

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 1032 - L.D. 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**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §1091-A, as enacted by PL 1995, c. 456, §1, is amended to read:

§1091-A. Failure to report

1. Failure to report after stay of execution. A defendant who has been sentenced but granted a stay of execution to report ~~at~~ until a specific time specified date or event and who, in fact, fails to report as ordered is guilty of:

- A. A Class E crime if the underlying crime was punishable by a maximum period of imprisonment of less than one year; or
- B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more.

~~It is an affirmative defense that the failure to appear resulted from just cause.~~

2. Affirmative defense. It is an affirmative defense to prosecution under subsection 1 that the failure to report resulted from just cause.

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 2. 15 MRSA §2124, sub-§1, ¶F, as enacted by PL 2011, c. 601, §7, is amended to read:

F. Restitution imposed by the challenged criminal judgment that has not been paid and in a case when a person has not inexcusably violated Title 17-A, section 1328-A or inexcusably defaulted in payment of any portion. Any challenge as to the amount of restitution ordered is further limited by Title 17-A, section 1330-A; ~~or~~

Sec. 3. 15 MRSA §2124, sub-§1, ¶F-1 is enacted to read:

F-1. Community service work imposed by the challenged criminal judgment that has not been fully performed and in a case when a person has not inexcusably failed to complete the work within the time specified by the court; or

Sec. 4. 15 MRSA §2125, as amended by PL 2011, c. 601, §8, is further amended to read:

§2125. Ground for relief

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing proceeding is unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126 ~~or, section 2128 unless section 2128-A applies, or section 2128-B.~~

Sec. 5. 15 MRSA §2126, as amended by PL 1985, c. 556, §2, is further amended to read:

§2126. Exhaustion

A person under restraint or impediment specified in section 2124 must also demonstrate that ~~he~~ the person has previously exhausted remedies incidental to proceedings in the trial court, on appeal or administrative remedies. A person who has taken an appeal from a judgment of conviction ~~or, a juvenile adjudication or a judgment of not criminally responsible by reason of insanity~~ is not precluded from utilizing the remedy of this chapter while the appeal is pending, ~~provided that the.~~ The post-conviction review proceeding is automatically stayed pending resolution of the appeal unless the Appellate Court on motion and for good cause otherwise directs.

Sec. 6. 15 MRSA §2138, sub-§12, as amended by PL 2011, c. 601, §13, is further amended to read:

12. Exhaustion. A person who has taken a direct appeal from the judgment of conviction is not precluded from utilizing the remedy of this chapter while the appeal is pending, ~~as long as the.~~ The resolution of the motion is automatically stayed pending final disposition of the direct appeal unless the Supreme Judicial Court, sitting as the Law Court, on motion otherwise directs.

A person who has initiated a collateral attack upon the judgment of conviction under chapter 305-A is not precluded from utilizing the remedy of this chapter while that post-conviction review proceeding is pending, ~~as long as.~~ The resolution of the motion is automatically stayed pending final disposition of the post-conviction review proceeding unless the assigned justice or judge in the post-conviction review proceeding otherwise directs.

Sec. 7. 17-A MRSA §757, sub-§1, ¶B, as enacted by PL 1975, c. 499, §1, is amended to read:

B. Being a person in official custody, ~~he~~ the person intentionally makes, obtains or possesses contraband.

Sec. 8. 17-A MRSA §1304, sub-§3, ¶B, as enacted by PL 1999, c. 367, §5, is amended to read:

B. If it appears that the default is excusable, the court may give the offender additional time for payment ~~or~~ may reduce the amount of each installment or may permit the offender to perform community service work at a rate authorized by paragraph A, subparagraph (2), supervised by the sheriff of the county in which the court that assessed the fine is located or by a community confinement monitoring agency with which that sheriff has contracted under Title 30-A, section 1659-A.

Sec. 9. 22 MRSA §2383-B, sub-§2, ¶¶E and F, as amended by PL 1997, c. 340, §5, are further amended to read:

E. Physicians, dentists, podiatrists, pharmacists or other persons authorized by law or rule to administer, dispense, prescribe or sell scheduled or prescription drugs, controlled substances or hypodermic apparatuses while acting within the course of their professional practice; ~~and~~

F. With regard to the possession or furnishing of hypodermic apparatuses, persons authorized by the Bureau of Health pursuant to a hypodermic apparatus exchange program, certified under chapter 252-A while acting within the scope of their employment under such programs; and

Sec. 10. 22 MRSA §2383-B, sub-§2, ¶G is enacted to read:

G. Persons conducting research at a school of pharmacology that is accredited or is a candidate for accreditation in good standing.