

## STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

## S.P. 250 - L.D. 701

**An Act To Amend the Laws Governing Probation and Remove References to the Intensive Supervision Program of the Department of Corrections**

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

**Sec. 1. 15 MRSA §651, sub-§16**, as enacted by PL 2011, c. 214, §2 and affected by §6, is amended to read:

**16. Probation violation warrant.** "Probation violation warrant" means a bench warrant issued by a judicial officer in response to a motion to revoke the probation, ~~intensive supervision~~ or supervised release of an individual, requested by a probation officer or prosecutor.

**Sec. 2. 15 MRSA §652, sub-§4**, as enacted by PL 2011, c. 214, §2 and affected by §6, is amended to read:

**4. Corrections warrants.** Warrants issued by the Department of Corrections for violations of parole, probation, ~~intensive supervision~~ or supervised release or for escape or failure to report;

**Sec. 3. 15 MRSA §2121, sub-§2**, as amended by PL 2011, c. 601, §3, is further amended to read:

**2. Post-sentencing proceeding.** "Post-sentencing proceeding" means a court proceeding or administrative action occurring during the course of and pursuant to the operation of a sentence that affects whether there is incarceration or its length, including revocation of parole, failure to grant parole, an error of law in the computation of a sentence including administrative calculations of deductions relative to time detained pursuant to Title 17-A, section 1253, subsection 2 and default in payment of a fine or restitution. It does not include the following Title 17-A, Part 3 court proceedings: revocation of probation, ~~revocation of intensive supervision~~, revocation of supervised release for sex offenders or revocation of administrative release. It does not include the following administrative actions: calculations of good time and meritorious good time credits pursuant to Title 17-A, section 1253, subsections 3, 3-B, 4, 5 and 7 or similar

deductions under Title 17-A, section 1253, subsections 8, 9 and 10; disciplinary proceedings resulting in a withdrawal of good-time credits or similar deductions under Title 17-A, section 1253, subsections 6, 8, 9 and 10; cancellation of furlough or other rehabilitative programs authorized under Title 30-A, sections 1556, 1605 and 1606 or Title 34-A, section 3035; cancellation of a supervised community confinement program granted pursuant to Title 34-A, section 3036-A; cancellation of a community confinement monitoring program granted pursuant to Title 30-A, section 1659-A; or cancellation of placement on community reintegration status granted pursuant to Title 34-A, section 3810 or 4112.

**Sec. 4. 15 MRSA §3003, sub-§17**, as amended by PL 1989, c. 113, §1, is further amended to read:

**17. Law enforcement officer.** "Law enforcement officer" means any person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, or to perform probation functions ~~or to perform intensive supervision functions.~~

**Sec. 5. 17-A MRSA §2, sub-§17**, as amended by PL 2009, c. 142, §2, is further amended to read:

**17.** "Law enforcement officer" means any person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, or to perform probation functions ~~or to perform intensive supervision functions~~ or who is an adult probation supervisor.

**Sec. 6. 17-A MRSA §755, sub-§1-A**, as amended by PL 2003, c. 711, Pt. A, §5, is repealed.

**Sec. 7. 17-A MRSA §755, sub-§3-A, ¶D**, as enacted by PL 2001, c. 383, §95 and affected by §156, is repealed.

**Sec. 8. 17-A MRSA §1152, sub-§2, ¶E**, as enacted by PL 1985, c. 821, §3, is repealed.

**Sec. 9. 17-A MRSA §1152, sub-§2, ¶G**, as amended by PL 2005, c. 527, §12, is further amended to read:

G. A fine as authorized by chapter 53. Such a fine may be imposed in addition to the sentencing alternatives in paragraphs B, D, ~~E~~, F, H, I, L, M and N;

**Sec. 10. 17-A MRSA §1175, first ¶**, as repealed and replaced by PL 2009, c. 652, Pt. A, §17, is amended to read:

Upon complying with subsection 1, a victim of a crime of murder or of a Class A, Class B or Class C crime or of a Class D crime under chapters 9, 11 and 12 for which the defendant is committed to the Department of Corrections or to a county jail or is committed to the custody of the Commissioner of Health and Human Services either

under Title 15, section 103 after having been found not criminally responsible by reason of insanity or under Title 15, section 101-D after having been found incompetent to stand trial must receive notice of the defendant's unconditional release and discharge from institutional confinement upon the expiration of the sentence or upon release from commitment under Title 15, section 101-D or upon discharge under Title 15, section 104-A and must receive notice of any conditional release of the defendant from institutional confinement, including probation, supervised release for sex offenders, parole, furlough, work release, ~~intensive supervision~~, supervised community confinement, home release monitoring or similar program, administrative release or release under Title 15, section 104-A.

**Sec. 11. 17-A MRSA §1175, sub-§3, ¶B**, as amended by PL 2009, c. 268, §9, is further amended to read:

B. The nature of the release authorized, whether it is a conditional release, including probation, supervised release for sex offenders, parole, furlough, work release, ~~intensive supervision~~, supervised community confinement, home release monitoring or a similar program, administrative release or release under Title 15, section 104-A, or an unconditional release and discharge upon release from commitment under Title 15, section 101-D or upon the expiration of a sentence or upon discharge under Title 15, section 104-A;

**Sec. 12. 17-A MRSA §1202, sub-§1-B**, as amended by PL 2009, c. 142, §6, is further amended to read:

**1-B.** Notwithstanding subsection 1, if the State pleads and proves that the enumerated Class D or Class E crime was committed by the person against a family or household member, and if the court orders the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014, the person may be placed on probation for a period not to exceed 2 years, except that, on motion by the probation officer, the person on probation or the court, the term of probation must be terminated by the court when the probationer has served at least one year of probation, has completed the certified batterers' intervention program, has paid in full any victim restitution ordered and, from the time the period of probation commenced until the motion for termination is heard, has met all other conditions of probation.

A. As used in this subsection, the following definitions apply.

(1) "Enumerated Class D or Class E crime" means any Class D crime in chapter 9, any Class D or Class E crime in chapter 11, the Class D crimes described in sections 302 and 506-B and the Class D crimes described in sections 554, 555 and 758.

(2) "Family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.

B. Termination under this subsection requires a judicial finding that the probationer has served at least one year of probation, has successfully completed a certified batterers' intervention program, has paid in full any victim restitution ordered and,

from the time the period of probation commenced until the motion for termination is heard, has met all other conditions of probation.

**Sec. 13. 17-A MRSA §1204, sub-§5** is enacted to read:

5. Whenever the court requires as a condition of probation that the convicted person remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the probation officer, the Department of Corrections may impose on a person applying for such permission an application fee of \$25. The department may impose on a person an additional fee of \$25 per month if permission is sought and granted to leave the jurisdiction of the court on a periodic basis. Permission to leave may not be denied or withdrawn solely because the person is not able to pay the application fee or the additional fee. When a person fails to pay an imposed fee, the department may refuse to process the application or may withdraw permission to leave if the failure to pay is attributable to the person's willful refusal to pay or to a failure on the person's part to make a good faith effort to obtain the funds required for the payment. Fees received pursuant to this subsection must be deposited into the department's adult community corrections account, which may not lapse. Fees deposited pursuant to this subsection must be used to defray costs associated with processing the applications, including, but not limited to, the cost of materials, equipment, training for probation officers and administration, and for the department's share of the costs of extraditing probationers who are fugitives from justice.

**Sec. 14. 17-A MRSA §1208**, as enacted by PL 1995, c. 368, Pt. R, §4, is amended to read:

**§1208. In lieu of probation revocation proceedings**

Whenever a probation officer has probable cause to believe that a person under the supervision of the probation officer has violated a condition of probation but the violation does not constitute a crime ~~or constitutes only a Class E crime~~, the probation officer, instead of commencing probation revocation proceedings under section 1205, may offer to the person on probation the option of adding one or more of the following conditions to the person's probation:

- 1. Daily reporting program.** ~~Participation in a daily reporting program;~~
- 2. Public restitution program; treatment program.** Participation in a public restitution program or treatment program administered through a Department of Corrections' ~~prerelease center~~ correctional facility; or
- 3. Residing at facility.** Residing at a Department of Corrections' ~~prerelease center~~ correctional facility for a period of time not to exceed 90 days.

If the person on probation agrees, in writing, to the additional conditions, the conditions must be implemented. If the person on probation does not agree or if the person fails to fulfill the additional conditions to the satisfaction of the probation officer, the probation officer may commence probation revocation proceedings under section 1205 or 1205-B for the violation that the probation officer had probable cause to believe

occurred. If the person on probation fulfills the additional conditions to the satisfaction of the probation officer, the probation officer shall so notify the person in writing and the probation officer may not commence probation revocation proceedings for the violation that the probation officer had probable cause to believe occurred.

**Sec. 15. 17-A MRSA §1252, sub-§5-A, ¶B**, as amended by PL 2003, c. 232, §1, is further amended to read:

B. The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in paragraph A, if:

(1) The court finds by substantial evidence that:

(a) Imposition of a minimum unsuspended term of imprisonment under paragraph A will result in substantial injustice to the defendant. In making this determination, the court shall consider, among other considerations, whether the defendant did not know and reasonably should not have known that the victim was less than 18 years of age;

(b) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not have an adverse effect on public safety; and

(c) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not appreciably impair the effect of paragraph A in deterring others from violating section 1105-A, 1105-B, 1105-C or 1105-D; and

(2) The court finds that:

~~(b) The defendant is an appropriate candidate for an intensive supervision program, but would be ineligible to participate under a sentence imposed under paragraph A; or~~

(c) The defendant's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under paragraph A would frustrate the general purposes of sentencing set forth in section 1151.

If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and

**Sec. 16. 17-A MRSA §1253, sub-§3**, as amended by PL 1993, c. 518, §1, is further amended to read:

3. Beginning October 1, 1983, a person sentenced to imprisonment for more than 6 months is entitled to receive a deduction of 10 days each month for observing all rules of the department and institution. The period from which the deduction is made must be calculated from the first day the person is delivered into the custody of the department and includes the full length of the unsuspended portion of the sentence. This provision does not apply to the suspended portion of the person's sentence pursuant to section 1203 ~~nor does it apply to the suspended portion of a sentence under section 1262.~~ For the

purpose of calculating good time under this subsection, a month is 30 days and a year is 12 months.

A. Deductions under this subsection must be calculated as follows for partial months.

Days of partial month	Maximum good time credit available
0 - 2 days	
3 - 5 days	1
6 - 8 days	2
9 - 11 days	3
12 - 14 days	4
15 - 17 days	5
18 - 20 days	6
21 - 23 days	7
24 - 26 days	8
27 - 29 days	9
30 days	10

**Sec. 17. 17-A MRSA §1256, sub-§1-A**, as amended by PL 2009, c. 142, §8, is further amended to read:

**1-A.** Subsection 1 applies to prisoners on ~~intensive supervision~~ or supervised community confinement pursuant to Title 34-A, section 3036-A.

**Sec. 18. 17-A MRSA c. 52**, as amended, is repealed.

**Sec. 19. 25 MRSA §2801-B, sub-§1, ¶A**, as amended by PL 2009, c. 142, §10, is further amended to read:

A. An employee of the Department of Corrections with a duty to perform probation functions ~~or to perform intensive supervision functions~~ who is an adult probation supervisor as defined in Title 17-A, section 2, subsection 3-C or an investigative officer as described in Title 34-A, section 3011;

**Sec. 20. 26 MRSA §663, sub-§3, ¶L**, as enacted by PL 2009, c. 529, §3, is amended to read:

L. A person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except a prisoner who is:

- (1) Employed by a private employer;
- (2) Participating in a work release program;
- ~~(3) Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261;~~
- (4) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;

(5) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or

(6) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A.

**Sec. 21. 26 MRSA §962, sub-§6, ¶H,** as amended by PL 2009, c. 142, §11, is further amended to read:

H. Who is a prisoner employed by a public employer during the prisoner's term of imprisonment, except for prisoners who are in a work release program ~~or on intensive supervision under Title 17-A, section 1261~~ or supervised community confinement pursuant to Title 34-A, section 3036-A.

**Sec. 22. 26 MRSA §979-A, sub-§6, ¶K,** as amended by PL 2009, c. 142, §12, is further amended to read:

K. Who is a prisoner employed by a public employer during the prisoner's term of imprisonment, except for prisoners who are in a work release program ~~or on intensive supervision under Title 17-A, section 1261~~ or supervised community confinement pursuant to Title 34-A, section 3036-A.

**Sec. 23. 28-A MRSA §2, sub-§13-A,** as amended by PL 2009, c. 142, §13, is further amended to read:

**13-A. Law enforcement officer.** "Law enforcement officer" means any person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, or to perform probation functions ~~or to perform intensive supervision functions~~ or who is an adult probation supervisor as defined in Title 17-A, section 2, subsection 3-C.

**Sec. 24. 34-A MRSA §1001, sub-§14,** as amended by PL 2009, c. 142, §14, is further amended to read:

**14. Prisoner.** "Prisoner" means an adult person sentenced and committed to, transferred to or detained in the custody of the department, including, ~~where the context indicates,~~ a person ~~under intensive supervision~~ or on supervised community confinement.

**Sec. 25. 34-A MRSA §1001, sub-§15-A,** as amended by PL 2001, c. 667, Pt. A, §50, is further amended to read:

**15-A. Regional correctional administrator.** "Regional correctional administrator" means the supervisor of adult probation and parole ~~and intensive supervision~~ services or the supervisor of juvenile community corrections officer services for a region.

**Sec. 26. 34-A MRSA §5401,** as repealed and replaced by PL 1995, c. 502, Pt. F, §33, is amended to read:

#### **§5401. Administration of probation and parole services**

The Department of Corrections is charged with the administration of probation and parole services ~~and the Intensive Supervision Program~~ within the State.

**Sec. 27. 34-A MRSA §5402, sub-§2, ¶A**, as amended by PL 2005, c. 488, §19, is further amended to read:

A. Adopt and enforce rules for field probation and parole officers, juvenile community corrections officers, and parole officers in correctional facilities ~~and Intensive Supervision Program officers~~;

**Sec. 28. 34-A MRSA §5402, sub-§2, ¶B**, as amended by PL 2005, c. 488, §20, is further amended to read:

B. Appoint, subject to the Civil Service Law, regional correctional administrators, field probation and parole officers, juvenile community corrections officers, ~~Intensive Supervision Program officers~~ and such other employees as may be required to carry out adequate supervision of all probationers, parolees from the correctional facilities; ~~persons on intensive supervision~~ and other persons placed under the supervision of an employee listed in this paragraph;

**Sec. 29. 34-A MRSA §5402, sub-§2, ¶D**, as amended by PL 1985, c. 821, §28, is further amended to read:

D. Provide necessary investigation of any criminal case or matter, including presentence investigation ~~and intensive supervision eligibility investigations~~, when requested by the court having jurisdiction;

**Sec. 30. 34-A MRSA §5402, sub-§2, ¶K**, as amended by PL 2005, c. 488, §21, is further amended to read:

K. Provide instruction and training courses for probation and parole officers, ~~for Intensive Supervision Program officers~~ and for juvenile community corrections officers;

**Sec. 31. 34-A MRSA §5404**, as amended by PL 2011, c. 680, §§7 and 8, is further amended to read:

#### **§5404. Probation and parole officers**

In addition to duties prescribed by the commissioner and by the court having jurisdiction, a probation and parole ~~or intensive supervision program~~ officer shall:

**1. Investigation.** Investigate any criminal case or matter concerning probation, supervised release for sex offenders; or parole ~~or intensive supervision~~ referred to the officer for investigation and report the result of the investigation;

**2. Arrest.** Arrest, after completing the entry level and orientation training course prescribed by the commissioner, in the following circumstances:

- A. Arrest violators of probation or supervised release for sex offenders and parole violators and return parole violators upon request of the commissioner;
- B. Arrest and return to a correctional facility persons released from the correctional facility under section 3035 or transferred from the facility under section 3036-A; and
- C. If the officer has probable cause to believe that a person under the supervision of the department has violated a condition of that person's probation, supervised release for sex offenders; or parole ~~or intensive supervision~~, the officer may arrest that person;

**3. Supervision.** Supervise persons as follows:

- A. Supervise the probation, supervised release for sex offenders; or parole ~~or intensive supervision~~ of each person placed under the officer's supervision to ensure that departmental resources are directed to the management of persons with a high risk of reoffending;
- B. Supervise persons released from a correctional facility under section 3035 and supervise persons transferred to supervised community confinement under section 3036-A if the commissioner directs;
- C. Keep informed of the conduct and condition of each person placed under the officer's supervision and use suitable methods to encourage the person to improve that person's conduct and condition; and
- E. Supervise the transition from institutional confinement for persons residing in a prerelease center if the commissioner directs;

**3-A. Risk assessment; immunity from liability.** Make a good faith effort to supplement any assessment tool for all domestic violence offenders with a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety. A probation and parole ~~or intensive supervision program~~ officer shall implement protocols to override risk assessment scores based on the presence of domestic violence risk factors that indicate a higher risk.

Notwithstanding any other law to the contrary, the administration of the domestic violence risk assessment pursuant to this subsection or the failure to administer the assessment does not subject any state, municipal or county official or employee to liability in a civil action; and

**4. Records and reports.** Keep records of each case and make reports as required.

**Sec. 32. 34-A MRSA §11203, sub-§1-A,** as amended by PL 2009, c. 365, Pt. B, §4 and affected by §22, is further amended to read:

**1-A. Conditional release.** "Conditional release" means supervised release of a registrant or an offender from institutional confinement for placement on probation, parole, ~~intensive supervision~~, supervised release for sex offenders, supervised community

confinement, home release monitoring or release under Title 15, section 104-A or Title 17-A, chapter 54-G.

**Sec. 33. 34-A MRSA §11273, sub-§3**, as enacted by PL 2011, c. 663, §3, is amended to read:

**3. Conditional release.** "Conditional release" means supervised release of a registrant or an offender from institutional confinement for placement on probation, parole, ~~intensive supervision~~, supervised release for sex offenders, supervised community confinement, home release monitoring or release under Title 15, section 104-A or Title 17-A, chapter 54-G.

**Sec. 34. 34-B MRSA §1220, first ¶**, as amended by PL 2007, c. 286, §3, is further amended to read:

The department shall designate at least one individual within each of the 7 areas described in section 3608, subsection 1-A to act as liaison to the District Courts and Superior Courts of the State and to the Department of Corrections in its administration of probation and parole services ~~and the Intensive Supervision Program established pursuant to Title 17-A, section 1261.~~

**Sec. 35. 39-A MRSA §102, sub-§11, ¶E**, as amended by PL 2009, c. 529, §4, is further amended to read:

E. "Employee" does not include any person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered by the prisoner during incarceration and while the prisoner is:

- (1) A prisoner in a county jail under final sentence of 72 hours or less and is assigned to work outside of the county jail;
- (2) Employed by a private employer;
- (3) Participating in a work release program;
- ~~(4) Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261;~~
- (5) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;
- (6) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or
- (7) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A.

**Sec. 36. 39-A MRSA §203, sub-§1, ¶C**, as amended by PL 2009, c. 142, §18, is repealed.

**Sec. 37. Application.** That section of this Act that enacts the Maine Revised Statutes, Title 17-A, section 1202, subsection 1-C applies only to a person who commits a

crime on or after the effective date of this Act and is subsequently placed on probation for that crime.

**Sec. 38. Appropriations and allocations.** The following appropriations and allocations are made.

**CORRECTIONS, DEPARTMENT OF**

**Adult Community Corrections 0124**

Initiative: Allocates funds for the costs of processing out-of-state travel applications and the costs of extraditing probationers.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$10,313	\$13,750
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$10,313</u>	<u>\$13,750</u>