



132nd MAINE LEGISLATURE

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Legislative Document

No. 449

H.P. 303

House of Representatives, February 4, 2025

**An Act to Authorize a Court to Conditionally Discharge Certain
Criminal Defendants**

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative SINCLAIR of Bath.

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

2 **Sec. 1. 12 MRSA §10902, sub-§1**, as amended by PL 2023, c. 265, §1, is further
3 amended to read:

4 **1. Conviction or adjudication of violation.** Any conviction, adjudication, deferred
5 disposition pursuant to Title 17-A, section 1902, subsection 1, conditional discharge
6 pursuant to Title 17-A, section 122, subsection 1 or written filing agreement with the State
7 pursuant to the Maine Rules of Unified Criminal Procedure, Rule 11B for a violation of
8 this Part is grounds for suspension of any license or permit issued under this Part. Except
9 when provided by law, the commissioner shall determine the suspension period. To
10 suspend a license or permit based upon a conviction or adjudication, the commissioner
11 shall follow the procedures under section 10903. A suspension or revocation of a license
12 by the District Court is subject to the provisions of subsection 5.

13 **Sec. 2. 12 MRSA §10902, sub-§2**, as amended by PL 2023, c. 265, §2, is further
14 amended to read:

15 **2. Refusal to issue license or permit.** If a person is convicted, is adjudicated, enters
16 into a deferred disposition pursuant to Title 17-A, section 1902, subsection 1, is subject to
17 an order of conditional discharge pursuant to Title 17-A, section 122, subsection 1 or enters
18 into a written filing agreement with the State pursuant to the Maine Rules of Unified
19 Criminal Procedure, Rule 11B in violation of any provision of this Part and is not the holder
20 of a valid license or permit issued under this Part, the commissioner may refuse to issue a
21 related license or permit to that person for up to 5 years following the date of conviction or
22 adjudication, except when the killing or wounding of a human being has occurred, in which
23 case the commissioner may refuse to issue the license or permit for a period of not less than
24 5 years.

25 **Sec. 3. 16 MRSA §703, sub-§5**, as enacted by PL 2013, c. 267, Pt. A, §2, is
26 amended to read:

27 **5. Disposition.** "Disposition" means information of record disclosing that a criminal
28 proceeding has been concluded, although not necessarily finalized, and the specific nature
29 of the concluding event. "Disposition" includes, but is not limited to: an acquittal; a
30 dismissal, with or without prejudice; the filing of a charge by agreement of the parties or
31 by a court; an order of conditional discharge; the determination that a defendant is currently
32 a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty
33 or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed
34 due to a defendant's incompetence; a finding of not criminally responsible by reason of
35 insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest
36 of judgment; a sentence imposition; a resentencing ordered; an execution of and completion
37 of any sentence alternatives imposed, including but not limited to fines, restitution,
38 correctional custody and supervision, and administrative release; a release or discharge
39 from a commitment based upon a finding of not criminally responsible by reason of insanity
40 or its equivalent; the death of the defendant; any related pretrial and post-trial appeals,
41 collateral attacks and petitions; a pardon, commutation, reprieve or amnesty; and
42 extradition. "Disposition" also includes information of record disclosing that the
43 responsible law enforcement agency or officer has elected not to refer a matter to a
44 prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate

1 or approve criminal proceedings or that a grand jury has determined that there is insufficient
2 evidence to warrant the return of a formal charge.

3 **Sec. 4. 17-A MRSA c. 6** is enacted to read:

4 **CHAPTER 6**

5 **CONDITIONAL DISCHARGE**

6 **§121. Eligibility for conditional discharge**

7 A defendant is eligible for a conditional discharge if the defendant consents to a
8 conditional discharge in writing; is charged with one or more Class C, Class D or Class E
9 crimes or Class B crimes under chapter 45; is not also currently charged with murder, a
10 Class A crime or a Class B crime other than a Class B crime under chapter 45; has not
11 previously been convicted of murder or a Class A, Class B or Class C crime; and has not
12 previously been subject to a conditional discharge.

13 **§122. Conditional discharge**

14 **1. Authority of court to order conditional discharge.** The court may, without
15 accepting a plea, order that all pending criminal proceedings for a defendant who is eligible
16 for a conditional discharge under section 121 be suspended for a specific period of time,
17 not to exceed 6 months, and impose conditions on the defendant to be in effect during the
18 period of suspension. A conditional discharge may be ordered over the objection of the
19 attorney for the State.

20 **2. Conditions of conditional discharge.** If a court enters an order of conditional
21 discharge under subsection 1, the court shall attach conditions of conditional discharge,
22 including, without exception, a condition that the defendant refrain from criminal conduct.
23 The court may also impose any of the following additional conditions that the court
24 considers to be reasonable and appropriate to assist the defendant in leading a law-abiding
25 life:

26 A. Any condition that could be imposed as a condition of probation under section 1807,
27 subsection 2 other than a condition under section 1807, subsection 2, paragraphs H, J
28 or K. If the court imposes a condition that the defendant participate in an electronic
29 monitoring program under section 1807, subsection 2, paragraph M, the court shall
30 impose as an additional condition that the defendant pay an electronic monitoring fee
31 to the appropriate person. If the court imposes a condition of psychiatric outpatient or
32 inpatient treatment or mental health counseling, the provisions of section 1807,
33 subsection 5 apply;

34 B. A condition that the defendant remain in the custody of a designated individual or
35 organization agreeing to supervise the defendant and that the defendant report as
36 directed to the designated individual or organization, answer all reasonable inquiries
37 from the designated individual or organization, permit the designated individual or a
38 member of the designated organization to visit at reasonable times the defendant's
39 home or other designated location and notify the designated individual or organization
40 of any change in the defendant's address or employment. When it is feasible to do so,
41 the court may interview an individual or a member of an organization prior to imposing

1 a condition under this paragraph to ensure that the individual or organization is willing
2 and able to ensure that the defendant refrain from any new criminal conduct and adhere
3 to the other conditions imposed under this subsection. The court may not designate a
4 probation officer to supervise the defendant under this paragraph unless no other
5 suitable individual or organization is available. The designated individual or
6 organization shall agree to immediately notify the court of any violation by the
7 defendant of any condition imposed under this subsection;

8 C. If the court imposes a condition under paragraph B, a condition that the defendant
9 pay an administrative supervision fee of between \$10 and \$50 per month to the
10 designated individual or organization or, if the designated individual is a probation
11 officer, to the Department of Corrections. In determining whether to set an amount
12 higher than \$10 per month, the court shall take into account the financial resources of
13 the defendant and the nature of the burden its payment imposes; and

14 D. If the court imposes a condition under paragraph B, a condition that the defendant
15 remain within the jurisdiction of the court, unless permission to leave the jurisdiction
16 of the court temporarily is granted in writing by the designated individual or
17 organization. If a condition is imposed under this paragraph, the designated individual
18 or organization, or if the designated individual is a probation officer, the Department
19 of Corrections, may impose an application fee of up to \$25 on a defendant applying for
20 such permission and an additional fee of up to \$25 per month if permission is sought
21 and granted to leave the jurisdiction of the court on a periodic basis. Permission to
22 leave the jurisdiction of the court may not be denied or withdrawn solely because the
23 defendant is not able to pay the application fee or the additional fee. When a defendant
24 fails to pay a fee imposed under this paragraph, the designated individual or
25 organization may refuse to process the application or may withdraw permission to
26 leave the jurisdiction of the court if the failure to pay is attributable to the defendant's
27 willful refusal to pay or to a failure on the defendant's part to make a good faith effort
28 to obtain funds required for the payment.

29 **3. Modification of conditions.** During the period of time that a defendant is subject
30 to an order of conditional discharge under subsection 1, upon application of the defendant,
31 any individual or organization designated by the court under subsection 2, paragraph B or,
32 upon the court's own motion, the court may, after a hearing upon notice to the attorney for
33 the State and the defendant, modify the conditions imposed by the court under subsection
34 2. In response to the motion, the court may add further conditions or relieve the defendant
35 of any condition that, in the court's opinion, imposes an unreasonable burden on the
36 defendant, except that the court may not relieve the defendant of the condition that the
37 defendant refrain from criminal conduct.

38 **4. Preconviction bail.** Preconviction bail provisions under Title 15, chapter 105-A
39 apply to a defendant subject to an order of conditional discharge.

40 **5. Other rights unaffected.** A defendant's written consent to a conditional discharge
41 may not be construed as a waiver of the defendant's rights under any other law.

42 **§123. Final disposition**

43 **1. Dismissal with prejudice.** Except as provided in subsection 2, at the conclusion of
44 the period of time specified in the order of conditional discharge under section 122,
45 subsection 1, or at the conclusion of any extended time period ordered under section 124,

1 subsection 2, the court shall enter an order dismissing with prejudice all pending criminal
2 charges that are the subject of the order of conditional discharge.

3 **2. Exception; pending motion to terminate.** If, at the time specified in subsection 1,
4 there is a pending motion under section 124, subsection 1 to terminate the order of
5 conditional discharge, the court may not enter an order under subsection 1 unless the court
6 enters an order denying that pending motion.

7 **§124. Violation of condition**

8 **1. Motion to terminate.** If, during the period that a defendant is subject to an order of
9 conditional discharge under section 122, the attorney for the State has probable cause to
10 believe that the defendant has violated a court-imposed condition of conditional discharge,
11 the attorney for the State may file a motion with the court to terminate the order of
12 conditional discharge.

13 **2. Hearing; disposition.** Following notice to the defendant and hearing, if the attorney
14 for the State proves by a preponderance of the evidence that the defendant has inexcusably
15 failed to comply with a court-imposed condition of conditional discharge, the court may:

16 A. Revoke the order of conditional discharge and order that the suspended criminal
17 proceedings are no longer suspended; or

18 B. Modify the order of conditional discharge in one or both of the following ways:

19 (1) Adding further conditions of conditional discharge authorized by section 122,
20 subsection 2; and

21 (2) Extending, for a period not to exceed 6 months, the period of time during which
22 all pending criminal proceedings for the defendant are suspended and the defendant
23 is subject to the order of conditional discharge.

24 **3. Exception; failure to pay fee.** Notwithstanding subsection 2, if the attorney for the
25 State proves by a preponderance of the evidence that the defendant has violated one or
26 more conditions of conditional discharge and the only conditions violated involve the
27 payment of fees, the court may not revoke the order of conditional discharge if the
28 defendant shows that failure to pay the fees was not attributable to the defendant's willful
29 refusal to pay or to a failure on the defendant's part to make a good faith effort to obtain
30 funds required for the payment.

31 **4. Violation not a crime.** A defendant who violates a condition of conditional
32 discharge may not be charged with a crime unless the conduct constitutes a crime under
33 another provision of law.

34 **5. Place of hearing.** A hearing under this section or section 122, subsection 3 must be
35 held in the court that ordered the conditional discharge. The hearing need not be conducted
36 by the justice or judge who originally ordered the conditional discharge.

37 **6. Rights of defendant at hearing.** At a hearing under this section or section 122,
38 subsection 3, the defendant must be given the opportunity to confront and cross-examine
39 witnesses against the defendant, to present evidence on the defendant's own behalf and to
40 be represented by counsel. If the defendant cannot afford counsel, the court shall appoint
41 counsel for the defendant. Assignment of counsel and withdrawal of counsel must be in
42 accordance with the Maine Rules of Unified Criminal Procedure.

1 termination motion are obtained as a result of a medical professional's or law enforcement
2 officer's responding to a request for medical assistance for a suspected drug-related
3 overdose or if the identity of the defendant is learned or the defendant is identified as a
4 person subject to termination of a conditional discharge as a result of a medical
5 professional's or law enforcement officer's responding to a request for medical assistance
6 for a suspected drug-related overdose.

7 Finally, the bill provides that the Commissioner of Inland Fisheries and Wildlife may
8 suspend any of a defendant's fish or wildlife licenses or permits or may refuse to issue a
9 related fish or wildlife license or permit to a defendant based on the entry of an order of
10 conditional discharge against the defendant charged with violating any provision of the
11 Maine Revised Statutes, Title 12, Part 13. Under current law, the commissioner may
12 suspend any fish or wildlife license or permit or refuse to issue a related fish or wildlife
13 license or permit based on a defendant's conviction, adjudication, deferred disposition or
14 written filing agreement with the State related to a violation of any provision of Title 12,
15 Part 13.