

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

**STATE OF MAINE**  
126<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION



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

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

July 2013

**STAFF:**

CURTIS BENTLEY, LEGISLATIVE ANALYST  
ANNA BROOME, LEGISLATIVE ANALYST  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 STATE HOUSE STATION  
AUGUSTA, ME 04333  
(207) 287-1670

**MEMBERS:**

SEN. STAN J. GERZOFSKY, CHAIR  
SEN. DAVID E. DUTREMBLE  
SEN. GARY E. PLUMMER

REP. MARK N. DION, CHAIR  
REP. MICHAEL A. LAJOIE  
REP. BRYAN T. KAENRATH  
REP. ALAN M. CASAVANT  
REP. TIMOTHY I. MARKS  
REP. JOSHUA R. PLANTE  
REP. RICKY D. LONG  
REP. THOMAS M. TYLER  
REP. JETHRO D. PEASE  
REP. COREY S. WILSON

# STATE OF MAINE

126<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION



## LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 126<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.

*CARRIED OVER* ..... carried over to a subsequent session of the Legislature  
*CON RES XXX*..... chapter # of constitutional resolution passed by both houses  
*CONF CMTE UNABLE TO AGREE*.....Committee of Conference unable to agree; legislation died  
*DIED BETWEEN HOUSES*.....House & Senate disagreed; legislation died  
*DIED IN CONCURRENCE*.....defeated in each house, but on different motions; legislation died  
*DIED ON ADJOURNMENT*..... action incomplete when session ended; legislation died  
*EMERGENCY*..... enacted law takes effect sooner than 90 days after session adjournment  
*FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE* ..... emergency failed to receive required 2/3 vote  
*FAILED, ENACTMENT or FINAL PASSAGE*..... failed to receive final majority vote  
*FAILED, MANDATE ENACTMENT* ..... legislation proposing local mandate failed required 2/3 vote  
*HELD BY GOVERNOR*..... Governor has not signed; final disposition to be determined at subsequent session  
*LEAVE TO WITHDRAW*..... sponsor's request to withdraw legislation granted  
*NOT PROPERLY BEFORE THE BODY* ..... ruled out of order by the presiding officer; legislation died  
*INDEF PP*..... indefinitely postponed; legislation died  
*ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X*... ought-not-to-pass report accepted; legislation died  
*P&S XXX*..... chapter # of enacted private & special law  
*PUBLIC XXX*.....chapter # of enacted public Law  
*RESOLVE XXX*..... chapter # of finally passed resolve  
*VETO SUSTAINED*..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 126<sup>th</sup> Legislature is October 9, 2013. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

**LD 1433**

**An Act To Amend the Laws Governing Mental Responsibility for  
Criminal Conduct**

**PUBLIC 265**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SANDERSON HAMPER	OTP-AM	H-297 H-346 DION

This bill amends the laws governing mental responsibility for criminal conduct in the following ways.

1. It provides that the State Forensic Service may observe a defendant who is incarcerated at the correctional facility where the defendant is incarcerated as part of an evaluation of the defendant by the State Forensic Service if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the observation.
2. It provides that, if a defendant has been incarcerated prior to commitment to the custody of the Commissioner of Health and Human Services for observation to determine the competency of the defendant to stand trial and during the period of observation the defendant assaults another person and the risk of a subsequent assault cannot be managed, the commissioner may return the defendant to the correctional facility.
3. It sets deadlines for a court to hold a hearing on the question of a defendant's competence to stand trial and increases the number of different types of facilities to which a court may commit a defendant who is found incompetent to stand trial.
4. It provides that a person who is in prison for an offense and is found not criminally responsible by reason of insanity for another offense must finish that person's prison term before beginning the commitment ordered by the court for the 2nd offense.
5. It provides that an individual who is in state custody on the basis of being not criminally responsible by reason of insanity with respect to an offense may petition the court to be off institutional grounds if the individual is monitored by a team providing assertive community treatment and meets with a psychiatrist, psychologist, nurse practitioner or physician assistant at least monthly. It removes language that limits to 14 days the amount of time such an individual may be off institutional grounds.

**Committee Amendment "A" (H-297)**

This amendment makes the following changes to the bill.

1. The bill provides that, if a defendant has been incarcerated prior to commitment to the custody of the Commissioner of Health and Human Services for observation to determine the competency of the defendant to stand trial and during the period of observation the defendant assaults another person and the risk of a subsequent assault cannot be managed, the commissioner may return the defendant to the correctional facility. This amendment provides that the defendant need only present a substantial risk of causing bodily injury to staff or others instead of requiring an actual assault.
2. The bill requires a court to terminate a defendant's commitment to the custody of the Commissioner of Health and Human Services after the commissioner notifies the court that the defendant is being returned to a correctional facility because the defendant assaulted another person and the risk of subsequent assaults cannot be managed. This amendment removes the mandatory language and gives the court discretion in determining what action should be taken regarding the defendant, including, but not limited to, the termination of the defendant's commitment.
3. This amendment provides that if the State Forensic Service reports to the court that a defendant is either now

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

competent to stand trial or not restorable, the court must hold a hearing on the matter within 30 days of the report. Current law provides that the court must schedule such a hearing without delay.

4. In addition to the places provided in the bill where the Commissioner of Health and Human Services is allowed to house a person committed as not competent to stand trial, this amendment allows the commissioner to place such a person in any living situation specifically approved by a court.

5. This amendment provides that when a person serving a criminal sentence is found not criminally responsible for a subsequent crime, the court may exercise its discretion to determine whether the defendant should be immediately committed to a mental health institution or whether the defendant should complete the sentence being served before being committed to the institution. This change accords section 4 of the bill with the Law Court's holding in *James v. State*, 2008 ME 122, 953 A.2d 1152.

6. This amendment provides that a person previously found not criminally responsible for a crime who has been committed to the custody of the Commissioner of Health and Human Services whose treatment plan allows that person to live off institutional grounds must meet with a member of a multidisciplinary treatment team affiliated with the institution at least every 14 days and with a team member qualified to prescribe medication at least monthly.

### **House Amendment "A" To Committee Amendment "A" (H-346)**

This amendment removes the change made in Committee Amendment "A" that would require the court to hold a competency hearing within 30 days of the court's receiving the State Forensic Service's report.

### **Enacted Law Summary**

Public Law 2013, chapter 265 amends the laws governing mental responsibility for criminal conduct in the following ways.

1. It provides that the State Forensic Service may observe a defendant who is incarcerated at the correctional facility where the defendant is incarcerated as part of an evaluation of the defendant by the State Forensic Service if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the observation.

2. It provides that, if a defendant has been incarcerated prior to commitment to the custody of the Commissioner of Health and Human Services for observation to determine the competency of the defendant to stand trial and during the period of observation the defendant presents a substantial risk of causing bodily injury to staff or others that cannot be managed in an appropriate mental health institution, the commissioner may return the defendant to the correctional facility. Additionally, it directs the commissioner to report the risk management issue to the court for determining what action should be taken regarding the defendant, including, but not limited to, the termination of the defendant's commitment.

3. It specifies the types of facilities that the Commissioner of Health and Human Services is allowed to house a person committed as not competent to stand trial including any living situation that has been specifically approved by a court.

4. It provides that when a person serving a criminal sentence is found not criminally responsible for a subsequent crime, the court may exercise its discretion to determine whether the defendant should be immediately committed to a mental health institution or whether the defendant should complete the sentence being served before being committed to the institution. This change amends the law to accord it with the Law Court's holding in *James v. State*, 2008 ME 122, 953 A.2d 1152.

5. It provides that a person previously found not criminally responsible for a crime who has been committed to the custody of the Commissioner of Health and Human Services whose treatment plan allows that person to live off

*Joint Standing Committee on Criminal Justice and Public Safety*

institutional grounds must meet with a member of a multidisciplinary treatment team affiliated with the institution at least every 14 days and with a team member qualified to prescribe medication at least monthly.

**LD 1438     An Act To Implement Certain Recommendations of the Criminal Law  
Advisory Commission Relative to the Maine Bail Code, Statutory  
Post-conviction Review, the Maine Criminal Code and a Related Statute**

**PUBLIC 266**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-456

This bill implements the Criminal Law Advisory Commission recommendations as follows.

1. Current law provides that a person who has been sentenced but granted a stay of execution to report to the court at a specific time and who fails to report commits a Class E crime or a Class C crime depending on the length of the original sentence imposed. Existing statute does not specify a culpable mental state for failure to report. This bill clarifies that a failure to report is a strict liability crime, which means that it does not include a culpable mental state element, making it equivalent in this respect to a failure to appear and a violation of a condition of release.
2. In the context of a failure to report, it amends language to ensure that circumstances in which a sentence is automatically stayed or automatically terminated are included in addition to circumstances in which the stay order provides a specific date.
3. It makes a technical correction to the affirmative defense language for failure to report.
4. Current law provides for an action for post-conviction review of a criminal judgment or of a post-sentencing proceeding following the criminal judgment when the challenged criminal judgment or post-sentencing proceeding is causing a present restraint or other specified impediment. This bill provides that these restraints and impediments include community service work imposed by the challenged criminal judgment that has not been fully performed when the person has not inexcusably failed to complete the work within the time specified by the court.
5. It rectifies an oversight that occurred during the Second Regular Session of the 125th Legislature when the law granting grounds for relief to show that a challenged criminal judgment or sentence is unlawful or unlawfully imposed was amended.
6. It provides that a person who has taken an appeal from a judgment of not criminally responsible by reason of insanity may use the remedy of post-conviction review while the appeal is pending.
7. It makes a number of technical corrections to clarify provisions regarding the exhaustion of remedies with respect to appeals.
8. It amends the Class C version of the crime of visual sexual aggression against a child by adding that a person is guilty of the crime if the person engages in the prohibited activity for the purpose of causing affront or alarm. This language was included in the Class D version of the crime but omitted from the Class C version of the crime when both were enacted by Public Law 2003, chapter 711, Part B, section 4.
9. It amends the law that provides an affirmative defense to prosecution for prohibited contact with a minor to make clear that the defendant may not be the person whose consent with respect to contact with the minor provides the basis for the affirmative defense.
10. It provides that when an offender defaults on the payment of a fine and the court determines it to be excusable, in addition to the current statutory options of giving the offender additional time for payment or reducing the