15, section 2124 to: make nonsubstantive changes to the present restraint or impediments provisions to enhance readability and clarity; delete the current time limitation in subsection 1, paragraph C relating to an unconditional discharge, which the time limitations pursuant to Title 15, section 2128-B now control; add in subsection 1 a new paragraph C-1 to reflect the holding in *State v. Trott*, 2004 ME 15, 841A. 789; remove a reference to paragraph C in subsection 1, paragraph D because paragraph D is not relevant to paragraph C; in subsection 1, paragraph E relating to a fine, add 2 limitations as to a fine that has not been paid constituting an impediment for purposes of subsection 1, namely, an inexcusable violation by the person of the mandate of Title 17-A, section 1303-B and an inexcusable failure by the person to pay the fine imposed or any outstanding portion; clarify that the term "fine" also includes any imposed monetary fees, surcharges and assessments, however designated; add in subsection 1 a new paragraph F that includes restitution, a sentencing alternative that was enacted by Public Law 1977, chapter 455, but was omitted from subsection 1 when it was enacted by Public Law 1979, chapter 701, section 15; provide for 2 limitations as to restitution that has not been paid constituting an impediment for purposes of subsection 1, namely, an inexcusable violation by the person of the mandate of Title 17-A, section 1328-A and an inexcusable failure by the person to pay the restitution imposed or any outstanding portion; limit any challenge made as to the amount of restitution ordered by applying Title 17-A, section 1330-A; for purposes of clarity, strike the reference to "a juvenile disposition other than incarceration or probation" and add a new paragraph that includes any other juvenile disposition imposed by the challenged criminal judgment not earlier covered in the preceding paragraphs; strike the indirect impediments addressed in subsection 3, paragraphs B and C because the former distinction drawn between facts that elevate the class or degree or increase the potential penalty but are not technically elements of the new crime in paragraph B and actual elements of the new crime that serve to accomplish the same result in paragraph C is no longer valid in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and its progeny; and create a new indirect impediment that combines 2 former provisions and specifies that the new requirement is not satisfied unless the crime is a felony or an infamous crime and the sentence alternative of incarceration has been imposed, and so does not authorize a defendant to initiate a post-conviction challenge pretrial. In *Apprendi* the United States Supreme Court held that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 490. The Court also stated that "facts that expose a defendant to a punishment greater than otherwise legally prescribed [are] by definition 'elements' of a separate legal offense." *Id.* at 483 n. 10. *Apprendi* applies as well to nonjury trials.
13. It amends Title 15, section 2128 to address only the waiver of grounds for relief found in subsections 1, 3 and 4.

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Subsection 2, which addresses certain errors not waived, was stricken from section 2128 and its provisions are now located in the newly enacted Title 15, section 2128-A. Subsections 5 and 6 were stricken from section 2128. The provisions of subsections 5 and 6 address the wholly different subject matter of filing deadlines and their provisions are now located in the newly enacted Title 15, section 2128-B.

14. It responds to the Law Court's holding in *Chasse v. State*, 2008 ME 28, & para; 1, 942 A.2d 689 that no filing deadline exists by establishing a one-year filing deadline for post-sentencing proceedings.

15. In order to ensure fairness, it provides a grace period of the same length as the new one-year filing deadline for post-sentencing proceedings.

### **Committee Amendment "A" (H-857)**

This amendment provides to a noncitizen who, in the context of a plea in which the noncitizen was represented by counsel and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding a jurisdictional avenue independent of that already provided by the Maine Revised Statutes, Title 15, section 2124, subsection 1. This jurisdictional avenue provides a means by which to initiate a post-conviction review proceeding to test the effective-assistance-of-counsel guarantee under the United States Constitution, Amendment VI as reflected in the United States Supreme Court decision of *Padilla v. Kentucky*, 559 U.S. \_\_\_, 130 S.Ct. 1473 (2010). To qualify, the plea must also be accepted by a trial court on or after March 31, 2010.

This amendment also provides a different filing deadline for Title 15, section 2124, subsection 3, paragraph E than that provided for in paragraphs A and D of the same section. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.

This amendment also adds an application section to provide a grace period of the same length as the new 60-day filing deadline for this indirect impediment.

### **Enacted Law Summary**

Public Law 2011, chapter 601 makes the following changes to post-conviction review.

1. It replaces the outdated phrase "mental disease or defect" with the word "insanity" to be consistent with Title 15, section 103, Title 17-A, sections 39 and 40 and the Maine Rules of Criminal Procedure, Rule 11(a) and Rule 11A(h).
2. It expands the term "assigned justice" to also include "judge" to more accurately reflect to whom a post-conviction case may be assigned.
3. It makes a significant change regarding remedial relief for errors in calculations of good time, meritorious good time and similar deductions pursuant to Title 17-A, section 1253. Remedial relief relative to such administrative actions by the custodian is no longer obtainable by way of post-conviction review. Remedial relief, if any, must now be obtained by way of available administrative remedies pursuant to the Maine Administrative Procedure Act. Current administrative remedies provide for an adequate hearing process and for review of final custodian action pursuant to the Maine Rules of Civil Procedure, Rule 80B or Rule 80C, making access to post-conviction review relief unnecessary and duplicative.
4. It makes clear that remedial relief for errors in calculations of deductions relative to time detained pursuant to Title 17-A, section 1253, subsection 2 remains governed by post-conviction review. Unlike the calculations for deductions for good time and similar types of deductions, the custodian does not make the calculations but instead relies upon a statement from either the transporter of the prisoner or the attorney for the State.
5. In addition to the current unavailability of post-conviction review relative to a revocation of probation

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proceeding, it clarifies that such is also the case with respect to court proceedings involving the revocation of intensive supervision, supervised release for sex offenders and administrative release. Each such court proceeding is provided in the Maine Criminal Code with a statutorily created hearing process and appellate review, making access to post-conviction relief unnecessary and duplicative.

6. It clarifies what other administrative actions must be addressed by way of the available administrative remedies rather than by way of post-conviction review.
7. It eliminates the outdated reference to proceedings before the Appellate Division of the Supreme Judicial Court.
8. It replaces the word "are" with the word "were" in Title 15, section 2122 in the context of the remedies formerly available pursuant to former statutory post-conviction habeas corpus. The word "were" was incorrectly changed to "are" by Public Law 1997, chapter 399, section 1.
9. For the purpose of notice, it adds *audita querela* to the list of common law remedies that were abolished in Maine with the advent of the post-conviction review statute. The Maine Law Court recently held in *State v. Blakesley*, 2010 ME 19, ¶ 23, 989 A.2d 746, 751-52 that, assuming without deciding whether *audita querela* was potentially available in criminal matters before the advent of the post-conviction statute, *audita querela* was abolished by that statute.
10. It amends Title 15, section 2123, subsection 2 to be gender-neutral.
11. It enacts Title 15, section 2123-A to clarify that administrative actions excluded from the definition of "post-sentencing proceeding" in Title 15, section 2121, subsection 2 are subject to review in the manner provided by the Maine Administrative Procedure Act, which is the exclusive method of review of those actions, replacing any previous common law or statutory method of review.
12. It amends Title 15, section 2124 to: make nonsubstantive changes to the present restraint or impediments provisions to enhance readability and clarity; delete the current time limitation in subsection 1, paragraph C relating to an unconditional discharge, which the time limitations pursuant to Title 15, section 2128-B now control; add in subsection 1 a new paragraph C-1 to reflect the holding in *State v. Trott*, 2004 ME 15, 841A. 789; remove a reference to paragraph C in subsection 1, paragraph D because paragraph D is not relevant to paragraph C; in subsection 1, paragraph E relating to a fine, add 2 limitations as to a fine that has not been paid constituting an impediment for purposes of subsection 1, namely, an inexcusable violation by the person of the mandate of Title 17-A, section 1303-B and an inexcusable failure by the person to pay the fine imposed or any outstanding portion; clarify that the term "fine" also includes any imposed monetary fees, surcharges and assessments, however designated; add in subsection 1 a new paragraph F that includes restitution, a sentencing alternative that was enacted by Public Law 1977, chapter 455, but was omitted from subsection 1 when it was enacted by Public Law 1979, chapter 701, section 15; provide for 2 limitations as to restitution that has not been paid constituting an impediment for purposes of subsection 1, namely, an inexcusable violation by the person of the mandate of Title 17-A, section 1328-A and an inexcusable failure by the person to pay the restitution imposed or any outstanding portion; limit any challenge made as to the amount of restitution ordered by applying Title 17-A, section 1330-A; for purposes of clarity, strike the reference to "a juvenile disposition other than incarceration or probation" and add a new paragraph that includes any other juvenile disposition imposed by the challenged criminal judgment not earlier covered in the preceding paragraphs; strike the indirect impediments addressed in subsection 3, paragraphs B and C because the former distinction drawn between facts that elevate the class or degree or increase the potential penalty but are not technically elements of the new crime in paragraph B and actual elements of the new crime that serve to accomplish the same result in paragraph C is no longer valid in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and its progeny; and create a new indirect impediment that combines 2 former provisions and specifies that the new requirement is not satisfied unless the crime is a felony or an infamous crime and the sentence alternative of incarceration has been imposed, and so does not authorize a defendant to initiate a post-conviction challenge pretrial. In *Apprendi* the United States Supreme Court held that "any fact that increases the penalty for a crime beyond the

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prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. at 490. The Court also stated that "facts that expose a defendant to a punishment greater than otherwise legally prescribed [are] by definition 'elements' of a separate legal offense." Id. at 483 n. 10. Apprendi applies as well to nonjury trials.

13. It amends Title 15, section 2128 to address only the waiver of grounds for relief found in subsections 1, 3 and 4. Subsection 2, which addresses certain errors not waived, was stricken from section 2128 and its provisions are now located in the newly enacted Title 15, section 2128-A. Subsections 5 and 6 were stricken from section 2128. The provisions of subsections 5 and 6 address the wholly different subject matter of filing deadlines and their provisions are now located in the newly enacted Title 15, section 2128-B.

14. It responds to the Law Court's holding in *Chasse v. State*, 2008 ME 28, ¶ 1, 942 A.2d 689 that no filing deadline exists by establishing a one-year filing deadline for post-sentencing proceedings.

15. In order to ensure fairness, it provides a grace period of the same length as the new one-year filing deadline for post-sentencing proceedings.

16. It provides to a noncitizen who, in the context of a plea in which the noncitizen was represented by counsel and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding a jurisdictional avenue independent of that already provided by the Maine Revised Statutes, Title 15, section 2124, subsection 1. This jurisdictional avenue provides a means by which to initiate a post-conviction review proceeding to test the effective-assistance-of-counsel guarantee under the United States Constitution, Amendment VI as reflected in the United States Supreme Court decision of *Padilla v. Kentucky*, 559 U.S. \_\_\_, 130 S.Ct. 1473 (2010). To qualify, the plea must also be accepted by a trial court on or after March 31, 2010.

17. Provides a different filing deadline for Title 15, section 2124, subsection 3, paragraph E than that provided for in paragraphs A and D of the same section. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.

18. It adds an application section to provide a grace period of the same length as the new 60-day filing deadline for this indirect impediment.

**LD 1867 An Act To Protect Victims of Domestic Violence**

**PUBLIC 640**

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|-------------------|-------------------------|---------------------------|
| CAIN<br>MASON     | OTP-AM                  | H-907                     |

This bill:

1. Adds additional crimes to the definition of "crime involving domestic violence" in the Maine Bail Code;
2. Provides that bail must be determined by a judge, not a bail commissioner, when a crime involving domestic violence is alleged to have occurred;
3. Makes the violation of a bail condition in cases in which an underlying crime was a crime involving domestic violence a Class C crime;
4. Requires judges to order that a defendant be committed without bail pending a bail revocation hearing, unless certain conditions are met, in certain circumstances;