TITLE 15

COURT PROCEDURE -- CRIMINAL

PART 1

CRIMINAL PROCEDURE GENERALLY

CHAPTER 1

JURISDICTION AND VENUE

§1. Superior Court; criminal jurisdiction

1. Jurisdiction. The Superior Court has original jurisdiction, exclusive or concurrent, of all crimes.

[PL 1999, c. 731, Pt. ZZZ, §9 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

2. Appellate and review jurisdiction.

[PL 2015, c. 431, §3 (RP).]

3. Location of post-arraignment proceedings. The Supreme Judicial Court may by rule provide that, with the consent of the defendant, post-arraignment proceedings in criminal cases may be conducted at locations other than those provided by statute. The Supreme Judicial Court may by rule provide that, without the consent of the defendant, post-arraignment proceedings in criminal cases may be conducted at locations other than those provided by statute, provided that the location is in an adjoining county and that it is in the vicinity of where the offense was committed.

[PL 1999, c. 731, Pt. ZZZ, §9 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

4. No jurisdiction, powers, duties or authority of Law Court. The Superior Court does not have and may not exercise the jurisdiction, powers, duties or authority of the Supreme Judicial Court sitting as the Law Court.

[PL 1999, c. 731, Pt. ZZZ, §9 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1975, c. 337, §3 (AMD). PL 1979, c. 127, §114 (AMD). PL 1985, c. 179 (AMD). PL 1999, c. 731, §ZZZ9 (RPR). PL 1999, c. 731, §ZZZ42 (AFF). PL 2005, c. 64, §1 (AMD). PL 2015, c. 100, §1 (AMD). PL 2015, c. 431, §3 (AMD).

§2. Death and injury separated by state line

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§3. Offenses near county line or in 2 counties

When an offense is committed on the boundary between 2 counties or within 100 rods thereof; or a mortal wound or other violence or injury is inflicted or poison is administered in one county, whereby death ensues in another, the offense may be alleged in the complaint or indictment as committed, and may be tried in either.

§4. County lines terminating at or near tidewaters; course

The lines of the several counties of the State which terminate at or in tidewaters shall run by the principal channel in such directions as to include, within the counties to which they belong, the several islands in said waters, and after so including such islands shall run in the shortest and most direct line to the extreme limit of the waters under the jurisdiction of this State, and all waters between such lines off the shores of the respective counties shall be a part of, and held to be within, such counties, respectively.

§5. Warrants for offenses at or near tidewaters; authority of officers

Any official authorized to issue warrants within any county may issue warrants for offenses committed in or upon the waters so made a part of such county or the waters of any adjoining county. Said warrant shall be returnable in the county where issued and the courts in such county shall have jurisdiction of the offense. Officers have the same authority upon all such waters as they have upon land within the county where the warrant is issued.

§6. Acquittal in part; conviction in part

When a person, indicted for an offense, is acquitted of a part by verdict of the jury and found guilty of the residue thereof, such verdict may be received and recorded by the court. He may be considered as convicted of the offense, if any, which is substantially charged by such residue, and be punished accordingly, although such offense would not otherwise be within the jurisdiction of said court.

§7. Removal of persons charged with crime in 2 counties

When a person is imprisoned or held under arrest in one county, a judge of the District Court or any Justice of the Superior Court, whichever court has jurisdiction over the matter to be heard, may order his removal into another county, when complaint has been made and warrant issued or an indictment has been found, charging the person so arrested or imprisoned with the commission of a crime in such other county, for examination or trial under said complaint or indictment; but, before issuing such order, he shall be satisfied that the administration of speedy and impartial justice requires it. [PL 1977, c. 49 (AMD).]

SECTION HISTORY

PL 1977, c. 49 (AMD).

§8. Duties of officer holding prisoner or holding court's order of removal

The officer holding the person described in the court order shall deliver him to the officer presenting it, upon receiving an attested copy of the same, and of the complaint and warrant or indictment on which such order is founded. The officer receiving the accused person shall bring him before the proper court or judge in the county to which he is removed, for examination and trial, and make due return of his proceedings.

CHAPTER 3

SEARCH WARRANTS

§51. Issuance

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§52. Complaint

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§53. Contents of warrant

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§54. Search of dwelling house

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §17 (RP).

§55. Search warrants; issuance by justice, judge or justice of the peace

A justice of the Superior Court, a judge of the District Court or a justice of the peace shall issue search warrants for any place in the State for such purposes as the Constitution of the United States and the Constitution of Maine permit, including with respect to any violation over which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians exercises exclusive jurisdiction under Title 30, section 6209-A, 6209-B or 6209-C. The evidence presented to the magistrate in support of the search warrant may consist of affidavits and other evidence under oath or affirmation that is capable of being reduced to a record for purposes of review. The Supreme Judicial Court shall by rule provide the procedure of the application for and issuance of search warrants. When no procedure is specified by the Supreme Judicial Court, the justice, judge or justice of the peace shall proceed in any reasonable manner that will allow the issuance of a search warrant for any constitutional purpose. A justice, a judge or a justice of the peace shall issue a search warrant for a domestic or foreign entity that is a provider of electronic communication service or a provider of remote computing service in accordance with the provisions of this section and section 56. [PL 2017, c. 144, §2 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §18 (RPR). PL 1979, c. 343, §1 (RPR). PL 1987, c. 736, §20 (AMD). PL 1991, c. 484, §5 (AMD). PL 1995, c. 388, §3 (AMD). PL 1995, c. 388, §8 (AFF). PL 2017, c. 144, §2 (AMD).

§56. Service of criminal process on providers of electronic communication service or providers of remote computing service

The following provisions apply to a service of criminal process on an electronic communication service provider and a remote computing service provider that are domestic or foreign entities. [PL 2017, c. 144, §3 (NEW).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Adverse result" means:

(1) Immediate danger of death or serious physical injury to any person;

(2) Flight from prosecution;

(3) Destruction of or tampering with evidence;

(4) Intimidation of a potential witness;

(5) Seriously jeopardizing an investigation; or

(6) Undue delay of a trial. [PL 2019, c. 489, §1 (AMD).]

(7) [PL 2019, c. 489, §1 (AMD).]

B. "Applicant" means a law enforcement officer who has applied for or received a search warrant pursuant to section 55 or this section. [PL 2017, c. 144, §3 (NEW).]

C. "Content information," when used with respect to any wire or electronic communication, includes any information concerning the substance, purport or meaning of that communication. [PL 2017, c. 144, §3 (NEW).]

D. "Court" means the Superior Court or the District Court. [PL 2017, c. 144, §3 (NEW).]

E. "Criminal process" means a search warrant issued pursuant to Title 5, section 113; section 55; or this section, or a grand jury subpoena issued pursuant to Rule 17 or 17A of the Maine Rules of Unified Criminal Procedure and this section. [PL 2017, c. 144, §3 (NEW).]

F. "Domestic entity" means an entity whose internal affairs are governed by the laws of this State. [PL 2017, c. 144, §3 (NEW).]

G. "Electronic communication service" means a service that provides to users the ability to send or receive spoken, wire or electronic communications. [PL 2017, c. 144, §3 (NEW).]

H. "Electronic communication service provider" means an entity that provides electronic communication service to the general public. [PL 2017, c. 144, §3 (NEW).]

I. "Entity" means an entity as defined in Title 5, section 102, subsection 7. [PL 2017, c. 144, §3 (NEW).]

J. "Foreign entity" means an entity other than a domestic entity. [PL 2017, c. 144, §3 (NEW).]

K. "Location information" means information concerning the location of an electronic device, including both the current location and any prior location of the device, that, in whole or in part, is generated, derived from or obtained by the operation of an electronic device. [PL 2017, c. 144, §3 (NEW).]

L. "Properly served" means that a search warrant or grand jury subpoena has been:

(1) Delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service or facsimile to a commercial clerk or commercial registered agent as provided in Title 5, section 106; Title 5, section 107, subsection 4; or this section;

(2) Delivered by specific means identified by the provider for service of criminal process, including, but not limited to, e-mail, facsimile or submission via an Internet web portal; or

(3) Delivered to the provider's place of business within the State.

If service is made pursuant to subparagraph (1) or (3) and the provider promptly notifies the law enforcement agency of the specific means of service identified by the provider pursuant to subparagraph (2) for criminal process, service must be made by the means of service specified by the provider if possible. [PL 2017, c. 144, §3 (NEW).]

M. "Provider" means an electronic communication service provider or a remote computing service provider. [PL 2017, c. 144, §3 (NEW).]

N. "Remote computing service" means computing storage or processing services provided by means of an electronic communication service. [PL 2017, c. 144, §3 (NEW).]

O. "Remote computing service provider" means an entity that provides remote computing service to the general public. [PL 2017, c. 144, §3 (NEW).]

[PL 2019, c. 489, §1 (AMD).]

2. Requirements applicable to a foreign entity provider. The following provisions apply to criminal process issued pursuant to this section that requires a search for records that are in the possession or control of a foreign entity provider when those records would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information.

A. A foreign entity provider served with a search warrant pursuant to this section shall produce to the applicant all records sought, including those records maintained or located outside this State, within 14 days of service. The 14 days may be extended by the court as follows:

(1) By the 10th day following service, the foreign entity provider in writing or electronically must notify the law enforcement officer who served the warrant that producing all the records within 14 days is not practicable, the reasons why compliance is not practicable and the date by which the foreign entity provider will complete the production; and

(2) The law enforcement officer shall file a notice with the court of the reasons under subparagraph (1).

If the court finds that good cause exists for the delay, the court may extend the 14-day period to the date of production specified by the foreign entity provider and the provider is prohibited from asserting that the warrant has expired. For purposes of this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought. [PL 2017, c. 144, §3 (NEW).]

B. A foreign entity provider served with a grand jury subpoena pursuant to this section shall produce to the prosecutor or grand jury all records sought, including those records maintained or located outside this State, by or at the time of the grand jury appearance. The grand jury subpoena must include the address of the prosecutor or grand jury to which the provider must produce the records. [PL 2017, c. 144, §3 (NEW).]

C. A foreign entity provider shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(11) if the foreign entity that is the provider of services is governed by the laws of another state and that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(12) if the foreign entity that is the provider of services is governed by the laws of a foreign country. Admissibility of these records in a court in this State is governed by the Maine Rules of Evidence, Rule 803(6). [PL 2017, c. 377, §1 (AMD).]

D. A foreign entity provider that produces records or testifies pursuant to this subsection is immune from criminal or civil liability for the release of the requested information to the court, attorney for the State or law enforcement agency involved in the investigation. [PL 2017, c. 144, §3 (NEW).] [PL 2017, c. 377, §1 (AMD).]

3. Requirements applicable to a domestic entity provider. The following provisions apply to criminal process issued pursuant to this section that requires a search for records that are in the possession or control of a domestic entity provider when those records would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information.

A. A domestic entity provider, when served with criminal process issued by another state to produce records that would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information, shall

produce those records as if that criminal process had been issued by a court in this State. [PL 2017, c. 144, §3 (NEW).]

B. A domestic entity provider served with a search warrant pursuant to this section shall produce to the applicant all records sought, including those records maintained or located outside this State, within 14 days of service. The 14-day period may be extended by the court as follows:

(1) By the 10th day following service, the domestic entity provider in writing or electronically must notify the law enforcement officer who served the warrant that producing all the records within 14 days is not practicable, the reasons why compliance is not practicable and the date by which the domestic entity provider will complete the production; and

(2) The law enforcement officer shall file a notice with the court of the reasons under subparagraph (1).

If the court finds that good cause exists for the delay, the court may extend the 14-day period to the date of production specified by the domestic entity provider and the provider is prohibited from asserting that the warrant has expired. For purposes of this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought. [PL 2017, c. 144, §3 (NEW).]

C. A domestic entity provider served with a grand jury subpoena pursuant to this section shall produce to the prosecutor or grand jury all records sought, including those records maintained or located outside this State, by or at the time of the grand jury appearance. The grand jury subpoena must include the address of the prosecutor or grand jury to which the provider must produce the records. [PL 2017, c. 144, §3 (NEW).]

D. A domestic entity provider shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(11) or on a form provided by the requesting jurisdiction. Admissibility of these records in a court in this State is governed by the Maine Rules of Evidence, Rule 803(6). [PL 2017, c. 144, §3 (NEW).]

E. A domestic entity provider that produces records or testifies pursuant to this subsection is immune from criminal or civil liability for the release of the requested information to the court, attorney for the State or law enforcement agency involved in the investigation. [PL 2017, c. 144, §3 (NEW).]

[PL 2017, c. 144, §3 (NEW).]

4. Application for expedited production of records. Notwithstanding the 14-day period specified in subsection 2 or 3 for production of the records, if an applicant for a search warrant believes that delaying production is reasonably likely to cause an adverse result, the applicant may request that the court require the production of the records sooner than 14 days after service pursuant to this subsection.

A. The applicant shall demonstrate to the court the specific adverse result or results, as specified in subsection 1, paragraph A, subparagraphs (1) to (6), that delaying production for 14 days is reasonably likely to cause. [PL 2019, c. 489, §2 (AMD).]

B. If the court finds that the delay may cause an adverse result, the court shall state the adverse result specified in subsection 1, paragraph A, subparagraphs (1) to (6) and may require the provider to produce the records in a specified number of days. [PL 2019, c. 489, §2 (AMD).]

C. If the court specifies that the provider has less than 14 days to produce the record and the adverse result finding is listed in subsection 1, paragraph A, subparagraphs (1) to (4), the provider must respond within the time specified by the court. [PL 2017, c. 144, §3 (NEW).]

D. If the court specifies that the provider has less than 14 days to produce the record and the only adverse result findings are results listed in subsection 1, paragraph A, subparagraphs (5) and (6), the provider must notify the law enforcement officer serving the warrant that compliance within that period specified by the court is not practicable and must state the date within 14 days from service by which the provider will respond. The law enforcement officer shall file the provider's response with the court, and, upon a demonstration of good cause by the provider, the response period may be extended by the court to no more than 14 days from the date of service of the warrant. As used in this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought. [PL 2019, c. 489, §2 (AMD).]

[PL 2019, c. 489, §2 (AMD).]

SECTION HISTORY

PL 2017, c. 144, §3 (NEW). PL 2017, c. 377, §1 (AMD). PL 2019, c. 489, §§1, 2 (AMD).

§57. Restriction on no-knock warrants; requirements for no-knock warrants

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Law enforcement officer" or "officer" has the same meaning as in Title 25, section 2801-A, subsection 5. [PL 2021, c. 267, §1 (NEW).]

B. "No-knock warrant" means a warrant that authorizes execution of the warrant without the law enforcement officer first announcing the authority for the execution of the warrant and the purpose for which the warrant was issued. Any warrant is a no-knock warrant if it is executed without waiting at least 20 seconds after the announcement of authority and purpose before making entry. [PL 2021, c. 267, §1 (NEW).]

[PL 2021, c. 267, §1 (NEW).]

2. Restriction on no-knock warrants. Notwithstanding any provision of law to the contrary, a state, county or local law enforcement officer may not execute a no-knock warrant except as provided in subsection 3 or 4.

[PL 2021, c. 267, §1 (NEW).]

3. Exceptions. The restrictions in subsection 2 do not apply if the warrant clearly states that providing notice prior to execution of the warrant would create an imminent risk of death or bodily harm to a law enforcement officer, an individual in the location named in the warrant or an individual in the surrounding areas outside of the location named in the warrant. Imminent risk of death or bodily harm under this subsection must be verified by the issuing authority by reviewing the information contained within the affidavit.

[PL 2021, c. 267, §1 (NEW).]

4. Exigent circumstances. Subsections 2 and 3 do not preclude entry by a law enforcement officer in accordance with a recognized exception to the warrant requirement, including, but not limited to, exigent circumstances.

[PL 2021, c. 267, §1 (NEW).]

5. Requirements. The following requirements apply to a law enforcement officer executing a no-knock warrant that is authorized under the exception provisions in subsection 3.

A. An officer on the entry team shall wear an official uniform that clearly identifies the officer as a law enforcement officer and, if the officer's law enforcement agency provides body-worn cameras to law enforcement officers, a body-worn camera worn in accordance with the policies of the officer's law enforcement agency. An officer shall follow the policy of the officer's law enforcement agency regarding the usage of body-worn cameras. This subsection does not require

a law enforcement agency that provides body-worn cameras to mandate recording the execution of a no-knock warrant. [PL 2021, c. 267, §1 (NEW).]

B. In cases in which an imminent risk of death or bodily harm exists, only officers trained in the use of stun grenade, stun, distraction or other similar devices may use such a device during the execution of the warrant. [PL 2021, c. 267, §1 (NEW).]

[PL 2021, c. 267, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 267, §1 (NEW).

CHAPTER 5

MENTAL RESPONSIBILITY FOR CRIMINAL CONDUCT

§101. Mental examination and observation of persons accused of crime

(REPEALED)

SECTION HISTORY

PL 1965, c. 334 (RPR). PL 1967, c. 402, §1 (AMD). PL 1969, c. 279 (AMD). PL 1969, c. 504, §§24-C (AMD). PL 1971, c. 269 (AMD). P&SL 1973, c. 53 (AMD). PL 1973, c. 547, §§1,2,3 (AMD). PL 1975, c. 230, §1 (AMD). PL 1975, c. 506, §§1,2 (AMD). PL 1975, c. 718, §1 (AMD). PL 1977, c. 201, §§1-3 (AMD). PL 1977, c. 311, §1 (AMD). PL 1977, c. 564, §§71-A (AMD). PL 1979, c. 663, §84 (AMD). PL 1981, c. 493, §2 (AMD). PL 1983, c. 580, §§2,3 (AMD). PL 1985, c. 630, §§1,2 (AMD). PL 1985, c. 796, §§2,3 (AMD). PL 1987, c. 402, §A107 (RP).

§101-A. Access to records by persons or entities performing examinations or evaluations

(REPEALED)

SECTION HISTORY

PL 1985, c. 356 (NEW). PL 1987, c. 402, §A108 (RP).

§101-B. Mental examination and observation of persons accused of crime

(REPEALED)

SECTION HISTORY

PL 1987, c. 402, §A109 (NEW). PL 1987, c. 758, §11 (AMD). PL 1989, c. 621, §§1-5 (AMD). PL 1993, c. 704, §1 (AMD). RR 1995, c. 2, §§25,26 (COR). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1999, c. 373, §1 (AMD). PL 1999, c. 503, §1 (AMD). PL 1999, c. 510, §3 (AMD). PL 2001, c. 354, §3 (AMD). PL 2001, c. 471, §D15 (AMD). PL 2001, c. 634, §1 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2009, c. 268, §1 (RP).

§101-C. Access to records by persons or entities performing examinations or evaluations

1. Written demand for records. When a person or entity has been ordered to perform an examination or evaluation pursuant to section 101-D, a diagnostic evaluation pursuant to section 3309-A, a competency examination pursuant to 3318-A, an evaluation and treatment pursuant to section 3318-B, or an examination of a juvenile with reference to insanity or abnormal condition of mind, and the person to be examined has sought the examination, joined in a request or order for the examination or has entered a plea or answer of not criminally responsible by reason of insanity, that person or entity may make written demand upon any individual, partnership, association, corporation, institution or governmental entity to produce the records or copies of the records, in whatever medium preserved, of the subject of the examination or evaluation.

[PL 2013, c. 234, §1 (AMD).]

2. Production of records. Any such entity from whom records are demanded pursuant to subsection 1 shall produce the records or copies of the records forthwith. The production shall be made notwithstanding any other law. No entity, or employee or agent of the entity, may be criminally or civilly responsible for furnishing any records in compliance with this section.
[PL 1987, c. 402, Pt. A, §109 (NEW).]

3. Confidentiality of records. Records provided under this section shall be confidential and shall not be disseminated by any person other than upon order of the court pursuant to a petition for release under section 104-A or pursuant to an involuntary commitment proceeding under Title 34-B, section 3864.
[PL 1989, c. 878, Pt. H, §3 (AMD).]

4. Definition. "Records" means information about a person, in whatever medium preserved. It includes, but is not limited to, medical histories, social histories, military histories, government histories, educational histories, drug and alcohol treatment histories, criminal record histories, penal institution histories and documentation pertaining to diagnosis or treatment.
[PL 1989, c. 621, §6 (AMD).]

5. Failure to produce records. Any person who is required to produce records by this section and intentionally or knowingly fails to do so within 20 days of the service of the written request upon him, may be subject to civil contempt for his failure to comply with the request.
[PL 1987, c. 402, Pt. A, §109 (NEW).]

SECTION HISTORY

PL 1987, c. 402, §A109 (NEW). PL 1989, c. 621, §6 (AMD). PL 1989, c. 878, §H3 (AMD). PL 2009, c. 268, §2 (AMD). PL 2013, c. 234, §1 (AMD).

§101-D. Mental examination of persons accused of crime

1. Competency to proceed. The court may for cause shown order that the defendant be examined to evaluate the defendant's competency to proceed as provided in this subsection.

A. Upon motion by the defendant or by the State, or upon its own motion, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's competency to proceed. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and report its initial determination regarding the defendant’s competency to proceed to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's competency to proceed, the report must so state and must set forth recommendations as to the nature and scope of any further examination. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

B. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 21 days of the court's order, and the report of that examination must be filed within 30 days of the court’s order. If further examination is ordered pursuant to paragraph C, the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate any party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination will be conducted at a time and

place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

C. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. Any order for further evaluation may designate the specialty of the person to perform the evaluation. In addition, if at any time during a criminal proceeding an issue of competency to proceed arises with respect to a defendant initially determined to be competent, the court may order such further examination by the State Forensic Service as the court finds necessary and appropriate. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

[PL 2009, c. 268, §3 (NEW).]

2. Insanity; abnormal condition of the mind. The court may for cause shown order that the defendant be evaluated with reference to insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's mental state at the time of the crime with reference to criminal responsibility under Title 17-A, section 39 and abnormal condition of the mind under Title 17-A, section 38.

(1) When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances of the crime and provide a report of its evaluation to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's mental state at the time of the crime, the report must so state and must set forth recommendations as to the nature and scope of any further examination.

(2) The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination or unless the attorney for the State has agreed that the report need not be forwarded to the State except as set forth in subparagraph (3), to the attorney for the State.

(3) If the court orders an examination under this paragraph over the objection of the defendant, any report filed by the State Forensic Service may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a). [PL 2015, c. 431, §4 (AMD).]

B. If the defendant enters a plea of not criminally responsible by reason of insanity, the court shall order evaluation under paragraph A. [PL 2009, c. 268, §3 (NEW).]

C. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If further examination is ordered pursuant to paragraph D, the report of that examination must be filed within 90 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place

at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

D. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. An order for further evaluation may designate the specialty of the person to perform the evaluation. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination, to the attorney for the State.

The court may order an examination under this paragraph over the objection of the defendant, but any report filed by the State Forensic Service must be impounded and may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a). [PL 2015, c. 431, §4 (AMD).]

[PL 2015, c. 431, §4 (AMD).]

3. Mental condition relevant to other issues. The court may for good cause shown order that the defendant be examined to evaluate the defendant's mental condition with reference to issues other than competency, insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State or upon its own motion a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation with respect to any issue necessary for determination in the case, including the appropriate sentence. The court's order shall set forth the issue or issues to be addressed by the State Forensic Service. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances relevant to the issues identified in the court's order and report to the court regarding the defendant's mental condition as it pertains to those issues. Prior to a verdict or finding of guilty or prior to acceptance of a plea of guilty or nolo contendere, the court may not order examination under this subsection over the objection of the defendant unless the defendant has asserted, or intends to assert, the defendant's mental condition as a basis for an objection, a defense or for mitigation at sentencing. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

B. If the defendant is incarcerated the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant an extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

[PL 2009, c. 268, §3 (NEW).]

4. Commitment for observation. The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, as set forth in this subsection. If the State Forensic Service determines that observation of the defendant will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9 and the defendant is incarcerated, the observation may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the observation. If the observation is to take place in a correctional facility, the court may not commit the defendant to the custody of the Commissioner of Health and Human Services.

A. If the State Forensic Service determines that observation of the defendant in an appropriate institution for the care of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic Service shall so advise the court. The State Forensic Service may make this determination based upon consultation with the defendant's attorney and the attorney for the State and the court and upon such other information as it determines appropriate. In addition, the State Forensic Service may include such a determination in a report to the court that recommends further evaluation of the defendant. [PL 2013, c. 265, §1 (AMD).]

B. Upon a determination by the State Forensic Service under paragraph A, a court having jurisdiction in a criminal case may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation for a period not to exceed 60 days. If the State Forensic Service requires additional time for observation, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may extend the commitment for up to an additional 90 days. Unless the defendant objects, an order under this paragraph must authorize the institution or residential program where the defendant is placed by the Commissioner of Health and Human Services to provide treatment to the defendant. When further observation of the defendant is determined no longer necessary by the State Forensic Service, the commissioner shall report that determination to the court and the court shall terminate the commitment. If the defendant had been incarcerated prior to the commitment for observation and if, 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 institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, the commissioner may return the defendant to the correctional facility. The commissioner shall report the risk management issues to the court. Upon receiving the report, the court shall review the report and may enter any order authorized by this section, including termination of the commitment. [PL 2013, c. 265, §1 (AMD).]

C. If the court has provided for remand to a correctional facility following the commitment under paragraph B, the correctional facility shall execute the remand order upon advice from the Commissioner of Health and Human Services that commitment is determined no longer necessary. [PL 2009, c. 268, §3 (NEW).]

[PL 2013, c. 265, §1 (AMD).]

5. Finding of incompetence; custody; bail. If, after hearing upon motion of the attorney for the defendant or upon the court's own motion, the court finds that any defendant is incompetent to stand

trial, the court shall continue the case until such time as the defendant is determined by the court to be competent to stand trial and may either:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and 180 days, the State Forensic Service or other appropriate office of the Department of Health and Human Services shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the State Forensic Service's report or the report of another appropriate office of the Department of Health and Human Services to the court states that the defendant is either now competent or not restorable, the court shall within 30 days hold a hearing. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. When a person who has been evaluated on behalf of the court by the State Forensic Service or other appropriate office of the Department of Health and Human Services is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service or other appropriate office of the Department of Health and Human Services share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed; or [PL 2021, c. 306, §1 (AMD).]

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at an institution for the care and treatment of people with mental illness, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital approved by the Department of Health and Human Services or an intensive outpatient treatment program or any program specifically approved by the court or by arrangement with a private psychiatrist or licensed clinical psychologist and treatment when it is determined appropriate by the State Forensic Service. When outpatient observation and treatment is ordered an examination must take place within 45 days of the court's order and the State Forensic Service shall file its report of that examination within 60 days of the court's order. The State Forensic Service's report to the court must contain the opinion of the State Forensic Service concerning the defendant's competency to stand trial and its reasons. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial, which must be held pursuant to and consistent with the standards set out in paragraph A. [PL 2013, c. 434, §1 (AMD); PL 2013, c. 434, §15 (AFF).]

[PL 2021, c. 306, §1 (AMD).]

5-A. Finding of nonrestorability. If the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, the court may notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order the defendant into execution of that sentence, and the correctional facility to which the defendant is transported shall execute the court's order.
[PL 2021, c. 306, §2 (NEW).]

6. Examiners. Evaluation of a defendant by the State Forensic Service pursuant to this section must be performed by a licensed psychologist or a psychiatrist. The State Forensic Service may determine whether an examination will be performed by a licensed psychologist or a psychiatrist unless the court has designated the specialty of the examiner in its order.
[PL 2009, c. 268, §3 (NEW).]

7. Competence; proceedings. Upon a determination that the defendant is competent to stand trial, proceedings with respect to the defendant must be in accordance with the rules of criminal procedure.
[PL 2009, c. 268, §3 (NEW).]

8. No release during commitment period; violation. A person ordered or committed for examination, observation, care or treatment pursuant to this section may not be released from the designated placement during the period of examination. An individual responsible for or permitting the release of a person ordered committed pursuant to this section for examination, observation, care or treatment from the designated placement commits a civil violation for which a fine of not more than $1,000 may be adjudged.
[PL 2013, c. 265, §3 (AMD).]

9. Examination after sentencing. If the issue of insanity, competency, abnormal condition of mind or any other issue involving the mental condition of the defendant is raised after sentencing, the court may for cause shown order the convicted person to be examined by the State Forensic Service. If at the time an examination order is entered by the court the sentenced person is in execution of a sentence of imprisonment imposed for any criminal conduct, the time limits and bail provisions of this section do not apply. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.
[PL 2011, c. 464, §2 (AMD).]

SECTION HISTORY

PL 2009, c. 268, §3 (NEW). PL 2011, c. 464, §§1, 2 (AMD). PL 2011, c. 542, Pt. A, §§8, 9 (AMD). PL 2013, c. 21, §2 (AMD). PL 2013, c. 265, §§1-3 (AMD). PL 2013, c. 434, §1 (AMD). PL 2013, c. 434, §15 (AFF). PL 2015, c. 431, §4 (AMD). PL 2021, c. 306, §§1, 2 (AMD).

§102. No responsibility for criminal act produced by mental disease or defect

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§103. Commitment following acceptance of negotiated insanity plea or following verdict or finding of insanity

When a court accepts a negotiated plea of not criminally responsible by reason of insanity or when a defendant is found not criminally responsible by reason of insanity by jury verdict or court finding, the judgment must so state. In those cases the court shall order the person committed to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of persons with mental illness or in an appropriate residential program that provides care

and treatment for persons who have intellectual disabilities or autism for care and treatment. Upon placement in the appropriate institution or residential program and in the event of transfer from one institution or residential program to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court. [PL 2011, c. 542, Pt. A, §10 (AMD).]

When a person who has been evaluated on behalf of a court by the State Forensic Service is committed into the custody of the Commissioner of Health and Human Services pursuant to this section, the court shall order that the State Forensic Service share any information it has collected or generated with respect to the person with the institution or residential program in which the person is placed. [PL 2013, c. 424, Pt. B, §3 (AMD).]

As used in this section, "not criminally responsible by reason of insanity" has the same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or verdict in this State under former section 102; under a former version of Title 17-A, section 39; under former Title 17-A, section 58; or under former section 17-B, chapter 149 of the Revised Statutes of 1954. [PL 2005, c. 263, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 493, §2 (AMD). RR 1995, c. 2, §27 (COR). PL 1995, c. 286, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B7 (REV). PL 2005, c. 263, §1 (AMD). PL 2009, c. 268, §4 (AMD). PL 2011, c. 542, Pt. A, §10 (AMD). PL 2013, c. 424, Pt. B, §3 (AMD).

§103-A. Commitment affected by certain sentences

1. Interruption of commitment. When a person while in the custody of the Commissioner of Health and Human Services pursuant to a commitment order under section 103 is found by a court to be in violation of the person's conditional release for a Maine conviction and new institutional confinement is ordered, or a person commits a Maine crime for which the person is subsequently convicted and the sentence imposed includes a straight term of imprisonment or a split sentence, the person must be placed in execution of that punishment, and custody pursuant to the commitment order under section 103 must automatically be interrupted thereby. In the event execution of that punishment is stayed pending appeal, the commitment under section 103 continues for the stay's duration. The person must be returned to the custody of the Commissioner of Health and Human Services pursuant to the commitment order under section 103 when the new institutional confinement ordered or the straight term of imprisonment or the unsuspended portion of the split sentence imposed has been fully served.
[PL 2007, c. 475, §3 (NEW).]

2. Commencement of commitment. When a person subject to an undischarged straight term of imprisonment or to an unsuspended portion of a split sentence for a Maine conviction is, for a different Maine offense, found not criminally responsible by reason of insanity or is the recipient of a negotiated insanity plea, the person must first serve the undischarged term of imprisonment or the unsuspended portion of the split sentence before commencing the commitment to the custody of the Commissioner of Health and Human Services ordered by the court pursuant to section 103 unless the court orders otherwise.
[PL 2013, c. 265, §4 (NEW).]

SECTION HISTORY

PL 2007, c. 475, §3 (NEW). PL 2013, c. 265, §4 (AMD).

§104. Release and discharge, hearing, payment of fees

(REPEALED)

SECTION HISTORY

PL 1967, c. 402, §2 (RPR). PL 1969, c. 376 (RPR). PL 1969, c. 504, §§24-E (AMD). PL 1969, c. 555 (RPR). PL 1973, c. 243 (RPR). PL 1973, c. 567, §20 (AMD). PL 1975, c. 230, §§2,3 (AMD). PL 1975, c. 506, §3 (AMD). PL 1975, c. 623, §§17-C (AMD). PL 1977, c. 114, §§24,25 (AMD). PL 1979, c. 663, §85 (RP).

§104-A. Release and discharge, hearing, payment of fees

1. Release and discharge. The term "release," as used in this section, means termination of institutional inpatient residency and return to permanent residency in the community. The head of the institution in which a person is placed under section 103 shall annually forward to the Commissioner of Health and Human Services a report containing the opinion of a staff psychiatrist as to the mental conditions of that person, stating specifically whether the person may be released or discharged without likelihood that the person will cause injury to that person or to others due to mental disease or mental defect. The report must also contain a brief statement of the reasons for the opinion. If a person has been placed in an institution outside the State pursuant to section 103, the institution of this State required to monitor the person's placement shall forward the report to the commissioner every 6 months. If a person who has been found not criminally responsible by reason of insanity for the crime of murder or a Class A crime and was committed under section 103 is the subject of a report finding that the person may be released, the report must specifically recommend the supervision for the Department of Health and Human Services to provide the person and must specifically include measures for the department to take to provide psychoactive medication monitoring of the person. The commissioner shall immediately file the report in the Superior Court for the county in which the person is committed. If a person has been placed in an institution outside the State, the commissioner shall immediately file the report in the Superior Court for the county in which the institution in this State required to monitor the person's placement is located. The court shall review each report and, if it is made to appear by the report that any person may be ready for release or discharge, the court shall set a date for and hold a hearing on the issue of the person's readiness for release or discharge. The court shall give notice of the hearing and mail a copy of the report to the Attorney General, offices of the district attorney that prosecuted the criminal charges for which the person was committed under section 103 and the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur. At the hearing, the court shall receive the testimony of at least one psychiatrist who has treated the person and a member of the State Forensic Service who has examined the person, the testimony of any independent psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has examined the person and any other relevant testimony. If, after hearing, the court finds that the person may be released or discharged without likelihood that the person will cause injury to that person or to others due to mental disease or mental defect, the court shall order, as applicable:

A. Release from the institution, provided that:

(1) The order for release includes conditions determined appropriate by the court, including, but not limited to, outpatient treatment and supervision by the Department of Health and Human Services, Division of Mental Health. If the order for release covers a person found not criminally responsible by reason of insanity for the crime of murder or a Class A crime and was committed under section 103, the order must direct the Department of Health and Human Services to provide the level of supervision necessary, including specific measures to provide psychoactive medication monitoring; and

(2) The order for release includes the condition that the person must be returned to the institution immediately upon the order of the commissioner whenever the person fails to comply with other conditions of release ordered by the court; or [PL 2005, c. 464, §1 (AMD).]

B. Discharge from the custody of the Commissioner of Health and Human Services. [RR 1995, c. 2, §28 (COR); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §7 (REV).]

Release from the institution is subject to annual review by the court and, except for return as ordered by the commissioner under paragraph A, subparagraph (1), must continue until terminated by the court. Each person released under this section remains in the custody of the commissioner. The Commissioner of Health and Human Services shall inform the public safety officer of the municipality or the sheriff's office of the county into which the person is released of the release.
[PL 2019, c. 405, §1 (AMD).]

2. Modified release treatment. Any individual committed pursuant to section 103 may petition the Superior Court for the county in which that person is committed for a release treatment program allowing the individual to be off institutional grounds if the individual is monitored by a multidisciplinary treatment team affiliated with the institution and meets face to face with a team member at least every 14 days and with a team member qualified to prescribe medication at least monthly. The petition must contain a report from the institutional staff, including at least one psychiatrist, and the report must define the patient's present condition; the planned treatment program involving absence from the institution; the duration of the absence from the institution; the amount of supervision during the absence; the expectation of results from the program change; and the estimated duration of the treatment program before further change. This petition must be forwarded to the court no later than 60 days prior to the beginning of the modified treatment program. If the court considers that the individual being off the grounds, as described in the treatment plan, is inappropriate, it shall notify the hospital that the plan is not approved and shall schedule a hearing on the matter. The clerk of courts upon receipt of the proposed treatment program shall give notice of the receipt of this program by mailing a copy to the office of the district attorney that prosecuted the criminal charges for which the person was committed under section 103, the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur and the Attorney General who may file objections and request a hearing on the matter. Representatives of the Attorney General and the office that prosecuted the person may appear at any hearing on the matter. At the hearing, the court shall receive the testimony of a member of the State Forensic Service who has examined the person, any independent psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has examined the person and any other relevant testimony. If the court does not respond within 60 days to the proposed treatment plan and no objections and request for hearing are filed by the district attorney or Attorney General, it may then be put into effect by the administrator of the hospital on the assumption that the court approved the treatment plan. The Commissioner of Health and Human Services shall inform the public safety officer of the municipality or the sheriff's office of the county in which the person will spend any unsupervised time under the release treatment program of that program.
[PL 2013, c. 265, §5 (AMD).]

3. Other provisions concerning initial release or discharge. A report must be forwarded and filed and hearings must be held in accordance with subsection 1, without unnecessary delay when, at any time, it is the opinion of a staff psychiatrist that a patient committed under section 103 may be released or discharged without likelihood that the patient will cause injury to that patient or to others due to mental disease or mental defect.

A person committed under section 103, or the person's spouse or next of kin, may petition the Superior Court for the county in which that person is committed for a hearing under subsection 1. Upon receiving the petition, the court shall request and must be furnished by the Commissioner of Health and Human Services a report on the mental condition of that person, as described in subsection 1. A hearing must be held on each petition, and release or discharge, if ordered, must be in accordance with subsection 1. If release or discharge is not ordered, a petition may not be filed again for the release or discharge of that person for 6 months. Any person released under subsection 1 or the person's spouse or next of kin may at any time after 6 months from the release petition the Superior Court for the county in which that person was committed for that person's discharge under subsection 1. If discharge is not ordered, a petition for discharge may not be filed again for 6 months.
[PL 2005, c. 263, §4 (AMD).]

4. Return to institution upon commissioner's order. The commissioner may order any person released under subsection 1, paragraph A, who fails to comply with the conditions of release ordered by the court, as evidenced by the affidavit of any interested person, to return to the institution from which he was released. A hearing shall be held for the purpose of reviewing the order for release within 7 days of the person's return if the person will be detained for 7 or more days. At the hearing, the court shall receive testimony of the psychiatrist who observed or treated the person upon the person's return to the institution, any member of the State Forensic Service who has examined the person upon the person's return, and any other relevant testimony. Following hearing, the court may reissue or modify the previous order of release.
[PL 1985, c. 796, §4 (AMD).]

5. Reinstitutionalization due to likelihood of causing injury. Any person released under subsection 1, paragraph A, whose reinstitutionalization, due to the likelihood that he will cause injury to himself or others due to mental disease or mental defect, is considered necessary, upon the verified petition of any interested person, may be brought before any Justice of the Superior Court upon his order. A hearing shall be held for the purpose of reviewing the mental condition of the person and the order for release. The court may order the person detained for observation and treatment, if appropriate, at the institution from which he was released pending the hearing, which detention shall not exceed 14 days. The psychiatrist responsible for the observation or treatment of the person shall report to the court prior to the hearing as to the mental condition of the person, indicating specifically whether the person can remain in the community without likelihood that he will cause injury to himself or others due to mental disease or mental defect. The court shall receive the testimony of the psychiatrist who observed or treated the person during the period of detention, any member of the State Forensic Service who has examined the person during the period of detention, and any other relevant testimony. Following the hearing, the court may reissue, modify or rescind the previous order of release.
[PL 1985, c. 796, §4 (AMD).]

6. Involuntary hospitalization; notice; appointed counsel. Any person released under subsection 1, paragraph A, may be admitted to a hospital under any provision of Title 34-B, chapter 3, subchapter IV, Article 3, while the order for release is in effect.

Notice of any hearing under subsection 1, 2, 3 or 5 shall be given to the offices of the district attorney which prosecuted the criminal charges against the person for which the person was acquitted by reason of insanity, the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur and Attorney General at least 7 days before the hearing date. Notice of any hearing under subsection 4 shall be given to the office of the district attorney and Attorney General as soon as possible before the hearing date.

Whenever a hearing is to be held under this section, the court shall determine whether the person whose release or discharge is in issue is indigent. If the court finds that the person is indigent, it shall appoint counsel to represent the person in connection with the hearing. Fees for court-appointed counsel for services rendered in connection with any hearing held under this section, or appeal from a decision in any hearing, and the fees of any expert witnesses called by the district attorney, Attorney General or on behalf of the person whose release or discharge is in issue, if indigent, shall be paid by the State. Any such fee to be in order for payment shall be first approved by the justice presiding at the hearing held under this section.
[PL 1985, c. 796, §4 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §86 (NEW). PL 1981, c. 493, §2 (AMD). PL 1985, c. 131, §1 (RPR). PL 1985, c. 796, §4 (AMD). PL 1993, c. 410, §CCC3 (AMD). RR 1995, c. 2, §28 (COR). RR 1995, c. 2, §§29,30 (COR). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 2001, c. 354,

§3 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2005, c. 263, §§2-4 (AMD). PL 2005, c. 464, §1 (AMD). PL 2013, c. 265, §5 (AMD). PL 2019, c. 405, §1 (AMD).

§104-B. Failure of patient to return

If any patient committed to the Department of Health and Human Services for care and treatment, under section 103 or 105, is ordered to return to the hospital by the Commissioner of Health and Human Services, law enforcement personnel of the State or of any of its subdivisions shall, upon request of the commissioner, assist in the return of the patient to the hospital. [RR 1995, c. 2, §31 (COR); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §§6, 7 (REV).]

SECTION HISTORY

PL 1979, c. 623, §1 (NEW). PL 1981, c. 493, §2 (AMD). PL 1985, c. 131, §2 (RPR). RR 1995, c. 2, §31 (COR). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §§B6,7 (REV).

§105. Authority to receive persons for observation committed by the United States District Court.

(REPEALED)

SECTION HISTORY

PL 1967, c. 402, §3 (NEW). P&SL 1973, c. 53 (AMD). PL 1981, c. 493, §2 (AMD). PL 1989, c. 621, §7 (RP).

§106. Involuntary medication of incompetent defendant

1. Definition. As used in this section, "commissioner" means the Commissioner of Health and Human Services or the commissioner's designee.
[PL 2015, c. 325, §1 (NEW).]

2. Notice required; contents. At any time after a defendant has been found incompetent to proceed and has been committed to the custody of the commissioner under section 101-D, subsection 5, the commissioner shall notify the court, prosecuting attorney and attorney for the defendant if the commissioner has determined that the defendant is not consenting to or responding to treatment and is unlikely to be restored to competency without the administration of psychiatric medication over the defendant's objection. The commissioner shall provide this notice only if there is no basis for involuntarily medicating the defendant other than to restore the defendant's competency. The commissioner shall state in the notice whether the commissioner believes that:

A. Medication is necessary to render the defendant competent; [PL 2015, c. 325, §1 (NEW).]

B. Medication is substantially likely to render the defendant competent; [PL 2015, c. 325, §1 (NEW).]

C. Medication is substantially unlikely to produce side effects that would significantly interfere with the defendant's ability to assist in the defendant's defense; [PL 2015, c. 325, §1 (NEW).]

D. No less intrusive means of treatment are available; and [PL 2015, c. 325, §1 (NEW).]

E. Medication is medically appropriate and is in the defendant's best medical interest in light of the defendant's medical condition. [PL 2015, c. 325, §1 (NEW).]

The commissioner shall also state in the notice whether less intrusive means of treatment have been attempted to render the defendant competent.
[PL 2015, c. 325, §1 (NEW).]

3. Court authorization. The following provisions govern court authorization for the involuntary medication of a defendant under this section.

A. Upon receipt of the notice under subsection 2, the prosecuting attorney shall assess whether important state interests are at stake in restoring the defendant's competency and shall promptly notify the commissioner of the result of that assessment. If the prosecuting attorney determines that important state interests are at stake, the prosecuting attorney shall file a motion seeking court authorization for involuntary medication of the defendant, and the court shall conduct a hearing within 30 days of the filing of the motion, unless the court extends the time for good cause. [PL 2015, c. 325, §1 (NEW).]

B. The court, in determining whether a defendant should be medicated over the defendant's objection, shall consider whether:

(1) Important state interests are at stake in restoring the defendant's competency;

(2) Involuntary medication will significantly further important state interests, in that the medication proposed:

(a) Is substantially likely to render the defendant competent to proceed; and

(b) Is substantially unlikely to produce side effects that would significantly interfere with the defendant's ability to assist the defense counsel in conducting the defendant's defense;

(3) Involuntary medication is necessary to further important state interests;

(4) Any alternate less intrusive treatments are unlikely to achieve substantially the same results; and

(5) The administration of the proposed medication is medically appropriate, as it is in the defendant's best medical interest in light of the defendant's medical condition. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

4. Findings; order. If the court finds by clear and convincing evidence that the involuntary administration of psychiatric medication to a defendant under this section is necessary and appropriate, it shall make findings addressing each of the factors in subsection 3, paragraph B and shall issue an order authorizing the administration of psychiatric medication to the defendant over the defendant's objection in order to restore the defendant to competency. When issuing the order, the court may order that medication may be administered by more intrusive methods only if the defendant has refused administration by less intrusive methods. The court may order that the commissioner report to the court within a reasonable period following entry of the order as to whether the authorized treatment remains appropriate.

[PL 2015, c. 325, §1 (NEW).]

5. Application. This section applies only if the prosecuting attorney seeks an order of involuntary medication for the purpose of rendering a defendant competent to proceed.

[PL 2015, c. 325, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 325, §1 (NEW).

§107. Involuntary medication of patient

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commissioner" means the Commissioner of Health and Human Services or the commissioner's designee. [PL 2015, c. 325, §1 (NEW).]

B. "Department" means the Department of Health and Human Services. [PL 2015, c. 325, §1 (NEW).]

C. "Patient" means a person held in a hospital under section 101-D or 103. [PL 2015, c. 325, §1 (NEW).]

D. "Psychiatrist" includes a physician assistant working under the supervision of a psychiatrist and a psychiatric nurse practitioner. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

2. Administration of psychiatric medication over objection prohibited; exceptions. A patient may not be administered psychiatric medication over the objection of the patient except:

A. As ordered by the court under section 106; [PL 2015, c. 325, §1 (NEW).]

B. In accordance with an advance health care directive; [PL 2015, c. 325, §1 (NEW).]

C. For a patient under guardianship, as authorized by the guardian; or [PL 2015, c. 325, §1 (NEW).]

D. For a patient who is not under guardianship, for whom no advance health care directive is known to be in effect and for whom no administration of medication under section 106 has been ordered, as provided in subsection 3. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

3. Involuntary medication on nonemergency basis. A hospital may seek to initiate involuntary medication of a patient under this section on a nonemergency basis only if all of the following conditions have been met:

A. A psychiatrist has determined that the patient has a mental illness or disorder; [PL 2015, c. 325, §1 (NEW).]

B. A psychiatrist has determined that, as a result of the patient's mental illness or disorder, the patient poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury; [PL 2015, c. 325, §1 (NEW).]

C. A psychiatrist has determined that the patient should be treated with psychiatric medication and has prescribed one or more psychiatric medications for the treatment of the patient's mental illness or disorder, has considered the risks and benefits of and treatment alternatives to involuntary medication and has determined that the need for treatment outweighs the risks and side effects; [PL 2015, c. 325, §1 (NEW).]

D. The patient has been advised of the risks and benefits of and treatment alternatives to the psychiatric medication and refuses or is unable to consent to the administration of the medication; [PL 2015, c. 325, §1 (NEW).]

E. The patient is provided a hearing before a hearing officer. The hearing must be held not more than 14 days after the filing of the notice by the hospital pursuant to paragraph G with the department's office of administrative hearings, unless counsel for the patient agrees to extend the date of the hearing; [PL 2015, c. 325, §1 (NEW).]

F. The patient is provided counsel at the department's expense at least 7 days prior to the hearing under paragraph E; [PL 2015, c. 325, §1 (NEW).]

G. The patient and counsel are provided with written notice of the hearing under paragraph E by the hospital at least 7 days prior to the hearing. The written notice must:

(1) Set forth the patient's diagnosis, the factual basis for the diagnosis, the basis upon which psychiatric medication is recommended, the expected benefits, potential side effects and risks of the medication to the patient and treatment alternatives to medication, if any;

(2) Advise the patient of the right to be present at the hearing, the right to be represented by counsel, the right to present evidence and the right to cross-examine witnesses. Counsel for the patient must have access to all medical records and files of the patient; and

(3) Inform the patient of the patient's right to file an appeal in Superior Court of a decision of the commissioner authorizing involuntary treatment.

Failure of the hospital to provide timely or adequate notice pursuant to this paragraph may be excused only upon a showing of good cause and the absence of prejudice to the patient. In making this determination, the hearing officer may consider factors including, but not limited to, the ability of the patient's counsel to prepare the case adequately and to confer with the patient, the continuity of care and, if applicable, the need for protection of the patient or institutional staff that would be compromised by a procedural default; [PL 2015, c. 325, §1 (NEW).]

H. The hearing officer at the hearing under paragraph E determines by clear and convincing evidence that:

(1) The patient has a mental illness or disorder;

(2) As a result of that illness or disorder the patient poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury if not medicated;

(3) There is no less intrusive alternative to involuntary medication; and

(4) The need for treatment outweighs the risks and side effects; [PL 2015, c. 325, §1 (NEW).]

I. The hearing officer at the hearing under paragraph E recommends to the commissioner that an order authorizing administration of involuntary medication be issued; [PL 2015, c. 325, §1 (NEW).]

J. The commissioner issues an order authorizing administration of involuntary medication. The decision whether to issue an order authorizing administration of involuntary medication rests with the commissioner. An order authorizing administration of involuntary medication provides authority to undertake procedures and administer medication to monitor and manage side effects, all consistent with medical standards of care; and [PL 2015, c. 325, §1 (NEW).]

K. The historical course of the patient's mental illness or disorder, as determined by available relevant information about the course of the patient's mental illness or disorder, is considered when it has direct bearing on the determination of whether the patient, as the result of a mental illness or disorder, poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

4. Emergency action. Nothing in this section prohibits a physician from taking appropriate action in an emergency, as defined by the department in rules adopted pursuant to Title 34-B, section 3003 and in accordance with procedures contained in those rules.
[PL 2015, c. 325, §1 (NEW).]

5. Effective date and expiration of order. An order authorizing involuntary medication pursuant to subsection 3 is effective 24 hours after it is issued and expires one year after the date of the order, unless a new authorization is given pursuant to the procedures set forth in subsection 7 or authorization is terminated early based on a significant change to the patient's medical condition such that the need

for treatment no longer outweighs the risks and side effects pursuant to the procedures set forth in subsection 8.
[PL 2015, c. 325, §1 (NEW).]

6. Effect of subsequent consent. A patient's subsequent informed consent does not abrogate an order authorizing involuntary medication under this section.
[PL 2015, c. 325, §1 (NEW).]

7. Extension. To extend an authorization that is in effect allowing involuntary medication under this section, the hospital shall, no later than 21 days prior to the expiration of the authorization, file with the department's office of administrative hearings and provide the patient and the patient's counsel with a written notice indicating the hospital's intent to extend the authorization under the existing decision.

A. A patient who is the subject of a filing under this subsection must be given the same due process protections as specified in subsection 3. The hearing on any request to extend an order for involuntary medication must be conducted prior to the expiration of the authorization that is in effect. If the hospital wishes to add a basis to an existing decision authorizing involuntary medication, the notice required by subsection 3, paragraph G must also specify the additional basis and the conduct within the past year that supports that additional basis. The hospital must prove the additional basis and conduct at the hearing as specified in subsection 3, paragraph H. If the hearing officer determines that the requirements for the extension of an authorization described in paragraph B have been met, the hearing officer must recommend an extension of the authorization to the commissioner. While the hearing officer may consider evidence of behavior during the period of involuntary medication, no new acts necessarily need to be alleged or proven in order to support an extension of the authorization that is in effect. [PL 2015, c. 325, §1 (NEW).]

B. The commissioner may order an extension of an authorization under this subsection. An order extending an authorization that is in effect must be granted based on clear and convincing evidence that:

(1) The patient has a mental illness or disorder;

(2) As a result of that illness or disorder the patient poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury if not medicated;

(3) There is no less intrusive alternative to involuntary medication; and

(4) The need for treatment outweighs the risks and side effects. [PL 2015, c. 325, §1 (NEW).]

C. An extension under this subsection is valid for one year after the date of the hearing under paragraph A. [PL 2015, c. 325, §1 (NEW).]
[PL 2015, c. 325, §1 (NEW).]

8. Early termination. To request early termination of an authorization allowing involuntary medication, the patient or the patient's designated representative shall file a request with the department's office of administrative hearings, along with copies of documents from the patient's hospital record, or from another medical source, demonstrating that there has been a significant change to the conditions leading to the original order or the patient's medical condition. The hearing officer shall determine within 14 days whether the documents are sufficient to show such a change, and, if so, shall schedule a hearing to determine whether the change in the conditions leading to the original order or the patient's medical condition is such that the benefits of the authorized treatment no longer outweigh the risks and side effects.

A. A hearing under this subsection must be held no more than 14 days after the hearing officer's determination, unless the patient or the patient's designated representative agrees to extend the date

of the hearing. The authorization remains in effect unless it is terminated following the hearing. [PL 2015, c. 325, §1 (NEW).]

B. The patient, the patient's designated representative, if any, and the hospital must be provided with written notice of the hearing under this subsection at least 7 days prior to the hearing. The written notice must:

(1) Advise the patient of the right to be present at the hearing, the right to present evidence and the right to present and examine witnesses; and

(2) Inform the patient of the patient's right to file an appeal in Superior Court of a decision of the commissioner determining that the benefits of the authorized treatment continue to outweigh the risks and side effects. [PL 2015, c. 325, §1 (NEW).]

C. For purposes of a request for early termination of an authorization under this subsection, the patient may name as the patient's designated representative a lay advisor provided by the hospital, a lawyer provided by the patient at the patient's own expense or another representative who is selected by the patient and who is willing and able to assist in the proceeding. If the hearing officer determines that a hearing is warranted, the patient must be provided counsel at the department's expense at least 7 days prior to the hearing. [PL 2015, c. 325, §1 (NEW).]

D. If, following a hearing under this subsection, the hearing officer determines by clear and convincing evidence that the benefits of authorized treatment no longer outweigh the risks and side effects, the hearing officer must recommend termination of the authorization to the commissioner. The decision whether to terminate the authorization of involuntary treatment rests with the commissioner, who shall act within 48 hours upon the hearing officer's recommendation. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

9. Final agency action. An order issued by the commissioner under subsection 3, paragraph J, subsection 7, paragraph B or subsection 8, paragraph D is a final agency action.
[PL 2015, c. 325, §1 (NEW).]

10. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.
[PL 2015, c. 325, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 325, §1 (NEW).

§108. Court-ordered independent examinations

Before making a determination under section 106 or 107, a court may order an independent psychiatric or medical examination of the patient. The Department of Health and Human Services, within 30 days after receiving a request from the Administrative Office of the Courts, shall reimburse the Judicial Department for the full amount of fees paid by the Judicial Department to providers of psychiatric and medical examinations of forensic patients ordered by the court. [PL 2015, c. 325, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 325, §1 (NEW).

§109. Committee for the oversight of patient human rights

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commissioner" means the Commissioner of Health and Human Services. [PL 2019, c. 405, §2 (NEW).]

B. "Committee" means a committee at a state institution that has responsibility for overseeing patients in a state institution or forensic patients placed in institutions outside the State. [PL 2019, c. 405, §2 (NEW).]

C. "Department" means the Department of Health and Human Services. [PL 2019, c. 405, §2 (NEW).]

D. "State institution" has the same meaning as in Title 34-B, section 1001, subsection 8. [PL 2019, c. 405, §2 (NEW).]

E. "Superintendent" means the chief administrative officer of a state institution. [PL 2019, c. 405, §2 (NEW).]

[PL 2019, c. 405, §2 (NEW).]

2. Committee convened. The commissioner shall convene a committee in each state institution. [PL 2019, c. 405, §2 (NEW).]

3. Duties. The duties of the committee include, but are not limited to:

A. Reviewing practices that affect, or potentially affect, the civil liberties or other rights of patients; [PL 2019, c. 405, §2 (NEW).]

B. Reviewing, investigating and seeking resolution of patient grievances; [PL 2019, c. 405, §2 (NEW).]

C. For forensic patients placed outside the State pursuant to subsection 103:

(1) Reviewing reports submitted to the commissioner by the state institution pursuant to section 104-A, subsection 1 and provided to the committee by the superintendent pursuant to subsection 4;

(2) Reviewing medical records or other records at the request of the patient or the patient's guardian if the patient who is the subject of the review or the patient's guardian has provided informed, written consent; and

(3) Receiving verbal reports at least twice per year from the superintendent of the state institution monitoring the person's placement outside the State; [PL 2019, c. 405, §2 (NEW).]

D. Performing other duties as assigned by the superintendent; and [PL 2019, c. 405, §2 (NEW).]

E. Making recommendations or reporting concerns to the superintendent based on any review under this subsection. [PL 2019, c. 405, §2 (NEW).]

[PL 2019, c. 405, §2 (NEW).]

4. Report; confidentiality. The superintendent shall provide patient reports under section 104-A, subsection 1 to the committee. The superintendent shall remove any identifying information of the patient in the report reviewed by the committee pursuant to subsection 3, paragraph C, subparagraph (1), unless the patient who is the subject of the report or the patient's guardian has provided informed, written consent to the full disclosure of the report to the committee.

[PL 2019, c. 405, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 405, §2 (NEW).

CHAPTER 7

FRESH PURSUIT

§151. Title

This chapter may be cited as the "Uniform Act on Fresh Pursuit."

§152. Fresh pursuit defined

The term "fresh pursuit" as used in this chapter includes fresh pursuit as defined by the common law, and the pursuit of a person who has committed a crime punishable by a maximum term of imprisonment equal to or exceeding one year, who is reasonably suspected of having committed such a crime or who is reasonably suspected of operating a motor vehicle while under the influence of intoxicating liquor or drugs. It shall include the pursuit of a person suspected of having committed a supposed crime punishable by a maximum term of imprisonment equal to or exceeding one year, though no such crime has actually been committed, if there is reasonable ground for believing that such a crime has been committed. Fresh pursuit as used in this chapter shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [PL 1987, c. 791, §1 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §87 (AMD). PL 1987, c. 791, §1 (AMD).

§153. State defined

For the purpose of this chapter the word "state" shall include the District of Columbia.

§154. Arrest; exception

Any member of a duly organized state, county or municipal police unit of another state of the United States, who enters this State in fresh pursuit and continues within this State in such fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a crime punishable by a maximum term of imprisonment equal to or exceeding one year or to have operated a motor vehicle while under the influence of intoxicating liquor or drugs in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal police unit of this State to arrest and hold in custody a person on the ground that he is believed to have committed such a crime or operated a motor vehicle while under the influence of intoxicating liquor or drugs in this State. This section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful. [PL 1987, c. 791, §2 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §88 (AMD). PL 1987, c. 791, §2 (AMD).

§155. Hearing

If an arrest is made in this State by an officer of another state in accordance with section 154, he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this State or admit him to bail for such purpose. If the magistrate determines that the arrest was unlawful, he shall discharge the person arrested.

CHAPTER 9

CRIMINAL EXTRADITION

SUBCHAPTER 1

ISSUANCE OF GOVERNOR'S WARRANT

§201. Definitions

As used in this chapter, unless the context indicates otherwise, the following words shall have the following meanings. [PL 1977, c. 671, §3 (RPR).]

1. Application. "Application" means a request, by any person specified in section 223, to the Governor of this State to make a requisition to the executive authority of another state for the extradition of a fugitive from justice.
[PL 1977, c. 671, §3 (RPR).]

2. Demand. "Demand" means the demand, as provided in section 203, by the executive authority of another state upon the Governor of this State for the extradition of a fugitive from justice.
[PL 1977, c. 671, §3 (RPR).]

3. Executive authority. "Executive authority" includes the Governor and any person performing the functions of governor in a state other than this State.
[PL 1977, c. 671, §3 (RPR).]

4. Fugitive from justice. "Fugitive from justice" means:

A. Any person accused of a crime in the demanding state who is not in that state, unless he is lawfully absent pursuant to the terms of his bail or other release. This definition shall include both a person who was present in the demanding state at the time of the commission of the alleged crime and thereafter left the demanding state and a person who committed an act in this State or in a 3rd state or elsewhere resulting in or constituting a crime in the demanding state; or [PL 1977, c. 671, §3 (NEW).]

B. Any person convicted of a crime in the demanding state who is not in that state, unless he is lawfully absent pursuant to the terms of his bail or other release, who has not served or completed a sentence imposed pursuant to the conviction. This definition shall include, but not be limited to, a person who has been released pending appeal or other review of the conviction, the review having been completed; a person who has been serving a sentence in this State; a person who has escaped from confinement in the demanding state; or a person who has broken the terms of his bail, probation or parole. [PL 1981, c. 317, §1 (AMD).]
[PL 1981, c. 317, §1 (AMD).]

5. Governor. "Governor" includes any person performing the functions of Governor by authority of the law of this State.
[PL 1977, c. 671, §3 (NEW).]

5-A. Judicial officer. "Judicial officer" shall mean a justice, judge, justice of the peace, clerk of courts or other neutral person empowered by the laws of the demanding state to issue criminal process.
[PL 1979, c. 274, §1 (NEW).]

6. State. "State," referring to a state other than this State, refers to any other state or territory, organized or unorganized, of the United States of America.
[PL 1977, c. 671, §3 (NEW).]

SECTION HISTORY

PL 1977, c. 671, §3 (RPR). PL 1979, c. 274, §1 (AMD). PL 1981, c. 317, §1 (AMD).

§202. Governor to deliver up person charged with crime in other state

Subject to the provisions of this chapter and of the Constitution of the United States and Acts of Congress in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person who is a fugitive from justice, as defined in section 201, subsection 4, and is found in this State. Any person charged with or

convicted of a crime as an adult in the demanding state shall be subject to this chapter, regardless of age. [PL 1979, c. 274, §1-A (AMD).]

SECTION HISTORY

PL 1977, c. 671, §4 (AMD). PL 1979, c. 274, §§1-A (AMD).

§203. Form of demand

1. Persons accused of a crime. No demand for the extradition of a person accused, but not yet convicted, of a crime in another state shall be recognized by the Governor of this State unless made in writing and containing the following:

A. An allegation that the accused is a fugitive from justice, as defined in section 201, subsection 4, paragraph A. The allegation shall be sufficient if it alleges that the accused was present in the demanding state at the time of the commission of the alleged crime and that he thereafter left the demanding state; or that he committed an act in this State or in a 3rd state, or elsewhere, resulting in or constituting a crime in the demanding state; and [PL 1977, c. 671, §5 (NEW).]

B. A copy of an indictment returned; or an information issued upon a waiver of indictment; or an information or other formal charging instrument issued upon a determination of probable cause by a judicial officer in the demanding state or accompanied by an arrest warrant issued upon a determination of probable cause by a judicial officer in the demanding state; or any other formal charging instrument, together with any affidavits in support thereof, or in support of an arrest warrant, which support a finding of probable cause; or an affidavit which supports a finding of probable cause. The indictment, information, other formal charging instrument or affidavit shall substantially charge the person demanded with having committed a crime under the law of that state, and the copy shall be authenticated by the executive authority making the demand. [PL 1979, c. 274, §1-B (AMD).]

[PL 1979, c. 274, §1-B (AMD).]

2. Person convicted of a crime. No demand for the extradition of a person convicted of a crime in another state shall be recognized by the Governor of this State unless made in writing and containing the following:

A. A statement by the executive authority of the demanding state that the person demanded is a fugitive from justice, as defined in section 201, subsection 4, paragraph B; and [PL 1981, c. 317, §2 (AMD).]

B. A copy of the judgment of conviction or of the sentence imposed in execution thereof, which has been authenticated by the executive authority making the demand. [PL 1977, c. 671, §5 (NEW).]

[PL 1981, c. 317, §2 (AMD).]

3. Defects in written demand. Defects in the written demand of the executive authority of another state or in any accompanying document or in the application for requisition may be remedied at any time, including at the hearing allowed by section 210, by new or amended documents or by other evidence.

[PL 1977, c. 671, §5 (NEW).]

4. Showing of substantial prejudice. Notwithstanding any other provision of law, defects in the written demand of the executive authority of another state or in any accompanying document or in the application for requisition may not be raised as a defense to extradition, in a petition contesting extradition pursuant to sections 210 and 210-A, unless it is shown by the petitioner that any such defect is substantially prejudicial to him.

[PL 1983, c. 843, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 671, §5 (RPR). PL 1979, c. 274, §§1-B (AMD). PL 1981, c. 317, §2 (AMD). PL 1983, c. 843, §1 (AMD).

§204. Attorney General to investigate at demand of Governor

When a demand is made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

§205. Extradition of prisoners or those awaiting trial or absent by compulsion

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution or imprisonment following conviction in this State is terminated.

The Governor may surrender on demand of the executive authority of any other state any person in this State who is charged in the manner provided in section 223 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

§206. Extradition of those not present at time of commission of crime

(REPEALED)

SECTION HISTORY

PL 1977, c. 671, §§5-A (RP).

§207. Governor to issue warrant and deliver to officer

If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any law enforcement officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue. Notwithstanding any other provision of law, defects in the Governor's warrant may not be raised as a defense to extradition, in a petition contesting extradition pursuant to sections 210 and 210-A, unless it is shown by the petitioner that any such defect is substantially prejudicial to him. [PL 1983, c. 843, §2 (AMD).]

SECTION HISTORY

PL 1977, c. 671, §6 (AMD). PL 1983, c. 843, §2 (AMD).

SUBCHAPTER 2

PROCEEDINGS AFTER ISSUANCE OF GOVERNOR'S WARRANT

§208. Warrant to authorize arrest

Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the State and to command the aid of any law enforcement officer in the execution of the warrant and to deliver the accused, subject to this chapter, to the duly authorized agent of the demanding state. A law enforcement officer may arrest a fugitive from justice pursuant to a warrant issued by the Governor even if he does not have physical possession of it upon

the representation of the prosecuting attorney that such a warrant has, in fact, been issued. [PL 1983, c. 843, §3 (AMD).]

SECTION HISTORY

PL 1977, c. 671, §8 (AMD). PL 1983, c. 843, §3 (AMD).

§209. Arresting officer may command assistance

Every such officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as sheriffs and other officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance.

§210. Rights of accused person; habeas corpus

A person arrested upon a Governor's warrant may not be delivered over to the agent whom the executive authority demanding the person has appointed to receive the person, unless the person is first taken before a judge of a court of record in this State, who shall inform the person of the demand made for the person's surrender and of the crime with which the person is charged and that the person has the right to demand and procure legal counsel. If the prisoner or the prisoner's counsel states that the prisoner may or will contest extradition, the judge shall fix a reasonable time, not to exceed 7 days, to allow the person to file a petition contesting extradition. The petition must be filed in District Court and state the grounds upon which extradition is contested. When the petition is filed, notice of it and of the time and place of hearing must be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, to the Attorney General and to the agent of the demanding state. [PL 1997, c. 181, §1 (AMD).]

A person arrested upon the warrant of the Governor may not be admitted to bail, except as provided as follows: If a petition contesting extradition is granted and the order is appealed by the State to the Supreme Judicial Court sitting as the Law Court, the petitioner may be admitted to bail, in the discretion of the presiding judge, pending that appeal. If the appeal is sustained, the petitioner must be immediately placed in custody without bail to await delivery to the agent of the demanding state. [PL 1997, c. 181, §1 (AMD).]

1.
[PL 1983, c. 843, §5 (RP).]

2.
[PL 1983, c. 843, §5 (RP).]

3.
[PL 1983, c. 843, §6 (RP).]

SECTION HISTORY

PL 1977, c. 671, §9 (RPR). PL 1979, c. 274, §§2,3 (AMD). PL 1979, c. 701, §§3-5 (AMD). PL 1983, c. 843, §§4-6 (AMD). PL 1997, c. 181, §1 (AMD).

§210-A. Procedure at hearing

At the hearing on the petition contesting extradition, if the Governor's warrant and the demand comply with the provisions of this chapter, the petitioner has the burden of proving by clear and convincing evidence that the petitioner has not been charged with a crime in the demanding state and that the petitioner is not a fugitive from justice. If the name of the petitioner is the same as that of the person named in the Governor's warrant, the petitioner has the burden of proving, by clear and convincing evidence, that the petitioner is not the person whom the demanding state is seeking to extradite. If the names are not identical, the State has the burden of proving by a preponderance of the

evidence that the petitioner is the person sought to be extradited by the demanding state. The following are conclusive on the issue of probable cause: [PL 2003, c. 17, §1 (AMD).]

1. Indictment. An indictment or an information issued upon a waiver of indictment; or
[PL 1997, c. 181, §2 (AMD).]

2. Judicial determination of probable cause. An information or other formal charging instrument or an arrest warrant issued on a determination of probable cause by a judicial officer in the demanding state.
[PL 1979, c. 274, §4 (NEW).]

Affidavits, including any affidavits supplied pursuant to the provisions of section 203 or in support of an application for requisition, and any other hearsay evidence that may be deemed reliable by the court, are admissible at the hearing on the petition contesting extradition, for the purpose of showing that the petitioner is charged with a crime in the demanding state, that there is probable cause, that the petitioner is in fact the person charged with the crime and that the petitioner is a fugitive from justice.
[PL 1997, c. 181, §2 (AMD).]

SECTION HISTORY

PL 1977, c. 671, §10 (NEW). PL 1979, c. 274, §4 (AMD). PL 1979, c. 701, §§6-8 (AMD). PL 1981, c. 317, §3 (AMD). PL 1997, c. 181, §2 (AMD). PL 2003, c. 17, §1 (AMD).

§210-B. Review of final judgment by Law Court

The order making final disposition of the petition contesting extradition constitutes a final judgment for the purpose of review. A final judgment entered under this section may be reviewed by the Supreme Judicial Court sitting as the Law Court. An appeal must be taken within 7 days after entry of the order that is being appealed. [PL 2003, c. 17, §2 (NEW).]

1. Appeal by petitioner. A petitioner aggrieved by the order may not appeal as of right. The manner and any conditions for the taking of an appeal are as the Supreme Judicial Court provides by rule.
[PL 2003, c. 17, §2 (NEW).]

2. Appeal by State. The State aggrieved by the order may appeal as of right and no certificate of approval by the Attorney General is required. The manner and any conditions for the taking of an appeal are as the Supreme Judicial Court provides by rule.
[PL 2003, c. 17, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 17, §2 (NEW).

§211. Disobedience of officer

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in disobedience of section 210 is guilty of a Class E crime. [PL 1979, c. 663, §89 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §89 (AMD).

§212. Prisoner confined in jail

The officer or person executing the Governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent being chargeable with the expense of keeping. Such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State.

SUBCHAPTER 3

ARREST AND PROCEEDINGS PRIOR TO ISSUANCE OF GOVERNOR'S WARRANT

§213. Arrest prior to requisition

1. Warrant of arrest. A warrant of arrest shall be issued whenever a person within this State is charged, on the sworn complaint of any credible person before a judge or magistrate of this State, or by a complaint made before a judge or magistrate of this State upon an affidavit of any credible person in another state, with:

A. The commission of a crime in any other state and with being a fugitive from justice as defined in section 201, subsection 4, paragraph A; or [PL 1977, c. 671, §12 (NEW).]

B. Having been convicted of a crime in another state and with having escaped from confinement or with having broken the terms of his bail, probation or parole. [PL 1977, c. 671, §12 (NEW); PL 1979, c. 274, §5 (AMD).]

[PL 1979, c. 274, §5 (AMD).]

2. Apprehension by warrant. A warrant issued by a judge or magistrate pursuant to subsection 1 shall command the law enforcement officer to whom it is directed to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge or magistrate who may be available in or convenient of access to the place where the arrest may be made, to answer the charge on the complaint and affidavit.

[PL 1977, c. 671, §12 (NEW).]

3. Copy of charge attached to warrant. A certified copy of the sworn charge or the complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

[PL 1977, c. 671, §12 (NEW).]

SECTION HISTORY

PL 1977, c. 671, §12 (RPR). PL 1979, c. 274, §5 (AMD).

§214. Arrest without warrant; hearing

The arrest of a person may be lawfully made by an officer or a private citizen without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year; but when so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in section 213. Thereafter his answer shall be heard as if he had been arrested on a warrant.

§215. Commitment to await requisition

If, from the examination by the judge or magistrate of the complaint, affidavits in support thereof, formal charging documents or judgments supplied by the demanding state or any other evidence, including reliable hearsay evidence, which may be presented, it appears that the person held is the person charged with having committed the crime alleged and that there is probable cause to believe that he committed the crime, and that he is a fugitive from justice, the judge or magistrate shall continue the case and may commit the person to jail, by a warrant specifying the accusation, for any time not exceeding 60 days which will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense. [PL 1977, c. 671, §13 (NEW).]

The following shall be conclusive on the issue of probable cause: [PL 1977, c. 671, §13 (NEW).]

1. Indictment or information. An indictment or an information issued upon a waiver of indictment; or
[PL 1977, c. 671, §13 (NEW).]

2. Charging instrument or warrant. An information or other formal charging instrument or an arrest warrant when they are issued upon a determination of probable cause by a judicial officer in the demanding state.
[PL 1979, c. 274, §5-A (AMD).]

The examination shall take place within a reasonable time after arrest, not to exceed 30 days, if the person held has not been admitted to bail, as provided in section 216. [PL 1977, c. 671, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 671, §13 (RPR). PL 1979, c. 274, §§5-A (AMD).

§216. Bail permitted in discretion of court except in certain cases

Except as otherwise provided, the judge or magistrate may admit the person arrested to bail by bond or undertaking, with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in that bond or undertaking and for his surrender to be arrested upon the warrant of the Governor of this State or waiver of it. The following persons shall not be admitted to bail pursuant to this section: [PL 1979, c. 701, §9 (AMD).]

1. Death or life imprisonment sentence. Any person charged with an offense for which a sentence of death or life imprisonment is possible under the laws of the demanding state;
[PL 1979, c. 274, §6 (NEW).]

2. Crime of escape. Any person who is charged with or has been convicted of the crime of escape in the demanding state; or
[PL 1979, c. 274, §6 (NEW).]

3. Escape status. Any person whose extradition is being sought on the ground that he has been convicted of a crime in the demanding state and:

A. Has escaped from confinement; or [PL 1979, c. 274, §6 (NEW).]

B. Is under sentence of imprisonment imposed upon the denial of an appeal or other review of a conviction or revocation of probation or parole, the person having been released on bail pending appeal or other review. [PL 1979, c. 701, §9 (AMD).]

[PL 1979, c. 701, §9 (AMD).]

SECTION HISTORY

PL 1977, c. 671, §14 (AMD). PL 1979, c. 274, §6 (RPR). PL 1979, c. 701, §9 (AMD).

§217. Extension of time of commitment

If the accused is not arrested under a warrant of the Governor by the expiration of time specified in the warrant, bond or undertaking, the judge or magistrate may discharge him or may continue the case for any further time not to exceed 60 days. If, after the expiration of any further time specified by the judge or magistrate, the accused has not been arrested under a Governor's warrant, the complaint shall be dismissed. Nothing in this section may be construed to prevent the rearrest of the accused upon a Governor's warrant issued subsequent to the expiration of the time period specified in this section. The court shall grant a reasonable extension of time under this section upon the representation of the prosecuting attorney that a written demand of the executive authority of another state has been issued but has not been received or acted upon by the Governor. [PL 1983, c. 843, §7 (AMD).]

SECTION HISTORY

PL 1977, c. 671, §15 (RPR). PL 1983, c. 843, §7 (AMD).

§218. Failure to appear

If the prisoner is admitted to bail and fails to appear and surrender himself according to the condition of his bond, the court, by proper order, shall declare the bond forfeited. Recovery may be had thereon in the name of the State as in the case of other bonds or undertakings given by the accused in criminal proceedings within the State.

SUBCHAPTER 4

APPLICATION; MISCELLANEOUS PROVISIONS

§219. Governor may surrender or hold prisoner where proceedings begun in this State

If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor at his discretion either may surrender him on the demand of the executive authority of another state or may hold him until he has been tried and discharged or convicted and punished in this State.

§220. Guilt or innocence not inquired into after extradition demanded

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime, and except insofar as it may be inquired into for the purpose of establishing probable cause as required by sections 203 and 210-A. [PL 1977, c. 671, §17 (AMD).]

SECTION HISTORY

PL 1977, c. 671, §17 (AMD).

§221. Warrant for arrest recalled or another issued

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

§222. Warrant for agent to receive accused from another state

Whenever the Governor shall demand a fugitive from justice, charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a commission under the seal of this State to some agent, commanding him to receive the

person so charged, if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed. [PL 1983, c. 843, §8 (AMD).]

SECTION HISTORY

PL 1983, c. 843, §8 (AMD).

§223. Application for issuance of requisition

1. Person charged with crime. When it is required to return to this State a person charged with a crime in this State, the prosecuting attorney shall present to the Governor a written application for a requisition for the return of the person charged. The application shall state:

A. The name of the person charged; [PL 1977, c. 671, §18 (RPR).]

B. The crime with which he is charged; [PL 1977, c. 671, §18 (RPR).]

C. The approximate time, place and circumstances of its commission; and [PL 1977, c. 671, §18 (RPR).]

D. The state in which the accused is believed to be, including his location therein at the time the application is made. [PL 1977, c. 671, §18 (RPR).]

The prosecuting attorney shall certify in his application that in his opinion the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.
[PL 1977, c. 671, §18 (RPR).]

2. Person convicted of a crime. When it is required to return to this State a person who has been convicted of a crime in this State and who has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney, the State Parole Board, the warden of the institution or the sheriff of the county from which the escape was made shall present to the Governor a written application for a requisition for the return of that person. The application shall state:

A. The name of the person; [PL 1977, c. 671, §18 (RPR).]

B. The crime of which he was convicted; [PL 1977, c. 671, §18 (RPR).]

C. The circumstances of his escape from confinement, or of the breach of the terms of his bail, probation or parole; and [PL 1977, c. 671, §18 (RPR).]

D. The state in which he is believed to be, including his location therein at the time the application is made. [PL 1977, c. 671, §18 (RPR).]
[PL 1977, c. 671, §18 (RPR).]

3. Verification; filing. The application shall be verified by affidavit, executed in duplicate and accompanied by 2 certified copies of:

A. The indictment return; [PL 1977, c. 671, §18 (RPR).]

B. The information filed or the complaint made to the judge or magistrate stating the offense with which the accused is charged, together with the affidavit in support of the information or complaint; or [PL 1977, c. 671, §18 (RPR).]

C. The judgment of conviction. [PL 1977, c. 671, §18 (RPR).]

The prosecuting attorney, State Parole Board, warden or sheriff may attach any further affidavits and other documents which he shall deem proper to be submitted with the application, including affidavits with attached photographs or fingerprints which serve to establish that the person named and shown therein is the person for whom a requisition is sought. One copy of the application with the action of the Governor indicated thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction, or of the sentence shall be filed in the

office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.
[PL 1977, c. 671, §18 (RPR).]

4. Prosecuting attorney; defined. As used in this section, the term "prosecuting attorney" means:

A. The district attorney or the deputy district attorney of the county in which the offense was committed; or [PL 1977, c. 671, §18 (NEW).]

B. The Attorney General or a Deputy Attorney General. [PL 1977, c. 671, §18 (NEW).]
[PL 1979, c. 663, §90 (AMD).]

SECTION HISTORY

PL 1971, c. 622, §§57,58 (AMD). PL 1977, c. 671, §18 (RPR). PL 1979, c. 663, §90 (AMD).

§224. Expenses paid on rendition of prisoners

1. Expenses paid from funds allotted to prosecuting attorney. When a fugitive from justice is returned to the State of Maine for prosecution, expenses incurred that are necessary and proper for the return must be paid out of the funds allotted for that purpose to the district attorney or from the Extradition and Prosecution Expenses Account established by section 224-A. In those cases prosecuted by the Attorney General, the expenses for extradition must be paid by the district attorney in whose county the crime is alleged to have been committed. District attorneys may agree to share expenses whenever a fugitive from justice is charged in the State with more than one offense.
[PL 2013, c. 566, §2 (AMD).]

2. Violations of probation and parole. Expenses incurred in connection with the extradition of persons charged with violating the terms and conditions of probation must be shared equally between the district attorney of the county in which the person was convicted and the Department of Corrections. Expenses incurred in connection with the extradition of persons charged with violating the terms and conditions of parole must be paid by the Department of Corrections.
[PL 2011, c. 515, §1 (AMD).]

3. Prosecuting attorney not liable. A prosecuting attorney shall not be liable for payment of such expenses unless he has previously consented to such rendition in writing.
[PL 1977, c. 66 (NEW).]

4. Expenses for rendition of escaped prisoners. Expenses for rendition of prisoners who have escaped from custody shall be paid by the State of Maine if the escape occurred while the prisoner was committed to or being held at a state institution or while the prisoner was in the custody of a state officer, shall be paid by the sheriff if the escape occurred while the prisoner was committed to or being held at a county jail or while in the custody of a county officer or shall be paid by a municipality if the escape occurred while the prisoner was being held at a lockup or in the custody of a municipal officer. Escape and custody shall have the same meaning as defined in Title 17-A.
[PL 1977, c. 66 (NEW).]

5. Prosecuting attorney to designate appropriate agents. The prosecuting attorney shall, in all cases, designate appropriate agents to safely return the prisoner to the State of Maine.
[PL 1977, c. 66 (NEW).]

6. Expense funds advanced. The treasurer or other appropriate official of the governmental unit responsible for payment of expenses pursuant to this section shall, upon written request of the prosecuting attorney, advance to him or officers designated by him a reasonable sum to defray necessary expenses. A full accounting of all expenses and return of unused funds shall be made to the issuing official no later than 3 business days from the date of return. All funds returned shall be credited to the account from which they were paid.
[PL 1977, c. 66 (NEW).]

7. Expenses of officers of the State. Expenses incurred by officers of the State, on whose governor the requisition is made, shall be paid in the same manner as other expenses and travel expenses for all necessary travel in returning the prisoner shall be paid at the same rate per mile as employees of the State receive.
[PL 1977, c. 66 (NEW).]

SECTION HISTORY

PL 1977, c. 66 (RPR). PL 1983, c. 843, §§9,10 (AMD). PL 2011, c. 515, §1 (AMD). PL 2013, c. 566, §2 (AMD).

§224-A. Extradition and Prosecution Expenses Account

1. Establishment; use. Notwithstanding any provision of law to the contrary, there is established an Extradition and Prosecution Expenses Account in each prosecutorial district in an amount not to exceed $30,000, to be administered by the district attorney and to be used solely for the purposes of paying the expenses of extraditing persons charged with or convicted of a crime in this State and who are fugitives from justice, as defined in section 201, subsection 4, paying fees or expenses of prosecution pursuant to section 1319, paying witness fees pursuant to section 1320 and paying for examination fees or expenses pursuant to Title 34-B, section 3862-A, subsection 6, paragraph D, subparagraph (3).
[PL 2019, c. 411, Pt. C, §1 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF).]

2. Funding. The Extradition and Prosecution Expenses Account in each prosecutorial district is funded by bail forfeited to and recovered by the State pursuant to the Maine Rules of Unified Criminal Procedure, Rule 46. Whenever bail is so forfeited and recovered by the State and if it is not payable as restitution pursuant to Title 17-A, section 2015, subsection 4, the district attorney shall determine whether it or a portion of it is deposited in the Extradition and Prosecution Expenses Account for that district attorney's prosecutorial district, but in no event may the account exceed $30,000. Any bail so forfeited and recovered and not deposited in the Extradition and Prosecution Expenses Account must be deposited in the General Fund. Any unexpended balance in the Extradition and Prosecution Expenses Account of a prosecutorial district established by this section may not lapse but must be carried forward into the next year.
[PL 2019, c. 113, Pt. C, §29 (AMD).]

3. Review by district attorney. The district attorney shall review monthly the Extradition and Prosecution Expenses Account and the expenses of that prosecutorial district in connection with the extradition of fugitives from justice, prosecution and witnesses and shall determine whether any funds in the account must be transferred to the General Fund.
[PL 2013, c. 566, §3 (AMD).]

4. Audit. Every district attorney shall have an annual audit made by the Office of the State Auditor or by a certified public accountant selected by the district attorney of the Extradition and Prosecution Expenses Account for that district attorney's prosecutorial district, covering the last complete fiscal year.

If the auditor finds in the course of the audit evidence of improper transactions, incompetency in keeping accounts or handling funds, failure to comply with this section or any other improper practice of financial administration, the auditor shall report that finding to the Attorney General immediately.
[PL 2013, c. 566, §3 (AMD).]

5. Advances and accounting for extradition. The district attorney shall advance funds from the Extradition and Prosecution Expenses Account to the agents designated by the district attorney to return a fugitive from justice to this State. A full accounting of all expenses and the return of all unused funds must be made by the agents no later than 3 business days from the date of return. All funds returned must be credited to the Extradition and Prosecution Expenses Account from which they were paid.

[PL 2013, c. 566, §3 (AMD).]

SECTION HISTORY

PL 1983, c. 843, §11 (NEW). PL 1983, c. 862, §42 (AMD). PL 1991, c. 377, §7 (AMD). PL 1995, c. 447, §§1-3 (AMD). PL 2007, c. 31, §1 (AMD). PL 2013, c. 16, §10 (REV). PL 2013, c. 566, §3 (AMD). PL 2015, c. 431, §5 (AMD). PL 2019, c. 113, Pt. C, §29 (AMD). PL 2019, c. 411, Pt. C, §1 (AMD). PL 2019, c. 411, Pt. D, §3 (AFF).

§225. Extradited persons except from civil process

A person brought into this State on extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is returned, until he has been convicted in the criminal proceeding or, if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

§226. Waiver of extradition

Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 207 and 208 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to await the issuance and service of a warrant of extradition and to contest extradition following issuance of the warrant of the Governor as provided for in section 210. Following waiver of extradition, the person shall be placed in custody without bail to await delivery to the agent of the demanding state. The agent of the demanding state need not be present at the waiver. [PL 1979, c. 701, §10 (AMD).]

If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent. Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State.

Notwithstanding any other provision of law, a law enforcement agency in this State holding a person who is alleged to have broken the terms of his probation, parole, bail or any other release in the demanding state, shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a Governor's warrant, if all of the following apply: [PL 1983, c. 843, §12 (NEW).]

1. Waiver. The person has signed a prior waiver of extradition as a term of his current probation, parole, bail or other release in the demanding state; and
[PL 1983, c. 843, §12 (NEW).]

2. Authenticated copy. The law enforcement agency holding the person has received an authenticated copy of the prior waiver of extradition signed by the person and photographs or fingerprints or other evidence properly identifying the person as the person who signed the waiver.
[PL 1983, c. 843, §12 (NEW).]

SECTION HISTORY

PL 1979, c. 701, §10 (AMD). PL 1983, c. 843, §12 (AMD).

§226-A. Delivery of fugitive to agents

Whenever a person held as a fugitive in this State has exhausted his remedies under this chapter to challenge his extradition or has waived extradition, the district attorney shall promptly notify the agents of the demanding state that the fugitive is available to be returned to that state. If no agent appears within 30 days after such notification, the fugitive may be discharged from custody, provided that after the discharge the fugitive may be rearrested and delivered to the agent for return to the demanding state, unless the Governor's warrant has been recalled. [PL 1983, c. 843, §13 (NEW).]

SECTION HISTORY

PL 1983, c. 843, §13 (NEW).

§227. Non-waiver by this State

Nothing in this chapter shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this chapter which result in or fail to result in extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever.

§228. Trial for crimes other than specified

After a person has been brought back to this State upon extradition proceedings, he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

§229. Title

This chapter may be cited as the "Uniform Criminal Extradition Act" and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

CHAPTER 11

SECURITY TO KEEP THE PEACE

§281. Power of courts to keep the peace; security required

The Justices of the Superior Court and Judges of the District Court, in term time or in vacation, have power to cause all laws for the preservation of the public peace to be kept; and in the execution thereof may require persons to give security to keep the peace and be of good behavior, as provided.

§282. Complaint that offense threatened

Any judge described in section 281, on complaint that any person threatens to commit an offense against the person or property of another, shall examine, on oath, the complainant and any other witnesses produced, reduce the complaint to writing and cause the complainant to sign it. If on examination of the facts he thinks that there is just cause to fear the commission of such offense, he shall issue a warrant reciting the substance of the complaint, and commanding the officer, to whom it is directed, forthwith to arrest the accused and bring him before such judge or court.

§283. Complaint not sustained; frivolous or malicious

If the judge, on examination of the facts, is not satisfied that there is just cause to fear the commission of any offense, he shall immediately discharge the accused. If he judges the complaint to be unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the judge, officer and witnesses for their fees as for his own debt.

§284. Sureties to keep peace; costs; binding over

When the accused is brought before the judge and his defense is heard, he may be ordered to recognize, with sufficient sureties, in the sum required by the judge, to keep the peace toward all persons and especially toward the person requiring the security, for a term of less than one year, and to pay the costs of prosecution; but he shall not be bound over to any court, unless he is charged with some other specific offense requiring it.

§285. Discharge on compliance; commitment

If the accused complies with such order, he shall be discharged. If he does not, he shall be committed to jail for the time for which he was required to find sureties or until he complies with such order. The judge shall state in the mittimus the cause of commitment and the time and sum for which security was required, and return a copy of the warrant to the next term of the Superior Court in said county, and such court shall have cognizance of the case, as if the accused had appealed thereto.

§286. Appeals

Any person aggrieved by the order of a judge requiring him to recognize as provided in section 284 may, on giving the security required, appeal to the next term of the Superior Court in the county. The judge shall thereupon require such witnesses as he thinks proper to recognize to appear at the appellate court. Such court may affirm or reverse the order of the judge, require the accused to recognize anew with sufficient sureties and make such order as to costs as it deems reasonable.

§287. Failure to prosecute appeal

If the appellant fails to prosecute his appeal, his recognizance shall be in force for any breach of its conditions without an affirmation of said order and shall stand as security for any costs which he is ordered by the court to pay.

§288. Recognizance after commitment

A person committed for not recognizing as aforesaid may be discharged by a Justice of the Superior Court or a bail commissioner on giving the security required.

§289. Recognizance returned to court; penalty remitted

All recognizances taken under this chapter shall be returned to the Superior Court on or before the first day of the next term, and be there filed by the clerk as of record. In any action thereon, if the forfeiture is found or confessed, the court may remit so much of the penalty, and on such terms, as it thinks proper.

§290. Sureties may surrender principals; new recognizances

Any surety in a recognizance taken under this chapter may surrender the principal the same as bail in civil cases, and he shall thereupon be discharged from liability for any subsequent breach of the recognizance. The principal may recognize anew with sufficient sureties for the residue of the term before a judge, and then be discharged.

§291. Judge on view; sureties without formal complaint

Whoever in the presence of any of the judges aforesaid or of any court of record makes an affray; threatens to kill or beat another or to commit any violence against his person or property; or contends with hot and angry words to the disturbance of the peace, may be ordered, without process or other proof, to recognize to keep the peace and be of good behavior for a term not exceeding 3 months, and may be otherwise dealt with as is provided in sections 281 to 290.

§292. Persons going armed without reasonable cause

Whoever goes armed with any dirk, pistol or other offensive and dangerous weapon, without just cause to fear an assault on himself, family or property may, on complaint of any person having cause

to fear an injury or breach of the peace, be required to find sureties to keep the peace for a term of less than one year, and, in case of refusal, may be committed as provided in section 285.

CHAPTER 12

PROTECTIVE ORDERS

§301. Protective orders in crimes between family members

(REPEALED)

SECTION HISTORY

PL 1979, c. 677, §1 (NEW). PL 1981, c. 420, §§1,2 (AMD). MRSA T. 15 §301, sub-§7 (RP).

CHAPTER 12-A

CRIMES BETWEEN FAMILY MEMBERS

§321. Protective orders in crimes between family members

1. Definition. For purposes of this section, "family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of any household member when the offender is an adult household member. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" has the same meaning as in Title 18-C, section 1-201, subsection 14.

[PL 2017, c. 402, Pt. C, §31 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Grounds for order. The court may issue a protective order if:

A. A person is charged with or convicted of a violation of Title 17-A, sections 201 to 204, 207 to 211, 252, 253, 301 to 303, 506-A or 556; [PL 1983, c. 619 (NEW).]

B. The offender and the victim are family or household members; and [PL 1983, c. 619 (NEW).]

C. The court finds that there is a likelihood that the offender may injure the health or safety of the victim in the future. [PL 1983, c. 619 (NEW).]

[PL 1983, c. 619 (NEW).]

3. Scope of order. A protective order may be a condition of release. It may require the offender:

A. To stay away from the home, school, business or place of employment of the victim; [PL 1983, c. 619 (NEW).]

B. Not to visit, or to visit only at certain times or under certain conditions, a child residing with the victim; or [PL 1983, c. 619 (NEW).]

C. Not to do specific acts which the court finds may harass, torment or threaten the victim. [PL 1983, c. 619 (NEW).]

[PL 1983, c. 619 (NEW).]

4. Issuance of order. The clerk may issue, without fee, a copy of a protective order, amendment or revocation to the offender, the victim and to the law enforcement agencies most likely to enforce it as determined by the court.

[PL 1989, c. 372, §1 (AMD).]

5. Appeal. A court decision may be appealed as provided by the Maine Rules of Civil Procedure. [PL 1983, c. 619 (NEW).]

6. Penalty. Violation of a protective order or of any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe, when the person has prior actual notice of the order, is a Class D crime. Notwithstanding any statutory provision to the contrary, an arrest for violation of a protective order may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order.
[PL 1995, c. 469, §2 (AMD).]

SECTION HISTORY

PL 1983, c. 619 (NEW). PL 1989, c. 372, §1 (AMD). PL 1995, c. 469, §§1,2 (AMD). PL 2003, c. 672, §1 (AMD). PL 2017, c. 402, Pt. C, §31 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

CHAPTER 13

ACCESSORIES

§341. Accessory; punishment; conviction with or without principal; place of trial

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§342. Accessories after the fact defined

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

CHAPTER 15

POSSESSION OF FIREARMS BY PROHIBITED PERSONS

§391. Definitions

(REPEALED)

SECTION HISTORY

PL 1977, c. 696, §166 (RP).

§392. Application

(REPEALED)

SECTION HISTORY

PL 1965, c. 327, §1 (AMD). PL 1977, c. 225, §1 (RPR). PL 1979, c. 127, §115 (AMD). PL 1981, c. 698, §88 (RPR). PL 1983, c. 618 (RP).

§393. Possession of firearms prohibited for certain persons

1. Possession prohibited. A person may not own, possess or have under that person's control a firearm, unless that person has obtained a permit under this section, if that person:

A. [PL 2001, c. 549, §2 (RP).]

A-1. Has been convicted of committing or found not criminally responsible by reason of insanity of committing:

(1) A crime in this State that is punishable by imprisonment for a term of one year or more;

(2) A crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year;

(3) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;

(4) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, does not come within subparagraph (3) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment for one year or more; or

(5) A crime under the laws of the United States, this State or any other state or the Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the prosecuting authority was required to plead and prove that the person committed the crime with the use of:

(a) A firearm against a person; or

(b) Any other dangerous weapon.

Violation of this paragraph is a Class C crime; [PL 2015, c. 470, §1 (AMD).]

B. [PL 2001, c. 549, §2 (RP).]

C. Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction:

(1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another person was threatened or resulted; or

(3) Under paragraph A-1, subparagraph (5).

Violation of this paragraph is a Class C crime; [PL 2015, c. 470, §1 (AMD).]

D. Is subject to an order of a court of the United States or a state, territory, commonwealth or tribe that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18 United States Code, Section 921(a), of that person or a child of the intimate partner of that person, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or the child, except that this paragraph applies only to a court order that was issued after a hearing for which that person received actual notice and at which that person had the opportunity to participate and that:

(1) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner or a child; or

(2) By its terms, explicitly prohibits the use, attempted use or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury.

Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

E. Has been:

(1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4-A, paragraphs A to C;

(2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or

(3) Found not competent to stand trial with respect to a criminal charge.

Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

E-1. Is currently a restricted person under Title 34-B, section 3862-A, subsection 2 or subsection 6, paragraph D except that the prohibition applies to possession and control, and not ownership. Violation of this paragraph is a Class D crime; [PL 2019, c. 411, Pt. C, §2 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

E-2. Has been ordered to participate in a progressive treatment program pursuant to Title 34-B, section 3873-A and, as part of that order, directed not to possess a dangerous weapon pursuant to Title 34-B, section 3873-A, subsection 7-A for the duration of the treatment program, except that the prohibition applies to possession and control, and not ownership. Violation of this paragraph is a Class D crime; [PL 2019, c. 411, Pt. C, §2 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

F. Is a fugitive from justice. For the purposes of this paragraph, "fugitive from justice" has the same meaning as in section 201, subsection 4. Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

G. Is an unlawful user of or is addicted to any controlled substance and as a result is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(3). Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

H. Is an alien who is illegally or unlawfully in the United States or who was admitted under a nonimmigrant visa and who is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(5). Violation of this paragraph is a Class D crime; [PL 2015, c. 470, §1 (AMD).]

I. Has been discharged from the United States Armed Forces under dishonorable conditions. Violation of this paragraph is a Class D crime; or [PL 2015, c. 470, §1 (AMD).]

J. Has, having been a citizen of the United States, renounced that person's citizenship. Violation of this paragraph is a Class D crime. [PL 2015, c. 470, §1 (AMD).]

For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

In the case of a deferred disposition, a person is deemed to have been convicted when the court imposes the sentence. In the case of a deferred disposition for a person alleged to have committed one or more of the offenses listed in section 1023, subsection 4, paragraph B-1, that person may not possess a firearm during the deferred disposition period. Violation of this paragraph is a Class C crime.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.
[PL 2019, c. 411, Pt. C, §2 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF).]

1-A. Limited prohibition for nonviolent juvenile offenses. A person who has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under subsection 1, paragraph A-1 or subsection 1-B, paragraph A but is not an adjudication under subsection 1,

paragraph C or an adjudication under subsection 1-B, paragraph B in which bodily injury to another person was threatened or resulted may not own or have in that person's possession or control a firearm for a period of 3 years following completion of any disposition imposed or until that person reaches 18 years of age, whichever is later. Violation of this subsection by a person at least 18 years of age is a Class C crime.
[PL 2015, c. 470, §2 (AMD).]

1-B. Prohibition for domestic violence offenses. A person may not own, possess or have under that person's control a firearm if that person:

A. Has been convicted of committing or found not criminally responsible by reason of insanity of committing:

(1) A Class D crime in this State in violation of Title 17-A, section 207-A, 209-A, 210-B, 210-C or 211-A; or

(2) A crime under the laws of the United States or any other state that in accordance with the laws of that jurisdiction is elementally substantially similar to a crime in subparagraph (1).

Violation of this paragraph is a Class C crime; or [PL 2015, c. 470, §3 (AMD).]

B. Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under this subsection. Violation of this paragraph is a Class C crime. [PL 2015, c. 470, §3 (AMD).]

Except as provided in subsection 1-A, the prohibition created by this subsection for a conviction or adjudication of an offense listed in paragraph A or B expires 5 years from the date the person is finally discharged from the sentence imposed as a result of the conviction or adjudication if that person has no subsequent criminal convictions during that 5-year period. If a person is convicted of a subsequent crime within the 5-year period, the 5-year period starts anew from the date of the subsequent conviction. In the case of a deferred disposition, the 5-year period begins at the start of the deferred disposition period. If, at the conclusion of the deferred disposition period, the court grants the State's motion to allow a person to withdraw the plea and the State dismisses the charge that gave rise to the prohibition with prejudice, the 5-year period terminates.

For the purposes of this subsection, a person is deemed to have been convicted or adjudicated upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

The provisions of this subsection apply only to a person convicted, adjudicated or placed on deferred disposition on or after October 15, 2015.
[PL 2017, c. 432, Pt. A, §1 (AMD).]

2. Application after 5 years. A person subject to the provisions of subsection 1, paragraph A-1, subparagraphs (1) to (4) or paragraph C as a result of a conviction or adjudication may, after the expiration of 5 years from the date that the person is finally discharged from the sentences imposed as a result of the conviction or adjudication, apply to the Office of the Governor for a permit to carry a firearm subject to subsection 4. That person may not be issued a permit to carry a concealed handgun pursuant to Title 25, chapter 252. A permit issued pursuant to this subsection is valid for 4 years from the date of issue unless sooner revoked for cause by the Governor. For purposes of this subsection, "firearm" does not include a firearm defined under 18 United States Code, Section 921(a)(3).

[PL 2017, c. 475, Pt. A, §21 (RPR).]

3. Contents. An application under subsection 2 must be on a form prepared by the Office of the Governor. The application must include the following: the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make, model and serial number of the firearm sought to be possessed; date, place and nature of conviction; sentence imposed; place of incarceration; name and address of probation or parole officer; date of discharge or release from prison or jail or termination of probation, supervised release for sex offenders, parole or administrative release; the reason for the request; and any other information determined by the Governor to be of assistance. The application must be accompanied by certified or attested copies of the indictment, information or complaint, judgment and commitment and discharge that are the subject of the conviction.
[PL 2017, c. 206, §2 (AMD).]

4. Notification, objection and decision. Upon receipt of an application, the Office of the Governor shall determine if the application is in proper form. If the application is proper, the Governor shall within 30 days notify in writing the sentencing or presiding judge, the Attorney General, the district attorney for the county where the applicant resides, the district attorney for the county where the conviction occurred, the law enforcement agency that investigated the crime, the chief of police and sheriff in the municipality and county where the crime occurred and the chief of police and sheriff in the municipality where the applicant resides as of the filing of the application. The Governor may direct any appropriate investigation to be carried out.

A. If, within 30 days of the sending of notice, a person notified objects in writing to the Governor regarding the initial issuance of a permit and provides the reason for the objection, the Governor may not issue a permit. The reason for the objection must be communicated in writing to the Governor in order for it to be the sole basis for denial. [PL 2017, c. 206, §3 (AMD).]

B. If, within 30 days of the sending of notice, a person notified objects in writing, including the reason for the objection, to the Governor regarding a 2nd or subsequent issuance of a permit, the Governor shall take the objection and its reason into consideration when determining whether to issue a 2nd or subsequent permit to the applicant, but need not deny the issuance of a permit based on an objection alone. [PL 2017, c. 206, §3 (AMD).]

The Governor may deny any application for a permit even if no objection is filed.
[PL 2017, c. 206, §3 (AMD).]

4-A. Application for relief. Except as otherwise provided, a person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective may, after the expiration of 5 years from the date of final discharge from commitment, apply to the commissioner for relief from the disability.

Relief is not available under this subsection for a person found not criminally responsible by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged by a Probate Court to lack the capacity to contract or manage the person's own affairs.

A. An application under this subsection must be on a form developed by the commissioner. The application must include the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make and model of the firearm sought to be possessed; reason for the request; date, place and docket number of commitment; name of institution to which applicant was committed; names of providers that provided mental health treatment for the applicant; date of discharge from commitment; release for all mental health records; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the commitment from which the applicant seeks relief and the report of an independent psychologist or psychiatrist licensed to practice in this State specifically addressing the factors set forth in paragraph E. The commissioner may establish a roster of psychologists and psychiatrists qualified and interested in doing these evaluations. The

psychologist or psychiatrist must be available for cross-examination. The psychologist or psychiatrist listed on the roster is an employee for the purposes of the Maine Tort Claims Act for evaluations under this paragraph. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

B. The commissioner has the independent authority to establish the following, to be paid by the applicant:

(1) Application fee; and

(2) Fees for evaluations required by paragraph A. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

C. Upon receipt of a completed application, the commissioner shall notify persons who received notice of the commitment pursuant to Title 34-B, section 3864, subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police and sheriff in the municipality and county where the applicant resides of the filing of the application, with a request to provide to the commissioner any information relevant to the factors in paragraph E. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

D. Upon receipt of a completed application, the commissioner shall review the application and determine whether the person has made a prima facie showing of the elements of paragraph E. If the commissioner determines that the person has made a prima facie showing, the commissioner shall schedule a hearing. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

E. The burden of proof is on the applicant to prove, by clear and convincing evidence, that the circumstances that led to the involuntary commitment to a hospital have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

F. If the commissioner finds by clear and convincing evidence that the circumstances that led to the involuntary commitment have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest, the commissioner may grant relief. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

G. Notwithstanding any other provision of law, and except as indicated in this paragraph, all applications for relief pursuant to this subsection and documents made a part of the application, refusals and any information of record collected by the commissioner during the process of determining whether an applicant qualifies for relief are confidential and may not be made available for public inspection or copying unless:

(1) The applicant waives this confidentiality in writing or on the record of any hearing; or

(2) A court of record so orders. Proceedings relating to the grant or denial of relief are not public proceedings under Title 1, chapter 13.

The commissioner shall make a permanent record, in the form of a summary, of the final decision regarding each application. The summary must include the name of the applicant and indicate whether the application for relief was granted or denied. The information contained in this summary is available for public inspection. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]

H. An applicant may appeal the denial of an application for relief under this subsection within 30 days of receipt of the written notice of decision by filing a complaint in the District Court for de novo review in the district where the Department of Public Safety has its principal office. Hearings are closed unless otherwise agreed to by the applicant. A party aggrieved by a decision of the District Court may not appeal as of right. The time for taking the appeal and the manner and any

conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule. [PL 2007, c. 670, §9 (NEW); PL 2007, c. 670, §24 (AFF).]
[PL 2011, c. 541, §1 (AMD).]

5. Appeal. Any person to whom a permit under subsection 2 has been denied may file a petition for review pursuant to Title 5, chapter 375, subchapter 7.
[PL 2007, c. 670, §10 (AMD).]

6. Filing fee. The commissioner may establish a reasonable filing fee not to exceed $25 to defray costs of processing applications.
[PL 1977, c. 225, §2 (NEW).]

7. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A. [PL 2001, c. 549, §4 (NEW).]

B. "Not criminally responsible by reason of insanity" has the same meaning as used in section 103 and any comparable finding under the laws of the United States or any other state. [PL 2005, c. 527, §4 (AMD).]

C. "State" means the State of Maine and "state" means any other state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico and the possessions of the United States. [PL 2001, c. 549, §4 (NEW).]

D. "Use of a dangerous weapon" has the same meaning as in Title 17-A, section 2, subsection 9, paragraph A. [PL 2001, c. 549, §4 (NEW).]

E. "Commissioner" means the Commissioner of Public Safety or the commissioner's designee. [PL 2007, c. 670, §11 (NEW).]
[PL 2007, c. 670, §11 (AMD).]

8. Penalty.
[PL 2015, c. 470, §4 (RP).]

9. Prima facie evidence. Notwithstanding any other law or rule of evidence, a copy of a court abstract provided by a court to the Department of Public Safety, State Bureau of Identification pursuant to Title 34-B, section 3864, subsection 12, if certified by the custodian of the records of that bureau, or the custodian's designee, is admissible in a criminal prosecution brought pursuant to this section as prima facie evidence that the person identified in the abstract has been involuntarily committed by the court issuing the abstract and has been provided the notice required in Title 34-B, section 3864, subsection 5, paragraph A-1 and Title 34-B, section 3864, subsection 13.
[PL 2007, c. 670, §13 (NEW).]

10. Subpoena power. The commissioner is authorized to issue a subpoena in the name of the commissioner in accordance with Title 5, section 9060, except that this authority applies to any stage of an investigation under this section and is not limited to an adjudicatory hearing. If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on that witness an order requiring the witness to appear before the Superior Court to show cause why the witness should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant the court in doing so, punish that witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.
[PL 2007, c. 670, §14 (NEW).]

11. Rules. The commissioner may adopt rules to implement the provisions of subsections 2 to 4-A. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.
[PL 2007, c. 670, §15 (NEW).]

SECTION HISTORY

PL 1965, c. 327, §2 (AMD). PL 1977, c. 225, §2 (RPR). PL 1977, c. 564, §§72,73 (AMD). PL 1985, c. 478, §1 (AMD). PL 1989, c. 917, §1 (AMD). PL 1993, c. 368, §1 (AMD). PL 1993, c. 368, §§2,3 (AMD). PL 1997, c. 334, §§1-3 (AMD). PL 1997, c. 462, §1 (AMD). PL 1997, c. 683, §B8 (AMD). PL 2001, c. 549, §§2-5 (AMD). PL 2005, c. 419, §§7-10 (AMD). PL 2005, c. 419, §12 (AFF). PL 2005, c. 527, §§2-5 (AMD). PL 2007, c. 194, §§1-4 (AMD). PL 2007, c. 670, §§4-15 (AMD). PL 2007, c. 670, §24 (AFF). PL 2009, c. 503, §§1, 2 (AMD). PL 2009, c. 651, §1 (AMD). PL 2011, c. 541, §1 (AMD). PL 2013, c. 424, Pt. A, §5 (AMD). PL 2013, c. 519, §1 (AMD). PL 2015, c. 287, §§1-5 (AMD). PL 2015, c. 470, §§1-4 (AMD). PL 2017, c. 206, §§1-3 (AMD). PL 2017, c. 227, §1 (AMD). PL 2017, c. 432, Pt. A, §1 (AMD). PL 2017, c. 475, Pt. A, §21 (AMD). PL 2019, c. 411, Pt. C, §2 (AMD). PL 2019, c. 411, Pt. D, §3 (AFF).

CHAPTER 17

MISCELLANEOUS PROVISIONS

§451. Felony defined

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§452. Limitations on prosecution

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§453. Detention at State Prison of dangerous persons

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §19 (AMD). PL 1969, c. 506, §1 (AMD). PL 1999, c. 583, §2 (RP).

§454. Murder or felony murder; filing copies of proceedings; expenses

Whenever any person is convicted of murder or felony murder, by jury verdict, court finding or court acceptance of a plea of guilty or nolo contendere, a copy, as applicable, of the transcript of the plea hearing, trial testimony and jury instructions, certified by the Official Court Reporter who created a transcript of the reporter's stenographic notes or the transcriber who created a transcript from the electronically recorded record, must be filed with the clerk of the court where that trial is held, and the expense for the transcript must be paid by the State. A copy, as applicable, of the transcript of the plea hearing, trial testimony and jury instructions, certified by the Official Court Reporter who created a transcript of the reporter's stenographic notes or the transcriber who created a transcript from the electronically recorded record, must be furnished by the clerk of court to the Secretary of State at no charge for use in any pardon hearing before the Governor, when the individual is indigent. [PL 2015, c. 431, §6 (AMD).]

SECTION HISTORY

PL 1971, c. 264 (AMD). PL 1977, c. 114, §26 (RPR). PL 1979, c. 663, §91 (AMD). PL 2007, c. 539, Pt. JJ, §6 (AMD). PL 2015, c. 431, §6 (AMD).

§455. Record of sales of firearms

1. Forms.

[PL 2017, c. 81, §1 (RP).]

1-A. Form. A firearms dealer may not refuse to show or refuse to allow inspection of the form a dealer must keep as prescribed by 18 United States Code, Section 923 to a law enforcement officer as defined in Title 17-A, section 2, subsection 17 upon presentation of a formal written request for inspection stating that the form relates to an active criminal investigation.

A person who violates this subsection commits a civil violation for which a fine of $50 may be adjudged.
[PL 2017, c. 81, §1 (NEW).]

2. False or fictitious name. A person may not give a false or fictitious name to a firearms dealer. A person who violates this subsection commits a civil violation for which a fine of $50 may be adjudged.
[PL 2017, c. 81, §1 (AMD).]

3. Exception. This section does not apply to a firearms wholesaler who sells only to other firearms dealers or to a firearms manufacturer who sells only at wholesale.
[PL 2017, c. 81, §1 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §92 (AMD). PL 1993, c. 185, §1 (AMD). PL 2003, c. 452, §H1 (RPR). PL 2003, c. 452, §X2 (AFF). PL 2017, c. 81, §1 (AMD).

§455-A. Warning requirement upon sales of firearms

1. Posting of conspicuous warning. Except as provided in subsection 1-A, any commercial retail sales outlet that sells firearms shall conspicuously post at each purchase counter where firearms may be purchased the following warning in block letters not less than one inch in height:

"ENDANGERING THE WELFARE OF A CHILD IS A CRIME. IF YOU LEAVE A FIREARM AND AMMUNITION WITHIN EASY ACCESS OF A CHILD, YOU MAY BE SUBJECT TO FINE, IMPRISONMENT OR BOTH.

KEEP FIREARMS AND AMMUNITION SEPARATE.

KEEP FIREARMS AND AMMUNITION LOCKED UP.

USE TRIGGER LOCKS."

[PL 1991, c. 450, §1 (AMD).]

1-A. Posting of warnings at gun shows. The warning sign as described in subsection 1 must be posted at all entrances of an organized gun show.
[PL 1991, c. 450, §2 (NEW).]

2. Violation. Any person who fails to post the warning in compliance with subsection 1, commits a civil violation for which a civil forfeiture of not more than $200 may be adjudged.
[PL 1989, c. 809 (NEW).]

SECTION HISTORY

PL 1989, c. 809 (NEW). PL 1991, c. 450, §§1, 2 (AMD). PL 1991, c. 450, §§1,2 (AMD).

§456. Records of sales of used merchandise

(REPEALED)

SECTION HISTORY

PL 1971, c. 385 (NEW). PL 1973, c. 357 (RPR). PL 1979, c. 663, §93 (AMD). PL 1981, c. 232 (RPR). PL 2003, c. 582, §1 (RP).

§457. Open pretrial criminal proceeding

1. Definition of pretrial proceeding. As used in this section, the term "pretrial proceeding" means an appearance before the court at which both parties are present and motions are heard, witnesses testify or evidence is presented, when the appearance occurs after the beginning of the initial appearance of the accused and before the swearing in of the jury or, in a jury waived trial, before the calling of the first witness.
[PL 1979, c. 665 (NEW).]

2. Open proceedings. Except as provided by statute, the general public may not be excluded from a pretrial criminal proceeding at which the court hears a motion to exclude evidence from trial, unless the court finds a substantial likelihood that:

A. Injury or damage to the accused's right to a fair trial will result from conducting the proceeding in public; [PL 1979, c. 665 (NEW).]

B. Alternatives to closure will not protect the accused's right to a fair trial; and [PL 1979, c. 665 (NEW).]

C. Closure will protect against the perceived injury or damage. [PL 1979, c. 665 (NEW).]
[PL 1979, c. 665 (NEW).]

3. Exceptions. Nothing in this section may be construed:

A. To limit the powers of courts to maintain decorum by ordering unruly spectators removed from the courtroom, by reasonably limiting the number of spectators or by exercising similar powers of judges at common law; or [PL 1979, c. 665 (NEW).]

B. To require that a proceeding to determine the validity of a claim of evidentiary privilege as provided by the Maine Rules of Evidence be open to the public. [PL 1979, c. 665 (NEW).]
[PL 1979, c. 665 (NEW).]

SECTION HISTORY

PL 1979, c. 665 (NEW).

PART 2

PROCEEDINGS BEFORE TRIAL

CHAPTER 99

ARREST WARRANTS

§601. Applicability

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

§602. Responsibility to execute arrest warrants

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

§603. Warrant repository

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 1993, c. 675, §B11 (AMD). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

§604. Criteria for selection of arrest warrant repository

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

§605. Standards by Attorney General

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

§606. Responsibility of court

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

§607. Rulemaking

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

§608. Bail commissioners in indigent cases

(REPEALED)

SECTION HISTORY

PL 1991, c. 402, §2 (NEW). PL 2011, c. 214, §1 (RP). PL 2011, c. 214, §6 (AFF).

CHAPTER 100

WARRANTS

§651. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

1. Affidavit warrant. "Affidavit warrant" means a warrant issued in response to a properly sworn charging instrument or affidavit, or both, based on probable cause to believe that an individual has committed a crime.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

2. Alias name. "Alias name" means an alternative name, a pseudonym or a placeholder name.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

3. Alternative name. "Alternative name" means a name used by an individual instead of or in addition to the individual's legal name.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

4. Bench warrant. "Bench warrant" means an arrest warrant issued by an authorized judicial officer that directs a law enforcement officer to seize or detain an individual and includes the following types of arrest warrants:

A. An affidavit warrant; [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

B. A contempt warrant; [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

C. An FTP warrant; [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

D. An FTA warrant; [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

E. A juvenile warrant; and [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

F. A probation violation warrant. [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

5. Contempt warrant. "Contempt warrant" means a bench warrant issued by a judicial order:

A. For failure of an individual to appear for a contempt hearing pursuant to the Maine Rules of Civil Procedure, Rule 66(c)(2)(E) or Rule 66(d)(2)(E); or [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

B. For failure of a contemnor to comply with a contempt order pursuant to the Maine Rules of Civil Procedure, Rule 66(c)(3) or Rule 66(d)(3)(A). [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

6. Digital signature. "Digital signature" has the same meaning as in Title 10, section 9502, subsection 1.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

7. Electronic signature. "Electronic signature" has the same meaning as in Title 10, section 9402, subsection 8.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

8. FTA warrant. "FTA warrant" means a bench warrant issued for failure of an individual to appear in court as required by a criminal summons or other court order requiring an individual to appear for a court hearing.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

9. FTP warrant. "FTP warrant" means a bench warrant issued for failure of an individual to pay a fine, as described in Title 14, section 3141, as ordered by the issuing court.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

10. Juvenile warrant. "Juvenile warrant" means a bench warrant issued in order to detain a juvenile pursuant to section 3202.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

11. Local entering agency. "Local entering agency" means a local law enforcement agency designated by the district attorney within a prosecutorial district, with the approval of the Chief Judge of the District Court.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

12. Maine telecommunications and routing operations system. "Maine telecommunications and routing operations system" means the interagency communications system maintained and operated by the Maine State Police.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

13. Maine State Police wanted database. "Maine State Police wanted database" means the database of warrants and other information maintained by the Maine State Police.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

14. Other judicial warrant. "Other judicial warrant" means a warrant, other than a bench warrant, issued by the Supreme Judicial Court, Superior Court, District Court or Probate Court, pursuant to statute or common law, including, but not limited to, civil orders of arrest and warrants for failure to respond to a subpoena or for jury duty.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

15. Placeholder name. "Placeholder name" means a nonspecific name, such as "Unknown," that is assigned by law enforcement officials to an individual whose legal name is not known to law enforcement officials.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

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 or supervised release of an individual, requested by a probation officer or prosecutor.
[PL 2013, c. 133, §1 (AMD).]

17. Pseudonym. "Pseudonym" means a fictitious name, such as "John Doe," that is assigned by law enforcement officials to an individual whose legal name is not known to law enforcement officials.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

18. Statewide warrant management system. "Statewide warrant management system" means the integrated electronic system that consists of the Maine State Police wanted database, the Maine telecommunications and routing operations system and the warrant docket management system.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

19. Warrant docket management system. "Warrant docket management system" means the system maintained by the Administrative Office of the Courts to manage the generation, storage, retention and recall of electronic arrest warrants issued by the courts.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 2011, c. 214, §2 (NEW). PL 2011, c. 214, §6 (AFF). PL 2013, c. 133, §1 (AMD).

§652. Exclusions

This chapter does not apply to: [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

1. Extradition warrants. Warrants issued by the Governor pursuant to the United States Constitution and the Uniform Criminal Extradition Act for the extradition of fugitives from justice, except that the provisions requiring law enforcement officers to be responsible for the execution of warrants are fully applicable to a Governor's warrant;
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

2. Other judicial warrants. Other judicial warrants that are generated, maintained and recalled by the individual issuing court and are not maintained in the Maine State Police wanted database. Notwithstanding any provision of this chapter, other judicial warrants retain their full force and effect;
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

3. Civil orders of arrest. Civil orders of arrest issued pursuant to Title 14, section 3135;
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

4. Corrections warrants. Warrants issued by the Department of Corrections for violations of parole, probation or supervised release or for escape or failure to report;
[PL 2013, c. 133, §2 (AMD).]

5. Nonjudicial warrants. Warrants issued by other authorities, including but not limited to federal courts and agencies and tribal courts; and
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

6. Search warrants. Warrants issued pursuant to section 55 and the Maine Rules of Unified Criminal Procedure, Rules 41, 41B, 41C and 111 and administrative inspection warrants issued pursuant to the Maine Rules of Civil Procedure, Rule 80E.
[PL 2015, c. 431, §7 (AMD).]

SECTION HISTORY

PL 2011, c. 214, §2 (NEW). PL 2011, c. 214, §6 (AFF). PL 2013, c. 133, §2 (AMD). PL 2015, c. 431, §7 (AMD).

§653. Statewide warrant management system

1. Warrant docket management system. The Administrative Office of the Courts shall establish a warrant docket management system for the generation, storage, retention and recall of all electronic arrest warrants issued by the courts. When a bench warrant is issued by a court, the warrant must be electronically directed to the warrant docket management system.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

2. Central warrant administration. The Maine State Police shall administer a central system for the management, enforcement and execution of warrants. The Maine State Police must have continuous electronic interface with the warrant docket management system, the Maine State Police wanted database, the Maine telecommunications and routing operations system and the National Crime Information Center. The Maine State Police shall coordinate with all law enforcement agencies to ensure the prompt communication of all warrant information through the National Crime Information Center and the Maine telecommunications and routing operations system. The Maine State Police shall post information to the warrant docket management system concerning the status and execution of all arrest warrants.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

3. Validation. The Maine State Police shall manage the mandated validation process for warrants sent to the National Crime Information Center.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

4. Monitor management. The Maine State Police shall monitor the management of entry and removal of warrant information in the Maine State Police wanted database, and shall exchange data with the warrant docket management system, or other pertinent databases, as required.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

5. Structured plan. The Maine State Police shall develop a structured bench warrant management plan designed to maximize the execution of outstanding arrest warrants and to identify appropriate bench warrants to be removed from pertinent databases.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 2011, c. 214, §2 (NEW). PL 2011, c. 214, §6 (AFF).

§654. Warrants

1. Form of warrant. A bench warrant and a return of service must each be maintained and transmitted in electronic form unless the statewide warrant management system is unavailable or other exigent circumstances prevent such electronic maintenance or transmittal, in which case a paper warrant may be issued and entered into the warrant docket management system as soon as practicable. An electronic warrant with a digital signature or an electronic signature is of equal validity as a manually signed paper warrant issued pursuant to former chapter 99 and has the full force and effect of law.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

2. Warrant electronically available. A certified electronic warrant must be maintained in the warrant docket management system and its details and status must be available at all times to the Maine State Police, which shall make that information available to local law enforcement agencies through the Maine telecommunications and routing operations system. The certified electronic warrant must include an electronic signature or digital signature, and may include a digital watermark or such other security features as the Administrative Office of the Courts determines necessary to verify the warrant's authenticity.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

3. Content of warrant. A bench warrant must contain:

A. The subject's name or alias name; [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

B. The subject's date of birth, if known; [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

C. At least one identified charge; [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

D. An indication if any pending charge is a domestic violence crime; and [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

E. Available information concerning the identity and location of the subject sufficient to meet the minimum requirements established by the Maine telecommunications and routing operations system and the National Crime Information Center. [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

The bench warrant may contain photographs of the subject, a description of any distinguishing physical characteristics and other information that will aid in the location of the subject and the execution of the warrant. A bench warrant is not rendered invalid because of technical noncompliance with this section.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

4. National Crime Information Center. A bench warrant may not be entered in the National Crime Information Center database without authorization from the Attorney General or designee of the Attorney General or a district attorney or designee of the district attorney, except that the Department of Corrections may enter a bench warrant for a violation of parole or probation or for escape. The authorizing entity shall specify appropriate geographic limitations, if any, on extradition, which are subject to change, at the time the bench warrant is executed.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

5. Clerical errors. A clerical error in a bench warrant must ordinarily be corrected by the issuance of a replacement warrant by the issuing court or agency, but may be corrected by an authorized judicial officer upon an ex parte application in exigent circumstances.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

6. Removal from database. When a bench warrant is recalled by the issuing court, the court shall maintain a record of the recall and the bench warrant must be immediately removed from the warrant docket management system and the Maine State Police wanted database. When a bench warrant is executed, the law enforcement agency must make an electronic return of service immediately upon verification that the served individual is the subject of the bench warrant. Once a return of service has been received, the bench warrant must be removed from the Maine State Police wanted database.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 2011, c. 214, §2 (NEW). PL 2011, c. 214, §6 (AFF).

§655. Local entering agency

1. Authority. The district attorney for each prosecutorial district, with the approval of the Chief Judge of the District Court, shall designate one or more local entering agencies for each prosecutorial district.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

2. Standards. Each local entering agency must have the capability and willingness to accept the burden and responsibility of warrant management as a full and equal element of its sworn public duty and must meet standards established by the Maine telecommunications and routing operations system and the National Crime Information Center.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 2011, c. 214, §2 (NEW). PL 2011, c. 214, §6 (AFF).

§656. Responsibilities of law enforcement agencies

Each law enforcement agency shall adopt policies to comply with this chapter. Local policies must ensure that all bench warrants are served and returns of service entered as required by section 654. [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 2011, c. 214, §2 (NEW). PL 2011, c. 214, §6 (AFF).

§657. Responsibilities of courts

The courts are responsible for: [PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

1. Complete information. Maintaining bench warrants with information that is as complete as possible and that maximizes the likelihood that the bench warrants will be successfully executed;
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

2. Single transmission. Transmitting only one set of data for each instance of a bench warrant's issuance and maintaining an audit record of each transmission; and
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

3. Recall notice. Immediately transmitting an electronic notice of recall to the Maine State Police when a bench warrant is recalled.
[PL 2011, c. 214, §2 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 2011, c. 214, §2 (NEW). PL 2011, c. 214, §6 (AFF).

CHAPTER 101

ISSUE OF PROCESS AND ARREST

§701. Criminal prosecutions by indictment; excepted cases

No person shall be held to answer in any court for an alleged offense, unless on an indictment found by a grand jury, except for contempt of court and in the following cases:

1. Use of charging instrument other than an indictment. When a prosecution utilizing a charging instrument other than an indictment is expressly authorized by rule of court; or
[PL 1997, c. 4, §1 (RPR).]

2. District Courts and courts martial. In proceedings before the District Court, the District Court acting as a juvenile court and courts martial.

SECTION HISTORY

PL 1971, c. 544, §49 (AMD). PL 1979, c. 663, §94 (AMD). PL 1997, c. 4, §1 (AMD).

§702. Justices, judges and justices of the peace may issue processes

The Justices of the Supreme Judicial Court and of the Superior Court, Judges of the District Court and justices of the peace may issue processes for the arrest of persons charged with offenses. For purposes of this section and section 706, full faith and credit must be given to offenses subject to the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation under the terms of Title 30, section 6209-A or 6209-B. [PL 1995, c. 388, §4 (AMD); PL 1995, c. 388, §8 (AFF).]

SECTION HISTORY

PL 1965, c. 356, §20 (AMD). PL 1987, c. 736, §21 (AMD). PL 1991, c. 484, §6 (AMD). PL 1995, c. 388, §4 (AMD). PL 1995, c. 388, §8 (AFF).

§703. Officer's oath to complaint

When it is the duty of an officer to make complaint before any judge, clerk or justice of the peace, he may make oath to it according to his knowledge and belief. [PL 1987, c. 736, §22 (AMD).]

SECTION HISTORY

PL 1965, c. 425, §9 (AMD). PL 1987, c. 736, §22 (AMD).

§704. Arrests without warrant; liability

Every sheriff, deputy sheriff, constable, city or deputy marshal, or police officer shall arrest and detain persons found violating any law of the State or any legal ordinance or bylaw of a town, until a legal warrant can be obtained and may arrest and detain such persons against whom a warrant has been issued though the officer does not have the warrant in his possession at the time of the arrest, and they shall be entitled to legal fees for such service; but if, in so doing, he acts wantonly or oppressively, or detains a person without a warrant longer than is necessary to procure it, he shall be liable to such person for the damages suffered thereby.

§705. Arrests in other counties

When a person charged with an offense in any county, before or after the issue of the warrant, removes, escapes or is found out of it, the officer having the warrant may pursue and arrest him in any other county and command aid as in his own county. [PL 1965, c. 356, §21 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §21 (AMD).

§706. District Court; warrants

Judges of District Courts have all authority and powers formerly granted by law to judges of municipal courts. [PL 1999, c. 368, §1 (AMD).]

When a complaint or an information charging a person with the commission of an offense, or a duly authenticated arrest warrant issued by the Tribal Court of the Passamaquoddy Tribe or the Penobscot Nation, is presented to any Judge of the District Court, to a justice of the peace or to any other officer of the District Court authorized to issue process, the judge, justice of the peace or other officer shall issue a warrant in the name of the District Court for the arrest of that person, in that form and under the circumstances that the Supreme Judicial Court provides by rule. A clerk of the District Court may accept a guilty plea upon payment of fines as set by the judge. [PL 1999, c. 368, §1 (AMD).]

A Judge of the District Court may try those brought before the judge for offenses within the judge's jurisdiction, although the penalty or fine accrues wholly or partly to the municipality of which the judge is a resident. [PL 1999, c. 368, §1 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §§22-24 (AMD). PL 1987, c. 736, §23 (AMD). PL 1991, c. 484, §7 (AMD). PL 1999, c. 368, §1 (AMD).

§707. Certain District Court clerks may issue process

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §25 (NEW). PL 1981, c. 456, §A57 (AMD). PL 1987, c. 736, §24 (RP).

§708. Preparation of complaints

The clerk may, in the absence or unavailability of a justice of the peace or of a prosecuting attorney or any of his assistants, prepare and draft complaints upon the request of any law enforcement officer, except that no complaint shall issue to any person who is not a law enforcement officer or for any criminal homicide or Class A, B or C crime unless approved by the district attorney or his designee or the Attorney General or his designee. [PL 1987, c. 736, §25 (AMD).]

Except in prosecutions instituted by the Attorney General or his designee, the district attorney or his designee shall, whenever practical, prepare all complaints for criminal homicide and Class A, B and C crimes and for all complainants who are not law enforcement officers. No complaint shall be filed nor process issued until such time as the complainant has made oath to the complaint or process before the proper official. [PL 1977, c. 579, §E, § 1 (NEW).]

Each district attorney shall establish written guidelines for the approval of issuance of complaints pursuant to this section. In those guidelines, the district attorney may extend the above procedure to Class D and E crimes, provided that the approval of the district attorney shall not be necessary for any complaint issued with the approval of the Attorney General or his designee. [PL 1977, c. 579, §E, § 1 (NEW).]

Whenever a complaint is not approved for prosecution by the district attorney or his designee, or the Attorney General or his designee, he shall, if requested, inform the complainant, orally or in writing, of the reasons therefor. [PL 1977, c. 579, §E, § 1 (NEW).]

SECTION HISTORY

PL 1969, c. 504, §§24-I (NEW). PL 1973, c. 567, §20 (AMD). PL 1977, c. 579, §E1 (RPR). PL 1987, c. 736, §25 (AMD).

CHAPTER 102

INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS

§709. Definitions

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

The following words and phrases as used in this chapter, unless the context otherwise indicates, shall have the following meanings. [PL 1973, c. 561 (NEW).]

1. Communication common carrier. "Communication common carrier" means any telephone or telegraph company.
[PL 1973, c. 561 (NEW).]

1-A. Administration of criminal justice.
[PL 2015, c. 470, §5 (RP).]

1-B. (TEXT EFFECTIVE UNTIL 1/01/22) Administration of juvenile criminal justice. "Administration of juvenile criminal justice" has the same meaning as in section 3308, subsection 7, paragraph A, subparagraph (2).
[PL 2011, c. 507, §1 (NEW).]

1-B. (TEXT REPEALED 1/01/22) Administration of juvenile criminal justice.
[PL 2021, c. 365, §1 (RP); PL 2021, c. 365, §37 (AFF).]

1-C. (TEXT EFFECTIVE UNTIL 1/01/22) Administration of juvenile justice. "Administration of juvenile justice" has the same meaning as in section 3308-A, subsection 1, paragraph A.
[PL 2015, c. 470, §6 (NEW).]

1-C. (TEXT EFFECTIVE 1/01/22) Administration of juvenile justice. "Administration of juvenile justice" has the same meaning as in section 3003, subsection 1-A.
[PL 2021, c. 365, §2 (AMD); PL 2021, c. 365, §37 (AFF).]

2. Contents. "Contents," when used with respect to any wire or oral communication, means any information concerning the identity of the parties to such communication or the existence, contents, substance, purport or meaning of that communication.
[PL 1973, c. 561 (NEW).]

3. Intercepting device. "Intercepting device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

A. Any telephone or telegraph instrument, equipment or facility or any component thereof being used by a communication common carrier in the ordinary course of its business or extension telephones used by a subscriber to telephone service; or [PL 1973, c. 561 (NEW).]

B. A hearing aid or similar device being used to correct subnormal hearing to not better than normal. [PL 1973, c. 561 (NEW).]
[PL 1973, c. 561 (NEW).]

4. Intercept. "Intercept" means to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than:

A. The sender or receiver of that communication; [PL 1979, c. 701, §11 (AMD).]

B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or [PL 1973, c. 561 (NEW).]

C. A person given prior authority by the sender or receiver. [PL 1979, c. 701, §11 (AMD).]
[PL 1979, c. 701, §11 (AMD).]

4-A. Investigative officer. "Investigative officer" has the same meaning as in Title 34-A, section 1001, subsection 10-A.
[PL 2013, c. 80, §1 (RPR).]

4-B. Jail investigative officer. "Jail investigative officer" means an employee of a jail designated by the jail administrator as having the authority to conduct investigations of crimes relating to the security or orderly management of the jail and engage in any other activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act.
[PL 2015, c. 470, §7 (AMD).]

5. Oral communications. "Oral communications" means any oral communications uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.
[PL 1973, c. 561 (NEW).]

6. Person. "Person" means any individual, partnership, association, joint stock company, trust or corporation, or any other legal entity, whether or not any of the foregoing is an officer, agent or employee of the United States, a state or a political subdivision of a state.
[PL 1973, c. 561 (NEW).]

7. Wire communication. "Wire communication" means any communication made in whole or in part through the use of facilities for transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception.
[PL 1973, c. 561 (NEW).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1979, c. 701, §11 (AMD). PL 1987, c. 680, §1 (AMD). PL 1997, c. 361, §§1,2 (AMD). PL 2011, c. 507, §§1-3 (AMD). PL 2013, c. 80, §1 (AMD). PL 2013, c. 267, Pt. B, §5 (AMD). PL 2015, c. 470, §§5-7 (AMD). PL 2021, c. 365, §§1, 2 (AMD). PL 2021, c. 365, §37 (AFF).

§710. Offenses

1. Interception, oral communications prohibited. Any person, other than an employee of a communication common carrier, a law enforcement officer, an investigative officer, another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011 or a jail investigative officer or a jail employee acting at the direction of a jail investigative officer, carrying out practices otherwise permitted by this chapter, who intentionally or knowingly intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept any wire or oral communication is guilty of a Class C crime.
[PL 2013, c. 80, §2 (AMD).]

2. Editing of tape recordings in judicial proceedings prohibited. Any person who knowingly or intentionally edits, alters or tampers with any tape, transcription or other sound recording, or knows of such editing, altering or tampering, and presents that recording in any judicial proceeding or proceeding under oath, without fully indicating the nature of the changes made and the original state of the recording, is guilty of a Class C crime.
[PL 1979, c. 663, §96 (AMD).]

3. Disclosure, or use of wire or oral communications prohibited. A person is guilty of a Class C crime if he:

A. Intentionally or knowingly discloses or attempts to disclose to any person the contents of any wire or oral communication, knowing that the information was obtained through interception; or [PL 1979, c. 663, §97 (RPR).]

B. Intentionally or knowingly uses or attempts to use the contents of any wire or oral communication, knowing that the information was obtained through interception. [PL 1979, c. 663, §97 (RPR).]

[PL 1979, c. 663, §97 (RPR).]

4. Duty to report. Any communications common carrier shall promptly report to the Attorney General any facts coming to its attention in the conduct of its business which may indicate a possible violation of this section and such carrier shall adopt reasonable rules to assure compliance with this subsection, provided such carrier shall not be liable to any person who may claim an injury arising out of any such report, if made in good faith. Any person violating this subsection shall be subject to a civil penalty not to exceed $5,000, payable to the State, to be recovered in a civil action.
[PL 1979, c. 663, §98 (AMD).]

5. Possession of interception devices prohibited. A person, other than an employee of a communication common carrier, a law enforcement officer, an investigative officer, another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011 or a jail investigative officer or a jail employee acting at the direction of a jail investigative officer, carrying out practices otherwise permitted by this chapter, who has in that person's possession any device, contrivance, machine or apparatus designed or commonly used for intercepting wire or oral communications is guilty of a Class C crime.
[PL 2013, c. 80, §3 (AMD).]

6. Sale of interception devices prohibited. A person who sells, exchanges, delivers, barters, gives or furnishes or possesses with an intent to sell any device, contrivance, machine or apparatus designed or commonly used for the interception of wire or oral communications as defined in this chapter is guilty of a Class B crime. This subsection shall not include devices manufactured under written contract for sale to common carriers, law enforcement agencies and the Department of Corrections, provided that the production of any such device shall not have commenced prior to the signing of the contract by both parties.
[PL 1987, c. 680, §4 (AMD).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1979, c. 663, §§95-100 (AMD). PL 1987, c. 680, §§2-4 (AMD). PL 2013, c. 80, §§2, 3 (AMD).

§711. Civil remedy

Any party to a conversation intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses or uses such communications and shall be entitled to recover from any such persons: [PL 1973, c. 561 (NEW).]

1. Damages. Actual damages, but not less than liquidated damages, computed at the rate of $100 per day for each day of violation; and
[PL 1979, c. 663, §101 (AMD).]

2. Attorney's fee. A reasonable attorney's fee and other litigation disbursements reasonably incurred.
[PL 1973, c. 561 (NEW).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1979, c. 663, §101 (AMD).

§712. Exceptions

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Switchboard operators, communication common carrier agent. It is not a violation of this chapter for an operator of a switchboard or an officer, employee or agent of any communication common carrier, as defined in this chapter, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, provided that the communication common carriers shall not utilize service for observing or random monitoring, except for mechanical or service quality control checks, nor shall any such officer, employee or agent use or disclose to another the contents as defined in this chapter of the communication so intercepted.
[PL 1987, c. 680, §5 (NEW).]

2. (TEXT EFFECTIVE UNTIL 1/01/22) Investigative officers. It is not a violation of this chapter for an investigative officer, or for another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; while engaged in any activity that is related to the administration of juvenile justice; or while engaged in any activity that is related to the administration of juvenile criminal justice if:

A. Either the sender or receiver of that communication is a person residing in an adult or juvenile correctional facility administered by the Department of Corrections; and [PL 2009, c. 93, §1 (AMD).]

B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:

(1) Providing the resident with a written notification statement;

(2) Posting written notification next to every telephone at the facility that is subject to monitoring; and

(3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. [PL 1997, c. 361, §3 (AMD).]

C. [PL 1997, c. 361, §3 (RP).]

This subsection does not authorize any interference with the attorney-client privilege.
[PL 2015, c. 470, §8 (AMD).]

2. (TEXT EFFECTIVE 1/01/22) Investigative officers. It is not a violation of this chapter for an investigative officer, or for another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; or while engaged in any activity that is related to the administration of juvenile justice if:

A. Either the sender or receiver of that communication is a person residing in an adult or juvenile correctional facility administered by the Department of Corrections; and [PL 2009, c. 93, §1 (AMD).]

B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:

(1) Providing the resident with a written notification statement;

(2) Posting written notification next to every telephone at the facility that is subject to monitoring; and

(3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. [PL 1997, c. 361, §3 (AMD).]

C. [PL 1997, c. 361, §3 (RP).]

This subsection does not authorize any interference with the attorney-client privilege.
[PL 2021, c. 365, §3 (AMD); PL 2021, c. 365, §37 (AFF).]

3. Jail investigative officer. It is not a violation of this chapter for a jail investigative officer, as defined in this chapter, or for a jail employee acting at the direction of a jail investigative officer to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act if:

A. Either the sender or the receiver of that communication is a person residing in an adult section of the jail; and [PL 2011, c. 507, §5 (AMD).]

B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:

(1) Providing the resident with a written notification statement;

(2) Posting written notification next to every telephone at the jail that is subject to monitoring; and

(3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. [PL 1997, c. 361, §4 (NEW).]

This subsection does not authorize any interference with the attorney-client privilege.
[PL 2015, c. 470, §9 (AMD).]

4. Disclosure to another state agency. It is not a violation of this chapter for the contents of an interception of any oral communication or wire communication that has been legally obtained pursuant to subsection 2 or 3 to be disclosed to a state agency if related to the statutory functions of that agency.
[PL 2011, c. 507, §6 (NEW).]

SECTION HISTORY

PL 1973, c. 561 (NEW). PL 1973, c. 788, §61 (AMD). PL 1979, c. 701, §12 (AMD). PL 1987, c. 680, §5 (RPR). PL 1995, c. 182, §1 (AMD). PL 1997, c. 361, §§3,4 (AMD). PL 2009, c. 93, §1 (AMD). PL 2011, c. 507, §§4-6 (AMD). PL 2013, c. 80, §4 (AMD). PL 2015, c. 470, §§8, 9 (AMD). PL 2021, c. 365, §3 (AMD). PL 2021, c. 365, §37 (AFF).

§713. Evidence

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

The contents of an interception are not admissible in court, except that: [PL 2011, c. 507, §7 (RPR).]

1. Contents obtained under the laws of another jurisdiction. The contents of an interception of any oral communication or wire communication that has been legally obtained under the laws of another jurisdiction in which the interception occurred are admissible in the courts of this State, subject to the Maine Rules of Evidence; and
[PL 2011, c. 507, §7 (NEW).]

2. (TEXT EFFECTIVE UNTIL 1/01/22) Contents obtained under this chapter. The contents of an interception of any oral communication or wire communication that has been legally obtained pursuant to section 712, subsection 2 or 3 are admissible in the courts of this State, subject to the Maine Rules of Evidence, if related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; the administration of juvenile justice; the administration of juvenile criminal justice; or the statutory functions of a state agency.
[PL 2015, c. 470, §10 (AMD).]

2. (TEXT EFFECTIVE 1/01/22) Contents obtained under this chapter. The contents of an interception of any oral communication or wire communication that has been legally obtained pursuant to section 712, subsection 2 or 3 are admissible in the courts of this State, subject to the Maine Rules of Evidence, if related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; the administration of juvenile justice; or the statutory functions of a state agency.
[PL 2021, c. 365, §4 (AMD); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 1979, c. 701, §13 (NEW). PL 1983, c. 379 (AMD). PL 1995, c. 182, §2 (AMD). PL 1997, c. 361, §5 (AMD). PL 2011, c. 507, §7 (RPR). PL 2015, c. 470, §10 (AMD). PL 2021, c. 365, §4 (AMD). PL 2021, c. 365, §37 (AFF).

CHAPTER 103

COMPLAINTS

§751. Sufficiency of indictment for murder or manslaughter

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§752. Owner of property as used in indictment

In an offense in any way relating to real or personal estate, it is sufficient and not a variance if it is proved at the trial that, when the offense was committed, the actual or constructive possession of or the general or special property in the whole of such estate or in any part thereof was in the person or community alleged in the indictment to be the owner thereof.

§753. General allegation of intent to defraud sufficient

When an intent to defraud is necessary to constitute an offense, it is sufficient to allege generally in the indictment an intent to defraud. If there appears on trial an intent to defraud the United States, any state, county, town, person or corporation, it is sufficient.

§754. Variance; amendments

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §26 (RP).

§755. Complaints and indictments not quashed for technicalities nor unimportant defects in venires

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §26 (RP).

§756. Recitation of ordinance or bylaws

In any prosecution before the District Court for violation of an ordinance or bylaw of a city or town, or of any bylaw of a village corporation or local health officer, it shall not be necessary to recite such ordinance or bylaw in the complaint, or to allege the offense more particularly than in prosecutions under a general statute.

§757. Allegation of prior conviction when sentenced enhanced; procedure

(REPEALED)

SECTION HISTORY

PL 1979, c. 252 (AMD). PL 1981, c. 679, §1 (RPR). PL 1999, c. 196, §1 (RP).

CHAPTER 105

EXAMINATION, ARRAIGNMENT AND RECOGNIZANCE

SUBCHAPTER 1

GENERAL PROVISIONS

§801. Examination of persons arrested

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §27 (RP).

§802. Discharge on recognizance in county of arrest

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §27 (RP).

§803. Adjournment of examination on recognizance or commitment

(REPEALED)

SECTION HISTORY

PL 1965, c. 19, §5 (AMD). PL 1965, c. 356, §27 (RP).

§804. Failure to appear

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §27 (RP).

§805. Scope of examination

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §27 (RP).

§806. Complaint adjudged frivolous or malicious; appeal

If following an examination, it appears that no offense has been committed or that there is not probable cause to charge the accused, on motion of the defendant the judge shall render judgment whether or not the complaint is frivolous or malicious. If the judge judges the complaint to be frivolous or malicious, he shall order the complainant to pay the costs of prosecution and shall issue execution in favor of the county and against the complainant for such sum, and may receive and pay over said costs to the county treasurer for the use of the county, and if the same are not paid, the judge shall return said execution to the county commissioners, for the use of the county. The complainant has the same right of appeal as in civil cases. [PL 1965, c. 356, §28 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §28 (AMD).

§807. Prisoner not asked how to be tried; dilatory pleas verified

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §29 (RP).

§808. Prisoners; bail or discharge if no indictment

(REPEALED)

SECTION HISTORY

PL 1987, c. 758, §12 (RP).

§809. Standing mute

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §30 (RP).

§810. Copy of indictment furnished; witnesses; assignment of counsel; compensation

The clerk shall, without charge, furnish to any person indicted for a crime punishable by imprisonment in the State Prison a copy of the indictment. If he is indicted for a crime punishable by imprisonment for life, the clerk shall furnish a copy of the indictment, a list of the jurors returned and process to obtain witnesses, to be summoned and paid at the expense of the State; if for a crime punishable by imprisonment for a term of years, witnesses shall be summoned and paid at the expense of the State only by order of the court under such circumstances as the Supreme Judicial Court shall by rule provide. Before arraignment, competent defense counsel shall be assigned by the Superior or District Court, unless waived by the accused after being fully advised of his rights by the court, in all criminal cases charging a felony, when it appears to the court that the accused has not sufficient means to employ counsel. The Superior or District Court may in any criminal case appoint counsel when it appears to the court that the accused has not sufficient means to employ counsel. The District Court shall order reasonable compensation to be paid to counsel by the District Court for such services in the District Court. The Superior Court shall order reasonable compensation to be paid to counsel out of the state appropriation for such services in the Superior Court. [P&SL 1975, c. 147, Pt. C, §14 (AMD).]

SECTION HISTORY

PL 1965, c. 352, §§1,2 (AMD). PL 1965, c. 356, §31 (AMD). PL 1971, c. 544, §50 (AMD). P&SL 1975, c. 147, §C14 (AMD).

§811. Waiver of indictment; petition; information; notification of rights; additional charges; arraignment in vacation

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §32 (RP).

§812. Negotiated pleas

1. Legislative intent and findings. The Legislature finds that there is citizen dissatisfaction with plea bargaining that has resulted in some criticism of the criminal justice process. The Legislature further finds that part of the dissatisfaction is caused because victims of crimes and law enforcement officers who respond to those crimes have no subsequent contact with the cases as they proceed through the courts for judicial disposition. Victims and law enforcement officers are many times not informed by prosecutors of plea agreements that are to be submitted to the court for approval or rejection under existing Maine Rules of Unified Criminal Procedure. It is the intent of this section to alleviate these expressions of citizen dissatisfaction and to promote greater understanding by prosecutors of citizens' valid concerns. This is most likely to be accomplished by citizens and law enforcement officers being informed of the results of plea negotiations before they are submitted to the courts. This notification will in no way affect the authority of the court to accept, reject or modify the terms of the plea agreement.
[PL 2015, c. 431, §8 (AMD).]

2. Notification to victims and law enforcement officers. Whenever practicable, before submitting a negotiated plea to the court, the attorney for the State shall make a good faith effort to inform the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime or a violation of Title 17-A, chapter 9, 11, 12 or 13 and, with respect to victims, shall comply with Title 17-A, section 2102, subsection 1, paragraphs A and B relative to informing victims of the details of and their right to comment on a plea agreement.
[PL 2019, c. 113, Pt. C, §30 (AMD).]

SECTION HISTORY

PL 1981, c. 685 (NEW). PL 1995, c. 680, §1 (AMD). PL 2007, c. 475, §4 (AMD). PL 2015, c. 431, §8 (AMD). PL 2019, c. 113, Pt. C, §30 (AMD).

§813. State's attorney present at certain proceedings

(REPEALED)

SECTION HISTORY

PL 1983, c. 795, §1 (NEW). PL 1983, c. 862, §43 (RPR). PL 1987, c. 758, §13 (RP).

§814. Opportunity for State to present relevant information

(REPEALED)

SECTION HISTORY

PL 1983, c. 795, §1 (NEW). PL 1983, c. 862, §44 (AMD). PL 1987, c. 758, §14 (RP).

§815. Communication between prosecutor and unrepresented defendant

1. Requirements for communication. To ensure that all waivers of the right to counsel are made knowingly, voluntarily and intelligently, a prosecutor may not communicate with an unrepresented defendant unless:

A. The defendant has been informed of the defendant's right to court-appointed counsel; [PL 2021, c. 480, §1 (NEW).]

B. The court has provided to the defendant a statement of:

(1) The substance of the charges against the defendant;

(2) The defendant's right to retain counsel, to request the assignment of counsel and to be allowed a reasonable time and opportunity to consult counsel before entering a plea;

(3) The defendant's right to remain silent and that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant;

(4) The maximum possible sentence and any applicable mandatory minimum sentence; and

(5) The defendant's right to trial by jury; and [PL 2021, c. 480, §1 (NEW).]

C. The defendant has executed a written waiver of the right to counsel in each prosecution. [PL 2021, c. 480, §1 (NEW).]

[PL 2021, c. 480, §1 (NEW).]

2. Exception. Notwithstanding subsection 1, a prosecutor may communicate with an unrepresented defendant who has not executed a written waiver of the right to counsel to offer the defendant an opportunity to participate in an established precharge diversion program the successful completion of which results in the prosecutor not prosecuting the charge or charges against the defendant.

[PL 2021, c. 480, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 480, §1 (NEW).

SUBCHAPTER 2

COMMITMENT OR BINDING OVER

§851. Sureties to make statement of property

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §33 (AMD). PL 1983, c. 795, §2 (AMD). PL 1983, c. 862, §45 (AMD). PL 1987, c. 758, §15 (RP).

§852. Responsibility of sureties

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §34 (AMD). PL 1987, c. 758, §16 (RP).

§853. Judge to recognize material witnesses, or commit them

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §35 (RP).

§854. Recognizance for minor

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §35 (RP).

§855. Bail after commitment

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §36 (AMD). PL 1987, c. 758, §17 (RP).

§856. Return of examinations and recognizances

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §37 (RP).

SUBCHAPTER 3

DISMISSAL

§891. Dismissal on satisfaction of private injury

1. General rule. When a person is charged with a Class D or Class E crime, or is the subject of a juvenile petition alleging a juvenile crime that would constitute a Class D or Class E crime if the juvenile involved were an adult, for which the party injured has a remedy by civil action, if the injured party appears before the court and in writing acknowledges satisfaction for the injury, the court, on payment of all costs, may dismiss the charge.
[PL 2007, c. 536, §1 (NEW).]

2. Exceptions. This section does not apply to the crime or juvenile crime of refusing to submit to arrest or detention as defined by Title 17-A, section 751-A, to any crime or juvenile crime in which the alleged victim is a family or household member as defined in Title 19-A, chapter 101 or to any juvenile who has previously been adjudicated of a juvenile crime or who has previously obtained relief under this section with respect to a juvenile petition.
[PL 2007, c. 536, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 356, §38 (AMD). PL 1979, c. 663, §102 (AMD). PL 1989, c. 862, §2 (AMD). PL 1995, c. 694, §D22 (AMD). PL 1995, c. 694, §E2 (AFF). PL 1999, c. 52, §1 (AMD). PL 2007, c. 277, §1 (AMD). PL 2007, c. 536, §1 (RPR).

§892. Bar to civil action

An order of dismissal entered pursuant to section 891 bars all further remedy by civil action for such an injury. [PL 2007, c. 536, §2 (RPR).]

SECTION HISTORY

PL 1965, c. 356, §39 (AMD). RR 2007, c. 1, §7 (COR). PL 2007, c. 536, §2 (RPR).

SUBCHAPTER 4

REMEDIES ON DEFAULT; DISCHARGE OF BAIL

§931. Forfeiture of bail; enforcement

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §40 (RPR). PL 1987, c. 758, §18 (RP).

§932. Bail exonerated by surrender before default upon recognizance

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§933. Court may remit penalty; sureties may surrender principal in court

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§934. Liquor cases excepted

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§935. Action on any recognizance dismissed

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§936. Unessential omissions and defects in recognizances not fatal

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§937. Personal recognizance and cash bail

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§938. Surrender before default

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§939. Court may order deposit forfeited

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§940. Surrender after default

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §41 (RP).

§941. Private claims paid out of forfeited bail

When the penalty of a bond to prosecute an appeal is paid to the clerk of the court or county treasurer, the court may award to any person therefrom the same sum that he would have been entitled to receive from the penalty for the offense, if paid on conviction and not on forfeiture of bail. [PL 1965, c. 356, §42 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §42 (AMD).

§942. Release on personal recognizance or bond

(REPEALED)

SECTION HISTORY

PL 1973, c. 760 (NEW). PL 1975, c. 143, §§1-3 (AMD). PL 1977, c. 696, §167 (AMD). PL 1979, c. 257, §2 (AMD). PL 1979, c. 663, §§103,104 (AMD). PL 1983, c. 429, §§1,2 (AMD). PL 1983, c. 795, §§3,4 (AMD). PL 1983, c. 862, §46 (AMD). PL 1987, c. 758, §19 (RP).

CHAPTER 105-A

MAINE BAIL CODE

SUBCHAPTER 1

GENERAL PROVISIONS

§1001. Title

This chapter shall be known and may be cited as the "Maine Bail Code." [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1002. Legislative findings; statement of purpose

The Legislature finds that the statutory provisions relative to bail for a defendant in a criminal case are scattered throughout numerous provisions of Maine's statutory law and that many such statutory provisions have not been updated to reflect the modern development of the law. The Legislature finds that the Supreme Judicial Court sitting as the Law Court has recently decided cases interpreting the various constitutional provisions dealing with bail for a defendant in a criminal proceeding and has provided guidance as to the proper interpretation of those constitutional provisions. The Legislature finds that it is in the interest of the State and of individual criminal defendants that the law relative to bail be incorporated into a modern, integrated and consistent code that will provide a comprehensive statement of the law of bail. It is the purpose and intent of this chapter to consolidate and clarify the

various provisions of Maine law dealing with the subject of bail for a defendant in a criminal case. [PL 1987, c. 758, §20 (NEW).]

It is the purpose and intent of this chapter that bail be set for a defendant in order to reasonably ensure the appearance of the defendant as required, to otherwise reasonably ensure the integrity of the judicial process and, when applicable, to reasonably ensure the safety of others in the community. It is also the purpose and intent of this chapter that the judicial officer consider, relative to crimes bailable as of right preconviction, the least restrictive release alternative that will reasonably ensure the attendance of the defendant as required, or otherwise reasonably ensure the integrity of the judicial process. Finally, it is also the intent and purpose of this chapter that a defendant, while at liberty on bail, refrain from committing new crimes. [PL 1997, c. 543, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §1 (AMD). PL 1997, c. 543, §§1,2 (AMD). PL 1997, c. 585, §1 (AMD).

§1003. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1987, c. 758, §20 (NEW).]

1. Bail. "Bail" is defined as follows.

A. In the preconviction context, "bail" means the obtaining of the release of the defendant upon an undertaking that the defendant shall appear at the time and place required and that the defendant shall conform to each condition imposed in accordance with section 1026 that is designed to ensure that the defendant shall refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community. [PL 2007, c. 374, §1 (AMD).]

B. In the post-conviction context, "bail" means the obtaining of the release of the defendant upon an undertaking that the defendant shall appear and surrender into custody at the time and place required and that the defendant shall conform to each condition imposed in accordance with section 1051 that is designed to ensure that the defendant refrains from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community. [PL 2007, c. 374, §1 (AMD).]

[PL 2007, c. 374, §1 (AMD).]

2. Court. "Court" means any Justice of the Supreme Judicial Court or Superior Court or any active retired justice and any District Court Judge or active retired judge when assigned under Title 4, section 157-C.

[PL 1999, c. 547, Pt. B, §38 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

3. Crime bailable as of right preconviction. "Crime bailable as of right preconviction" means a crime for which, under the Constitution of Maine, Article I, Section 10, a defendant has an absolute right to have bail set at the preconviction stage of any criminal proceeding.

[PL 1987, c. 758, §20 (NEW).]

3-A. Crime involving domestic violence. "Crime involving domestic violence" means:

A. As defined in Title 17-A, a crime of domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct; and [PL 2011, c. 341, §1 (NEW).]

B. A violation of a protective order under Title 19-A, section 4011, the alleged victim of which is a family or household member as defined in Title 19-A, section 4002, subsection 4. [PL 2011, c. 341, §1 (NEW).]

[PL 2011, c. 341, §1 (NEW).]

4. Crime bailable only as a matter of discretion preconviction. "Crime bailable only as a matter of discretion preconviction" means a formerly capital offense for which, pursuant to a Harnish bail proceeding, a capital defendant's conditional constitutional right to have bail set at the preconviction stage of a criminal proceeding has been extinguished.
[PL 1987, c. 758, §20 (NEW).]

4-A. Ensure the safety of others in the community. "Ensure the safety of others in the community," when used in the context of the granting or denial of bail, means protecting community members, other than those already protected under subsection 5, from the potential danger posed by the defendant to a specific person or to persons in the community generally.
[PL 2007, c. 374, §2 (NEW).]

5. Ensure the integrity of the judicial process. To "ensure the integrity of the judicial process," when used in the context of the granting or denial of bail, means safeguarding the role of the courts in adjudicating the guilt or innocence of defendants by ensuring the presence of the defendant in court and otherwise preventing the defendant from obstructing or attempting to obstruct justice by threatening, injuring or intimidating a victim, prospective witness, juror, attorney for the State, judge, justice or other officer of the court.

A. [PL 1997, c. 585, §2 (RP).]

B. [PL 1997, c. 585, §2 (RP).]
[PL 1997, c. 585, §2 (RPR).]

5-A. Failure to appear. "Failure to appear" includes a failure to appear at the time or place required by a release order and the failure to surrender into custody at the time and place required by a release order or by the Maine Rules of Unified Criminal Procedure, Rule 32(a) and Rule 38(d).
[PL 2015, c. 431, §9 (AMD).]

6. Formerly capital offenses. "Formerly capital offenses" means crimes which have been denominated capital offenses since the adoption of the Constitution of Maine.
[PL 1987, c. 758, §20 (NEW).]

7. Harnish bail proceeding. "Harnish bail proceeding" means a preconviction bail proceeding in which the State is offered the opportunity to obtain a judicial finding of probable cause that the defendant has committed a formerly capital offense, and the defendant, at the same proceeding, is afforded the opportunity to know and rebut the case against the defendant.
[PL 1987, c. 758, §20 (NEW).]

8. Judicial officer. "Judicial officer" includes the court, as defined in subsection 2, and a bail commissioner.
[PL 1987, c. 758, §20 (NEW).]

8-A. New criminal conduct. "New criminal conduct" refers to criminal activity by a defendant occurring after bail has been set.
[PL 1997, c. 543, §6 (NEW).]

9. Post-conviction. "Post-conviction" means any point in a criminal proceeding after a verdict or finding of guilty or after the acceptance of a plea of guilty or nolo contendere.
[PL 1995, c. 356, §2 (AMD).]

10. Preconviction. "Preconviction" means any point in a criminal proceeding before a verdict in the context of a jury trial or finding of guilty in the context of a jury-waived trial or before the acceptance of a plea of guilty or nolo contendere.
[PL 1995, c. 356, §2 (AMD).]

11. Unified Criminal Docket. "Unified Criminal Docket" means the unified criminal docket established by the Supreme Judicial Court.

[PL 2015, c. 431, §10 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §2 (AMD). PL 1995, c. 356, §§1,2 (AMD). PL 1997, c. 543, §§3-6 (AMD). PL 1997, c. 585, §2 (AMD). PL 1999, c. 547, §B38 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 15, §1 (AMD). PL 2007, c. 374, §§1, 2 (AMD). PL 2011, c. 341, §1 (AMD). PL 2015, c. 431, §§9, 10 (AMD).

§1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229, post-conviction review proceedings under sections 2121 to 2132, probation revocation proceedings under Title 17-A, sections 1809 to 1814, supervised release revocation proceedings under Title 17-A, section 1883 or administrative release revocation proceedings under Title 17-A, sections 1851 to 1857, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively. This chapter does not apply to a person arrested for a juvenile crime as defined in section 3103 or a person under 18 years of age who is arrested for a crime defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section 3103. [PL 2019, c. 113, Pt. C, §31 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1997, c. 317, §A1 (AMD). PL 1999, c. 788, §1 (AMD). PL 2003, c. 711, §A3 (AMD). PL 2005, c. 507, §4 (AMD). PL 2007, c. 552, §1 (AMD). PL 2011, c. 336, §1 (AMD). PL 2015, c. 431, §11 (AMD). PL 2019, c. 113, Pt. C, §31 (AMD).

SUBCHAPTER 2

PRECONVICTION BAIL

§1021. Superior Court and Supreme Judicial Court Justices

Any Justice of the Supreme Judicial Court or Superior Court or any active retired justice shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1022. District Court Judges

Any District Court Judge or active retired judge shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter. When the crime upon examination is found to be one not within the jurisdiction of the District Court, the judge shall set preconviction bail for the defendant to appear before the Superior Court in accordance with this chapter. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1023. Bail commissioners

1. Authority. A bail commissioner, appointed under this section, shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter, provided that a bail commissioner may not set preconviction bail for a defendant:

A. Who is charged with murder; [PL 1987, c. 758, §20 (NEW).]

B. If the attorney for the State requests a Harnish bail proceeding for a defendant charged with any other formerly capital offense; or [PL 1987, c. 758, §20 (NEW).]

C. As otherwise provided in subsection 4. [PL 1987, c. 758, §20 (NEW).]
[PL 1987, c. 758, §20 (NEW).]

2. Appointment. The Chief Judge of the District Court may appoint one or more residents of the State as bail commissioners. A bail commissioner serves at the pleasure of the Chief Judge of the District Court, but no term for which a bail commissioner is appointed may exceed 5 years. The Chief Judge of the District Court shall require bail commissioners to complete the necessary training requirements set out in this section. Bail commissioners have the powers of notaries public to administer oaths or affirmations in carrying out their duties.
[PL 1995, c. 356, §3 (AMD).]

3. Immunity from liability. A person appointed and serving as a bail commissioner is immune from any civil liability, as are employees of governmental entities under the Maine Tort Claims Act, Title 14, chapter 741 for acts performed within the scope of the bail commissioner's duties.
[PL 1989, c. 617, §3 (AMD).]

4. Limitations on authority. A bail commissioner may not:

A. Set preconviction bail for a defendant confined in jail or held under arrest by virtue of any order issued by a court in which bail has not been authorized; [PL 2001, c. 686, Pt. A, §1 (NEW).]

B. Change bail set by a court; [PL 2011, c. 341, §2 (AMD).]

B-1. Set preconviction bail for a defendant alleged to have committed any of the following offenses against a family or household member as defined in Title 19-A, section 4002, subsection 4:

(1) A violation of a protection from abuse order provision set forth in Title 19-A, section 4006, subsection 5, paragraph A, B, C, D, E or F or Title 19-A, section 4007, subsection 1, paragraph A, A-1, A-2, B, C, D, E or G;

(2) Any Class A, B or C crime under Title 17-A, chapter 9;

(3) Any Class A, B or C sexual assault offense under Title 17-A, chapter 11;

(4) Kidnapping under Title 17-A, section 301;

(5) Criminal restraint under Title 17-A, section 302, subsection 1, paragraph A, subparagraph (4) or Title 17-A, section 302, subsection 1, paragraph B, subparagraph (2);

(6) Domestic violence stalking that is a Class C crime under Title 17-A, section 210-C, subsection 1, paragraph B;

(7) Domestic violence criminal threatening that is a Class C crime under Title 17-A, section 209-A, subsection 1, paragraph B or domestic violence criminal threatening that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1604, subsection 5, paragraph A;

(8) Domestic violence terrorizing that is a Class C crime under Title 17-A, section 210-B, subsection 1, paragraph B or domestic violence terrorizing that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1604, subsection 5, paragraph A; or

(9) Domestic violence reckless conduct that is a Class C crime under Title 17-A, section 211-A, subsection 1, paragraph B or domestic violence reckless conduct that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1604, subsection 5, paragraph A; [PL 2019, c. 113, Pt. C, §32 (AMD).]

C. In a case involving domestic violence, set preconviction bail for a defendant before making a good faith effort to obtain from the arresting officer, the responsible prosecutorial office, a jail employee or other law enforcement officer:

(1) A brief history of the alleged abuser;

(2) The relationship of the parties;

(3) The name, address, phone number and date of birth of the victim;

(4) Existing conditions of protection from abuse orders, conditions of bail and conditions of probation;

(5) Information about the severity of the alleged offense; and

(6) Beginning no later than January 1, 2015, the results of 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 conducted on the alleged abuser when the results are available; [PL 2013, c. 424, Pt. A, §6 (RPR).]

D. Set preconviction or post-conviction bail for a violation of condition of release pursuant to section 1092, except as provided in section 1092, subsection 4; [PL 2015, c. 436, §1 (AMD).]

E. Set preconviction bail using a condition of release not included in every order for pretrial release without specifying a court date within 8 weeks of the date of the bail order; [PL 2015, c. 436, §2 (AMD).]

F. Set preconviction bail for crimes involving allegations of domestic violence without specifying a court date within 5 weeks of the date of the bail order; or [PL 2015, c. 436, §3 (NEW).]

G. Notwithstanding section 1026, subsection 3, paragraph A, subparagraph (9-A), impose a condition of preconviction bail that a defendant submit to random search with respect to a prohibition on the possession, use or excessive use of alcohol or illegal drugs. [PL 2015, c. 436, §3 (NEW).]

[PL 2019, c. 113, Pt. C, §32 (AMD).]

5. Fees. A bail commissioner is entitled to receive a fee not to exceed $60 for the charges pursuant to which the defendant is presently in custody, unless the defendant lacks the present financial ability to pay the fee. A defendant presently in custody who is qualified to be released upon personal recognizance or upon execution of an unsecured appearance bond, whether or not accompanied by one or more conditions of bail that have been set by a judicial officer, but who in fact lacks the present financial ability to pay a bail commissioner fee, must nonetheless be released upon personal recognizance or upon execution of an unsecured appearance bond. A bail commissioner may not refuse to examine a person to determine the person's eligibility for bail, set bail, prepare the personal recognizance or bond or take acknowledgement of the person in custody because the person in custody lacks the present financial ability to pay a bail commissioner fee. The bail commissioner shall submit such forms as the Judicial Department directs to verify the amount of fees received under this subsection. The sheriff of the county in which the defendant is detained may create a fund for the distribution by the sheriff or the sheriff's designee for the payment in whole or in part of the $60 bail commissioner fee for those defendants who do not have the financial ability to pay that fee.

A bail commissioner fee under this subsection is not a financial condition of release for the purposes of section 1026, subsection 3, paragraph B-1.

[PL 2021, c. 397, §1 (AMD).]

6. Attorneys-at-law. No attorney-at-law who has acted as bail commissioner in any proceeding may act as attorney for or on behalf of any defendant for whom that attorney-at-law has taken bail in any such proceeding, nor may any attorney-at-law who has acted as attorney for a defendant in any offense act as bail commissioner in any proceeding arising out of the offense with which the defendant is charged.
[PL 1987, c. 758, §20 (NEW).]

7. Mandatory training. As a condition of appointment and continued service, a bail commissioner must successfully complete a bail training program, as prescribed and scheduled by the Chief Judge of the District Court, not later than one year following appointment. The Maine Criminal Justice Academy shall provide assistance to the Chief Judge of the District Court in establishing an appropriate training program for bail commissioners. The program shall include instruction on the provisions of this chapter, the relevant constitutional provisions on bail and any other matters pertinent to bail that the Chief Judge of the District Court considers appropriate and necessary. The Chief Judge of the District Court may establish a continuing education program for bail commissioners.
[PL 1989, c. 147, §1 (AMD).]

8. Bail commissioners in indigent cases. The Chief Judge of the District Court may adopt rules requiring a bail commissioner to appear and set bail regardless of whether the defendant is indigent and unable to pay the bail commissioner's fee. The Chief Judge of the District Court may also adopt rules governing the manner in which a bail commissioner is paid in the event an indigent person is released on bail and is unable to pay the bail commissioner's fee.
[PL 2011, c. 214, §3 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §3 (AMD). PL 1989, c. 147, §1 (AMD). PL 1989, c. 185 (AMD). PL 1989, c. 617, §3 (AMD). PL 1993, c. 675, §B12 (AMD). PL 1995, c. 356, §3 (AMD). PL 1999, c. 15, §1 (AMD). PL 2001, c. 686, §A1 (AMD). PL 2009, c. 23, §1 (AMD). PL 2011, c. 214, §3 (AMD). PL 2011, c. 214, §6 (AFF). PL 2011, c. 341, §2 (AMD). PL 2011, c. 640, Pt. A, §§1, 2 (AMD). PL 2011, c. 680, §1 (AMD). PL 2013, c. 424, Pt. A, §6 (AMD). PL 2013, c. 519, §2 (AMD). PL 2015, c. 436, §§1-3 (AMD). PL 2019, c. 113, Pt. C, §32 (AMD). PL 2021, c. 397, §1 (AMD).

§1024. Clerks of court

Clerks of the District Court and clerks of the Superior Court, during the hours when the clerk's office is open for business and subject to the control of the District Court Judge or Superior Court Justice, may, without fee, take the personal recognizance of any defendant for appearance on a charge of a Class D or Class E crime. Nothing in this section may be construed to prohibit the appointment of any clerk of the District Court or the Superior Court as a bail commissioner, except that no fee may be charged by the clerk while the clerk's office is open for business. [PL 1987, c. 758, §20 (NEW).]

In any case when the District Judge or the Superior Court Justice has set bail for a defendant in a criminal case, the clerk of the District Court or of the Superior Court may, subject to the approval of the District Court Judge or Superior Court Justice, accept the bail, prepare the bond and take the acknowledgement of the defendant and sureties, if any, on the bond. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1025. Law enforcement officers

A law enforcement officer making a warrantless arrest under Title 17-A, section 15 may, without fee, take the personal recognizance of any defendant for appearance on a charge of a Class D or Class

E crime. If authorized, a law enforcement officer may, without fee, take the personal recognizance with deposit in accordance with Title 12, section 10353, subsection 2, paragraph C; and Title 12, section 9707. The law enforcement officer's authority under this section continues as long as the arrestee remains in the officer's custody. [PL 2003, c. 414, Pt. B, §28 (AMD); PL 2003, c. 614, §9 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1989, c. 704, §3 (AMD). PL 1991, c. 521 (AMD). PL 1991, c. 548, §A5 (AMD). PL 1991, c. 824, §A23 (RPR). PL 1995, c. 356, §4 (AMD). PL 1997, c. 678, §20 (AMD). PL 2001, c. 604, §20 (AMD). PL 2003, c. 414, §B28 (AMD). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF).

§1025-A. County jail employees

If a court issues an order that a defendant in custody be released, pending trial, on personal recognizance or upon execution of an unsecured appearance bond, whether or not accompanied by one or more conditions under section 1026, subsection 3, an employee of the county jail having custody of the defendant, if authorized to do so by the sheriff, may, without fee, prepare the personal recognizance or bond and take the acknowledgement of the defendant. [PL 2005, c. 541, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 541, §1 (NEW).

§1026. Standards for release for crime bailable as of right preconviction

1. In general. At the initial appearance before a judicial officer of a defendant in custody for a crime bailable as of right preconviction, the judicial officer may issue an order that, pending trial, the defendant be released:

A. On personal recognizance or upon execution of an unsecured appearance bond under subsection 2-A; [PL 2007, c. 374, §3 (AMD).]

B. On a condition or combination of conditions under subsection 3; or [PL 1997, c. 543, §7 (AMD).]

C. On personal recognizance or execution of an unsecured appearance bond, accompanied by one or more conditions under subsection 3. [PL 1997, c. 543, §7 (NEW).]

Every order for the pretrial release of any defendant must include a waiver of extradition by the defendant and the conditions that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders pursuant to Title 19, section 769 or Title 19-A, section 4011. [PL 2007, c. 374, §3 (AMD).]

2. Release on personal recognizance or unsecured appearance bond.

[PL 2007, c. 518, §2 (RP).]

2-A. Release on personal recognizance or unsecured appearance bond. The judicial officer shall order the pretrial release of the defendant on personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the judicial officer, unless, after consideration of the factors listed in subsection 4, the judicial officer determines that:

A. The release would not reasonably ensure the appearance of the defendant as required; [PL 2007, c. 374, §5 (NEW).]

B. The release would not reasonably ensure that the defendant would refrain from any new criminal conduct; [PL 2007, c. 374, §5 (NEW).]

C. The release would not reasonably ensure the integrity of the judicial process; or [PL 2007, c. 374, §5 (NEW).]

D. The release would not reasonably ensure the safety of others in the community. [PL 2007, c. 374, §5 (NEW).]

[PL 2007, c. 374, §5 (NEW).]

3. Release on conditions. Release on a condition or combination of conditions pursuant to subsection 1, paragraph B or C must be as provided in this subsection.

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines that the release described in subsection 2-A will not reasonably ensure the appearance of the defendant at the time and place required, will not reasonably ensure that the defendant will refrain from any new criminal conduct, will not reasonably ensure the integrity of the judicial process or will not reasonably ensure the safety of others in the community, the judicial officer shall order the pretrial release of the defendant subject to the least restrictive further condition or combination of conditions that the judicial officer determines will reasonably ensure the appearance of the defendant at the time and place required, will reasonably ensure that the defendant will refrain from any new criminal conduct, will reasonably ensure the integrity of the judicial process and will reasonably ensure the safety of others in the community. These conditions may include that the defendant:

(1) Remain in the custody of a designated person or organization agreeing to supervise the defendant, including a public official, public agency or publicly funded organization, if the designated person or organization is able to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. When it is feasible to do so, the judicial officer shall impose the responsibility upon the defendant to produce the designated person or organization. The judicial officer may interview the designated person or organization to ensure satisfaction of both the willingness and ability required. The designated person or organization shall agree to notify immediately the judicial officer of any violation of release by the defendant;

(2) Maintain employment or, if unemployed, actively seek employment;

(3) Maintain or commence an educational program;

(4) Abide by specified restrictions on personal associations, place of abode or travel;

(5) Avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family or household members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions;

(6) Report on a regular basis to a designated law enforcement agency or other governmental agency;

(7) Comply with a specified curfew;

(8) Refrain from possessing a firearm or other dangerous weapon;

(9) Refrain from the possession, use or excessive use of alcohol and from any use of illegal drugs. A condition under this subparagraph may be imposed only upon the presentation to the judicial officer of specific facts demonstrating the need for such condition;

(9-A) Submit to:

(a) A random search for possession or use prohibited by a condition imposed under subparagraph (8);

(a-1) A random search for possession or use prohibited by a condition imposed under subparagraph (9) if the defendant is a participant in a specialty court docket under Title 4, chapter 8, 8-A or 8-B, or any other specialty docket established by the Judicial Department,

or by agreement of the parties as part of a deferred disposition under Title 17-A, section 1902; or

(b) A search upon articulable suspicion for possession or use prohibited by a condition imposed under subparagraph (8) or (9);

(10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose;

(10-A) Enter and remain in a long-term residential facility for the treatment of substance use disorder;

(11) Execute an agreement to forfeit, in the event of noncompliance, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community and post with an appropriate court such evidence of ownership of the property or such percentage of the money as the judicial officer specifies;

(12) Execute a bail bond with sureties in such amount as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community;

(13) Return to custody for specified hours following release for employment, schooling or other limited purposes;

(15) Notify the court of any changes of address or employment;

(16) Provide to the court the name, address and telephone number of a designated person or organization that will know the defendant's whereabouts at all times;

(17) Inform any law enforcement officer of the defendant's condition of release if the defendant is subsequently arrested or summonsed for new criminal conduct;

(18) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community; and

(19) Participate in an electronic monitoring program, if available. [PL 2021, c. 397, §§2, 3 (AMD).]

B. The judicial officer may not impose a financial condition that, either alone or in combination with other conditions of bail, is in excess of that reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process or to ensure the safety of others in the community. [PL 2007, c. 518, §3 (RPR).]

B-1. Notwithstanding paragraph A, subparagraphs (11), (12) and (18) and paragraph B, a judicial officer may not impose a financial condition on a defendant for whom the highest class of crime charged is a Class E crime, except that a financial condition may be imposed on a defendant charged with a Class E crime:

(1) That is a violation of Title 17-A, chapter 11;

(2) That was committed against a family or household member as defined in Title 19-A, section 4002, subsection 4 or a dating partner as defined in Title 19-A, section 4002, subsection 3-A;

(3) That is a violation of a condition of release committed while the defendant is released on bail for a charge that involves: a violation of Title 17-A, chapter 11; a crime against a family or household member as defined in Title 19-A, section 4002, subsection 4; or a crime against a dating partner as defined in Title 19-A, section 4002, subsection 3-A;

(4) That is a violation of a condition of release premised on an allegation of new criminal conduct;

(5) When the defendant has failed to appear on the underlying Class E charge; or

(6) By stipulation. A financial condition imposed under this subparagraph may not exceed $5. [PL 2021, c. 397, §4 (NEW).]

C. Upon motion by the attorney for the State or the defendant and after notice and upon a showing of changed circumstances or upon the discovery of new and significant information, the court may amend the bail order to relieve the defendant of any condition of release, modify the conditions imposed or impose further conditions authorized by this subsection as the court determines to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. [PL 2007, c. 518, §3 (RPR).]

[PL 2021, c. 397, §§2-4 (AMD).]

4. Factors to be considered in release decision. In setting bail, the judicial officer shall, on the basis of an interview with the defendant, information provided by the defendant's attorney and information provided by the attorney for the State or an informed law enforcement officer if the attorney for the State is not available and other reliable information that can be obtained, take into account the available information concerning the following:

A. The nature and circumstances of the crime charged; [PL 1987, c. 758, §20 (NEW).]

B. The nature of the evidence against the defendant; and [PL 1987, c. 758, §20 (NEW).]

C. The history and characteristics of the defendant, including, but not limited to:

(1) The defendant's character and physical and mental condition;

(2) The defendant's family ties in the State;

(3) The defendant's employment history in the State;

(4) The defendant's financial resources, including the ability of the defendant to afford a financial condition imposed by the judicial officer;

(5) The defendant's length of residence in the community and the defendant's community ties;

(6) The defendant's past conduct;

(7) The defendant's criminal history, if any;

(8) The defendant's record concerning appearances at court proceedings;

(9) Whether, at the time of the current offense or arrest, the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of a sentence for an offense in this jurisdiction or another;

(9-A) Any evidence that the defendant poses a danger to the safety of others in the community, including the results of 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;

(10) Any evidence that the defendant has obstructed or attempted to obstruct justice by threatening, injuring or intimidating a victim or a prospective witness, juror, attorney for the State, judge, justice or other officer of the court;

(11) Whether the defendant has previously violated conditions of release, probation or other court orders, including, but not limited to, violating protection from abuse orders pursuant to former Title 19, section 769 or Title 19-A, section 4011;

(12) Whether the defendant is the person primarily responsible for the care of another person;

(13) Whether the defendant has a specific health care need, including a mental health care need, that is being met or would be better met outside of custody; and

(14) Whether being placed or remaining in custody would prevent the defendant from maintaining employment. [PL 2021, c. 397, §5 (AMD).]

[PL 2021, c. 397, §5 (AMD).]

5. Contents of release order. In a release order issued under subsection 2-A or 3, the judicial officer shall:

A. Include a written statement that sets forth:

(1) All the conditions to which the release is subject in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and

(2) If an agreement to forfeit money under subsection 3, paragraph A, subparagraph (11) or (12) is ordered, the reason the judicial officer has set the amount of money ordered to be forfeited under the agreement; and [PL 2021, c. 397, §6 (AMD).]

B. Advise the defendant of:

(1) The penalties if the defendant fails to appear as required; and

(2) The penalties for and consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest. [PL 1997, c. 543, §7 (AMD).]

[PL 2021, c. 397, §6 (AMD).]

6. Initial appearance in court. Nothing contained in this chapter may be construed as limiting the authority of a judge or justice to consider the issue of preconviction bail at a defendant's initial appearance in court.

[PL 1989, c. 147, §2 (NEW).]

7. Applicability of conditions of release. A condition of release takes effect and is fully enforceable as of the time the judicial officer sets the condition, unless the bail order expressly excludes it from immediate applicability.

[PL 1995, c. 356, §5 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §4 (AMD). PL 1989, c. 147, §2 (AMD). PL 1995, c. 356, §5 (AMD). PL 1997, c. 543, §7 (AMD). PL 1997, c. 585, §3 (AMD). PL 2001, c. 252, §§1,2 (AMD). PL 2005, c. 449, §1 (AMD). PL 2007, c. 374, §§3-10 (AMD). PL 2007, c. 377, §§4, 5 (AMD). PL 2007, c. 518, §§2, 3 (AMD). PL 2011, c. 680, §2 (AMD). PL 2013, c. 227, §1 (AMD). PL 2015, c. 436, §4 (AMD). PL 2017, c. 407, Pt. A, §§51, 52 (AMD). PL 2021, c. 397, §§2-6 (AMD).

§1027. Standards for release for formerly capital offenses

1. In general. At the initial appearance before a judicial officer of a defendant in custody preconviction for a formerly capital offense, the judicial officer shall issue an order under section 1026, unless the attorney for the State moves for a Harnish bail proceeding. If the attorney for the State

requests a Harnish bail proceeding before bail has been set, the judicial officer shall order the defendant held pending a hearing under subsection 2. The attorney for the State may move for a Harnish bail proceeding at any time preconviction. If the attorney for the State moves for a Harnish bail proceeding after bail has been set, the court may hold the defendant pending a hearing under subsection 2 or may continue the defendant's bail.
[PL 1987, c. 758, §20 (NEW).]

2. Harnish bail proceeding. A Harnish bail proceeding must be held within 5 court days of the State's request unless the court, for good cause shown and at the request of either the defendant or the attorney for the State, grants a continuance. Evidence presented at a Harnish bail proceeding may include testimony, affidavits and other reliable hearsay evidence as permitted by the court. If, after the hearing, the court finds probable cause to believe that the defendant has committed a formerly capital offense, it shall issue an order under subsection 3. If, after the hearing, the court does not find probable cause to believe that the defendant's alleged criminal conduct was formerly a capital offense, it shall issue an order under section 1026 and may amend its bail order as provided under section 1026, subsection 3, paragraph C.
[PL 1995, c. 356, §6 (AMD).]

3. When conditional right has been extinguished at Harnish bail proceeding. The court's finding that probable cause exists to believe that the defendant committed a formerly capital offense extinguishes the defendant's right to have bail set. The court shall make a determination as to whether or not the setting of bail is appropriate as a matter of discretion. The court may set bail unless the State establishes by clear and convincing evidence that:

A. There is a substantial risk that the capital defendant will not appear at the time and place required or will otherwise pose a substantial risk to the integrity of the judicial process; [PL 2007, c. 374, §11 (AMD).]

B. There is a substantial risk that the capital defendant will pose a danger to another or to the community; or [PL 1997, c. 543, §8 (AMD).]

C. There is a substantial risk that the capital defendant will commit new criminal conduct. [PL 1997, c. 543, §9 (NEW).]

In exercising its discretion, the court shall consider the factors listed in section 1026. If the court has issued a bail order on the basis of its discretionary authority to set bail in a case involving a formerly capital offense, the court having jurisdiction of the case may modify or deny bail at any time upon motion by the attorney for the State or the defendant or upon its own initiative and upon a showing of changed circumstances or the discovery of new and significant information.
[PL 2007, c. 374, §11 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 356, §6 (AMD). PL 1997, c. 543, §§8,9 (AMD). PL 2007, c. 374, §11 (AMD).

§1028. De novo determination of bail under section 1026

1. By defendant in custody. Any defendant who is in custody as a result of a decision of a bail commissioner acting under section 1026 may file a petition with the Unified Criminal Docket for a de novo determination of bail. The bail commissioner making the decision shall advise the defendant of the right to obtain a de novo determination.

A. If the defendant chooses to have a de novo determination of bail, the defendant must be furnished with a petition and, upon execution of the petition and without the issuance of any writ or other process, the sheriff of the county in which the decision was made shall provide for the

transportation of the defendant together with the petition and all papers relevant to the petition or copies of the petition or papers to the court.

If no justice or judge will be available within 48 hours, excluding Saturdays, Sundays and holidays, arrangements must be made for a de novo determination of bail in the nearest county in which a justice or judge is then sitting. The defendant's custodian shall provide transportation to the court as required by this chapter without the issuance of any writ or other process.

If there is no justice or judge available, the defendant must be retained in custody until the petition can be considered. [PL 2015, c. 431, §12 (AMD).]

B. The petition and such other papers as may accompany it must be delivered to the clerk of the Unified Criminal Docket to which the defendant is transported and upon receipt the clerk shall notify the attorney for the State. The court shall review the petition de novo and set bail in any manner authorized by section 1026. [PL 2015, c. 431, §12 (AMD).]

C. Upon receipt of a pro se petition or upon oral or written request of the attorney for the defendant, the clerk shall set a time for hearing and provide oral or written notice to the attorney for the State. The hearing must be scheduled for a time not less than 24 hours nor more than 48 hours after the clerk notifies the attorney for the State. [PL 1997, c. 543, §11 (NEW).]

[PL 2015, c. 431, §12 (AMD).]

2. By defendant not in custody. Any defendant who is not in custody but who is aggrieved by a decision of a bail commissioner acting under section 1026 as to the amount or conditions of bail set may file a petition with the Unified Criminal Docket for a de novo determination of bail. A justice or judge shall review the petition de novo and set bail in any manner authorized by section 1026. The petition must be considered as scheduled by the clerk.
[PL 2015, c. 431, §12 (AMD).]

3. No further relief. The de novo determination by a justice or judge under this section is final and no further relief is available.
[PL 2015, c. 431, §12 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1997, c. 543, §§10,11 (AMD). PL 1997, c. 585, §4 (AMD). PL 1999, c. 731, §ZZZ10 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2003, c. 66, §1 (AMD). PL 2015, c. 431, §12 (AMD).

§1028-A. De novo determination of bail set by a justice or judge acting under section 1026

1. By defendant. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file a petition with the Unified Criminal Docket for a de novo determination of bail by another justice or judge in accordance with the procedures set forth in Rule 46(d) of the Maine Rules of Unified Criminal Procedure. The court making the initial decision shall advise the defendant of the right to obtain a de novo determination of bail.
[PL 2015, c. 431, §13 (NEW).]

2. No further relief. The de novo determination by a justice or judge under this section is final and no further relief is available.
[PL 2015, c. 431, §13 (NEW).]

SECTION HISTORY

PL 2015, c. 431, §13 (NEW).

§1029. Review of bail under section 1027

1. Petition for review. Any defendant in custody following a Harnish bail proceeding under section 1027 may petition a single Justice of the Supreme Judicial Court for review under this section and the additional procedures set forth in the Maine Rules of Unified Criminal Procedure, Rule 46(e)(1).

A. [PL 2015, c. 431, §14 (RP).]

B. [PL 2015, c. 431, §14 (RP).]

[PL 2015, c. 431, §14 (RPR).]

2. Standard of review. With respect to the finding of probable cause to believe that the defendant committed a formerly capital offense, the finding of the lower court shall be upheld, unless it is clearly erroneous provided there is an adequate record for purposes of review. With respect to all other issues or with respect to the issue of probable cause when the record is inadequate for review, the review shall be de novo. The parties shall cooperate to expeditiously assemble a record for review.
[PL 1989, c. 147, §3 (AMD).]

3. Evidence. The evidence consists of the information of record submitted in the Harnish bail proceeding under section 1027 and any additional information the parties may choose to present.
[RR 2009, c. 2, §31 (COR).]

4. No further relief. The review under this section is final and no further relief is available.
[PL 1999, c. 731, Pt. ZZZ, §11 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1989, c. 147, §3 (AMD). PL 1999, c. 731, §ZZZ11 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). RR 2009, c. 2, §31 (COR). PL 2015, c. 431, §14 (AMD).

§1030. State's attorney present at certain proceedings; opportunity to present relevant information

Before making a determination as to whether or not to set bail for a defendant charged with murder or a Class A, Class B or Class C crime and before any bail order is reviewed under section 1028 or 1029, the judicial officer shall afford the attorney for the State or a law enforcement officer familiar with the charges the opportunity to present any information relevant to bail considerations. This opportunity is in addition to the availability of a Harnish bail proceeding as otherwise provided in this chapter. [PL 1995, c. 356, §7 (AMD).]

An attorney for the State or a law enforcement officer familiar with the charges must be present in District Court at all proceedings governed by the Maine Rules of Unified Criminal Procedure, Rule 5, at which bail is being set. [PL 2015, c. 431, §15 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §5 (AMD). PL 1995, c. 356, §7 (AMD). PL 2015, c. 431, §15 (AMD).

§1031. Bail if no indictment

Any defendant charged with a formerly capital offense who has been denied bail in accordance with section 1027 shall have bail set under section 1026 if the defendant is not indicted in the county where the crime is alleged to have been committed at the 2nd regularly scheduled session of the grand jury next after the date of the denial of bail. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

SUBCHAPTER 3

POST-CONVICTION BAIL

§1051. Post-conviction bail

1. Application to presiding judge or justice. After post-conviction, except as provided in this section, a defendant may apply to the judge or justice who presided at the trial for bail pending imposition or execution of sentence or entry of judgment or appeal. If the trial judge or justice is not available, the defendant may apply for bail under this section to another judge or justice of the court in which the defendant was convicted. Post-conviction bail is not available to a defendant convicted of:

A. Murder; [PL 1987, c. 758, §20 (NEW).]

B. Any other formerly capital offense for which preconviction bail was denied under section 1027; or [PL 1995, c. 356, §8 (AMD).]

C. Any crime when the defendant's preconviction bail was revoked and denied under sections 1096 and 1097. [PL 1995, c. 356, §8 (AMD).]

The judge or justice shall hold a hearing on the record on the bail application and shall state in writing or on the record the reasons for denying or granting bail. If bail is granted, the judge or justice shall also state, in writing or on the record, the reasons for the kind and amount of bail set, for any condition of release imposed and for the omission of any condition of release sought by the State.

The judge or justice may enter an order for bail pending appeal before a notice of appeal is filed, but conditioned upon its timely filing.

Every order for post-conviction release of a defendant must include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from new criminal conduct and not violate any pending protection from abuse order pursuant to Title 19, section 769, or Title 19-A, section 4011.
[PL 1997, c. 543, §12 (AMD).]

2. Standards. Except as provided in subsection 4, a defendant may not be admitted to bail under this section unless the judge or justice has probable cause to believe that:

A. There is no substantial risk that the defendant will fail to appear as required and will not otherwise pose a substantial risk to the integrity of the judicial process; [PL 1997, c. 543, §13 (AMD).]

B. There is no substantial risk that the defendant will pose a danger to another or to the community; and [PL 1997, c. 543, §13 (AMD).]

C. There is no substantial risk that the defendant will commit new criminal conduct. [PL 1997, c. 543, §13 (NEW).]

In determining whether to admit a defendant to bail, the judge or justice shall consider the factors relevant to preconviction bail listed in section 1026, as well as the facts proved at trial, the length of the term of imprisonment imposed and any previous unexcused failure to appear as required before any court or the defendant's prior failure to obey an order or judgment of any court, including, but not limited to, violating a protection from abuse order pursuant to Title 19, section 769 or Title 19-A, section 4011.

If the judge or justice decides to set post-conviction bail for a defendant, the judge or justice shall apply the same factors in setting the kind and amount of that bail.
[PL 2007, c. 374, §12 (AMD).]

2-A. Violation of probation; standards. This subsection governs bail with respect to a motion to revoke probation.

A. A judge or justice may deny or grant bail. [PL 2015, c. 436, §5 (NEW).]

B. In determining whether to admit the defendant to bail and, if so, the kind and amount of bail, the judge or justice shall consider the nature and circumstances of the crime for which the defendant was sentenced to probation, the nature and circumstances of the alleged violation and any record of prior violations of probation as well as the factors relevant to the setting of preconviction bail listed in section 1026. [PL 2015, c. 436, §5 (NEW).]

[PL 2015, c. 436, §5 (NEW).]

3. Conditions of release. Except as provided in subsection 4, the judge or justice may impose, in lieu of or in addition to an appearance or bail bond, any condition considered reasonably necessary to minimize the risk that the defendant may fail to appear as required, may compromise the integrity of the judicial process, may commit new criminal conduct, may fail to comply with conditions of release or may constitute a danger to another person or the community.

[PL 1997, c. 543, §14 (AMD).]

4. Standards applicable to bail arising out of State's appeal under section 2115-A, subsection 2. If the State initiates an appeal under section 2115-A, subsection 2, the judge or justice shall apply subchapter II to a defendant's application for bail pending that appeal.

[PL 1987, c. 758, §20 (NEW).]

5. Appeal by defendant. A defendant may appeal to a single Justice of the Supreme Judicial Court a denial of bail, the kind or amount of bail set or the conditions of release imposed by which the defendant is aggrieved. The single justice may not conduct a hearing de novo respecting bail, but shall review the lower court's order. The defendant has the burden of showing that there is no rational basis in the record for the lower court's denial of bail, the kind or amount of bail set or the conditions of release imposed of which the defendant complains. The determination by the single justice is final and no further relief is available.

[PL 1999, c. 731, Pt. ZZZ, §12 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

6. Appeal by State. The State may appeal to a single Justice of the Supreme Judicial Court the granting of bail, the kind or amount of bail set or the lower court's failure to impose a condition of release. The single justice may not conduct a hearing de novo respecting bail, but shall review the lower court's order. The State has the burden of showing that there is no rational basis in the record for the lower court's granting of bail, the kind or amount of bail set or the omission of the conditions of which the State complains. The determination by the single justice is final and no further relief is available.

[PL 1999, c. 731, Pt. ZZZ, §12 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

7. Revocation of bail.

[PL 1991, c. 393, §1 (RP).]

7-A. Revocation of post-conviction bail.

[PL 1995, c. 356, §10 (RP).]

8. Failure to appear; penalty.

[PL 1995, c. 356, §11 (RP).]

9. Violation of condition of release; penalty.

[PL 1995, c. 356, §12 (RP).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §§6,7 (AMD). PL 1991, c. 393, §§1,2 (AMD). PL 1995, c. 356, §§8-12 (AMD). PL 1997, c. 543, §§12-14 (AMD). PL 1999, c. 731, §ZZZ12 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2007, c. 374, §12 (AMD). PL 2015, c. 436, §5 (AMD).

SUBCHAPTER 4

SURETIES AND OTHER FORMS OF BAIL

§1071. Sureties to make statement of property

1. Statement by surety. Any person who offers to act as surety in the Superior Court for any defendant in a criminal prosecution, whether or not the defendant is an appellant from the finding of a Judge of the District Court, is to be admitted to bail to await the action of the grand jury, or is arrested in vacation on a warrant issued on an indictment pending in the Superior Court, may be required to file with the judicial officer a written statement signed and sworn to by the surety describing all real estate owned by the surety within the State with sufficient accuracy to identify it.

A. The statement must provide in detail all encumbrances and the value of the land. The value of the land must be based on the judgment of the surety. [PL 1997, c. 543, §15 (AMD).]

B. The certificate must remain on file with the original papers in the case and a certified copy must be transmitted by the judicial officer taking the bail to the clerk of court before which the defendant is to appear. [PL 1997, c. 543, §15 (AMD).]

C. Upon motion to the court and notice to the defendant, the defendant shall produce and the State has the right to examine all evidence of ownership, valuation and all encumbrances on the land. [PL 1997, c. 543, §15 (AMD).]

[PL 1997, c. 543, §15 (AMD).]

2. Bail lien required. Any person who offers real estate as surety for the appearance before a court of a defendant charged with murder or a Class A, Class B or Class C crime must file a bail lien with the register of deeds in the county where the real estate lies.

A. If the defendant is to be bailed prior to appearance in a court for the first time, the person offering the real estate shall file with that court a copy of the lien attested by the register of deeds, stating the date of recording and the book and page number at which the lien is recorded, on the next business day after which the real estate is offered.

(1) If a defendant is released from custody, prior to the defendant's first appearance in court, upon a person offering real estate as surety and that person fails to file with the court a duly attested copy of the lien required by this paragraph within the prescribed time limit, the defendant may be taken into custody without the issuance of further process and shall be held as though the surety had not offered real estate as surety. [PL 1987, c. 758, §20 (NEW).]

B. If the defendant is bailed after having appeared in court for the first time, the defendant shall not be released from custody until the person offering real estate has filed with the court, with which the bail is posted, a copy of the lien attested by the register of deeds, stating the date of recording and the book and page number at which the lien is recorded. [PL 1987, c. 758, §20 (NEW).]

C. The person filing the lien is responsible for the fee to be paid to the register of deeds for receiving, recording and indexing the bail lien and for discharge of the bail lien as provided in Title 33, chapter ll, subchapter IV. [PL 1987, c. 758, §20 (NEW).]

D. A bail lien is not required if bail is posted through a nonprofit bail assistance project. [PL 1987, c. 758, §20 (NEW).]

[PL 1987, c. 758, §20 (NEW).]

3. Limitation on real estate. As used in this chapter, real estate is limited to real property located in the State.

[PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §8 (AMD). PL 1989, c. 147, §4 (AMD). PL 1997, c. 543, §15 (AMD).

§1072. Responsibility of sureties

1. Preconviction. Each surety for a defendant admitted to preconviction bail is responsible for the appearance of the defendant at all times as well as the defendant's compliance with each condition of release, including that the defendant refrain from new criminal conduct, until a verdict or finding or plea of guilty or until the acceptance of a plea of guilty or nolo contendere, unless the surety has sooner terminated the agreement to act as surety and has been relieved of the responsibility in accordance with section 1073.

A preconviction surety is not responsible for the appearance of a defendant after conviction nor for the defendant's compliance with the conditions of release, unless the surety has agreed to act as postconviction surety.
[PL 1997, c. 543, §16 (AMD).]

2. Post-conviction. Each surety for a defendant admitted to bail after conviction is responsible for the defendant's appearance at all times until the defendant enters into execution of any sentence of imprisonment as well as the defendant's compliance with each condition of release, including that the defendant refrain from new criminal conduct, unless the surety has sooner terminated the agreement to act as surety and has been relieved of the responsibility in accordance with section 1073.
[PL 1997, c. 543, §16 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1989, c. 147, §5 (AMD). PL 1995, c. 356, §13 (AMD). PL 1997, c. 543, §16 (AMD).

§1072-A. Advising the surety

Prior to undertaking the responsibility as a surety for a defendant the surety must be: [PL 1997, c. 543, §17 (NEW).]

1. Written release order. Provided with a copy of the written release order pertaining to the defendant;
[PL 1997, c. 543, §17 (NEW).]

2. Appearance and conditions of release. Orally advised of the appearance requirement and of each of the conditions of release pertaining to the defendant for which the surety is responsible and the consequences to the surety if the defendant fails to appear as required or violates any condition of release; and
[PL 1997, c. 543, §17 (NEW).]

3. Responsibilities and consequences. Provided with a written statement advising the surety as to the general responsibilities of a surety under section 1072 and the consequences to the surety if the defendant fails to appear as required or fails to abide by each condition.
[PL 1997, c. 543, §17 (NEW).]

The Supreme Judicial Court shall by rule specify who is responsible for providing to the prospective surety the required oral and written advice as well as the copy of the written release order pertaining to the defendant. [PL 1997, c. 543, §17 (NEW).]

SECTION HISTORY

PL 1997, c. 543, §17 (NEW).

§1073. Termination of surety or cash bail agreement

A person who has agreed either to act as surety or to deposit cash bail for a defendant who has been admitted to preconviction bail may terminate the agreement by appearing before the clerk of the court having jurisdiction over the offense with which the defendant is charged and executing a statement under oath terminating the agreement. The statement must include a certification by the person that the person has notified the defendant or the defendant's attorney of the person's intention to terminate the agreement. A person may not terminate a cash bail agreement unless the person has been designated as the owner of all of the cash as required by section 1074. [PL 1995, c. 356, §14 (AMD).]

Upon execution of the statement terminating the agreement, the clerk shall bring the matter to the attention of a judge or justice of the court who, unless new and sufficient sureties have appeared or new and sufficient cash has been deposited, shall order the defendant committed for failure to furnish bail and shall issue a warrant for the defendant's arrest. [PL 1995, c. 356, §14 (AMD).]

The judge or justice may absolve the person of responsibility to pay all or part of the bond or may order the return of cash bail, except that a person may not be absolved of the responsibility to pay all or part of the bond, or receive any cash deposited as bail, if, prior to terminating the agreement, the defendant has failed to appear as required or the defendant has failed to comply with each condition of release. Nothing in this section may be construed to relieve or release a person of the responsibility for the appearance of the defendant, notwithstanding the termination of the agreement, until the defendant is in the custody of the sheriff of the county in which the case is pending, new or substitute sureties have appeared, new cash bail has been deposited or the defendant has otherwise been admitted to bail. [PL 2015, c. 436, §6 (AMD).]

A person who has agreed either to act as surety or to deposit cash bail for a defendant who has been admitted to post-conviction bail may terminate the agreement by following the procedure set forth in this section. [PL 1995, c. 356, §14 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 356, §14 (AMD). PL 1997, c. 543, §18 (AMD). PL 2015, c. 436, §6 (AMD).

§1073-A. Precondition to forfeiture of cash or other property of surety if a defendant violates a condition of release; notice

(REPEALED)

SECTION HISTORY

PL 1997, c. 543, §19 (NEW). PL 2015, c. 436, §7 (RP).

§1074. Property of defendant and 3rd parties as bail

1. Cash. Whenever cash is deposited as bail to secure the appearance of and conformance to conditions of release by a defendant in a criminal proceeding, either preconviction or post-conviction, the cash is deemed to be the property of the defendant unless, at the time the cash is deposited, the defendant or the person offering the cash as bail designates under oath another person to whom the cash belongs. If a person other than the defendant has been designated as the owner of the cash, it must be returned to that person unless otherwise forfeited or subject to setoff under subsection 3-A. If the defendant is deemed to be the owner of the cash, it must be returned to the defendant unless otherwise forfeited or subject to setoff as provided in this section.
[PL 2013, c. 211, §1 (AMD).]

1-A. Miscellaneous costs. The Chief Justice of the Supreme Judicial Court is authorized to use General Fund appropriations to cover miscellaneous costs associated with the operation of the account of deposited cash bail.
[PL 2003, c. 673, Pt. P, §1 (NEW).]

2. Real estate. When a defendant in a criminal proceeding is the owner of real estate and offers that real estate as security for appearance before any court, the defendant must file a bail lien and otherwise comply with the requirements of section 1071 as if the defendant were a surety. A discharge of the bail lien is governed by section 1071, unless the bail has been forfeited or is subject to setoff in accordance with this section.
[PL 1987, c. 758, §20 (NEW).]

3. Setoff of defendant's property. When a defendant has deposited cash or other property owned by the defendant as bail or has offered real estate owned by the defendant and subject to a bail lien as bail and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the defendant or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section. The court may order all or a portion of the bail owned by a defendant that has not been forfeited to be first paid and applied to one or more of the following:

A. Any fine, forfeiture, penalty or fee imposed upon a defendant as part of the sentence for conviction of any offense arising out of the criminal proceeding for which the bail has been posted and the sentence for conviction of any offense in an unrelated civil or criminal proceeding; [PL 2003, c. 87, §1 (AMD).]

B. Any amount of restitution the defendant has been ordered to pay as part of the sentence imposed in the proceeding for which bail has been posted and in any unrelated proceeding; [PL 2003, c. 87, §1 (AMD).]

C. Any amount of attorney's fees or other expense authorized by the court at the request of the defendant or attorney and actually paid by the State on behalf of the defendant on the ground that the defendant has been found to be indigent in the proceeding for which bail has been posted and in any unrelated proceeding; and [PL 2003, c. 87, §1 (AMD).]

D. Any surcharge imposed by Title 4, section 1057. [PL 1987, c. 758, §20 (NEW).]

The court shall apply any bail collected pursuant to this subsection first to restitution then to attorney's fees and then to fines and surcharges.
[PL 2017, c. 284, Pt. UUUU, §15 (AMD).]

3-A. Setoff of 3rd party's property. When a person other than the defendant has deposited cash or other property owned by the person as bail on behalf of the defendant or has offered real estate owned by the person and subject to a bail lien as bail on behalf of the defendant and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the person or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section. The court may order all or a portion of the bail owned by the person that has not been forfeited to be first paid and applied to one or more of the following:

A. Any fine, forfeiture, penalty or fee owed by the person arising out of any civil or criminal proceeding; [PL 2013, c. 211, §1 (NEW).]

B. Any amount of restitution the person has been ordered to pay as part of any court proceeding; [PL 2013, c. 211, §1 (NEW).]

C. Any amount of attorney's fees or other expense authorized by the court at the request of the person or the person's attorney and actually paid by the State on behalf of the person on the ground that the person has been found to be indigent in any proceeding; and [PL 2013, c. 211, §1 (NEW).]

D. Any surcharge imposed by Title 4, section 1057. [PL 2013, c. 211, §1 (NEW).]

The court shall apply any bail collected pursuant to this subsection first to restitution.

[PL 2013, c. 211, §1 (NEW).]

4. Enforcement orders. If the court determines that bail owned by a defendant or 3rd party should be ordered set off as authorized by this section, the court may issue any appropriate orders considered necessary to enforce the setoff. The orders may include, but are not limited to:

A. A direction to the clerk of courts to pay cash bail directly to a specified person, organization or government; [PL 1987, c. 758, §20 (NEW).]

B. An order directed to a public official or the defendant requiring that other property or real estate be sold and the proceeds paid to a specified person, organization or government; and [PL 1987, c. 758, §20 (NEW).]

C. An order requiring the defendant to convey clear and marketable title or other evidence of ownership of interest in real estate or other property to a specified person, organization or government. [PL 1987, c. 758, §20 (NEW).]

[PL 2013, c. 211, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1997, c. 543, §20 (AMD). PL 2003, c. 87, §1 (AMD). PL 2003, c. 673, §P1 (AMD). PL 2013, c. 211, §1 (AMD). PL 2017, c. 284, Pt. UUUU, §15 (AMD).

§1075. Attorney not to act as surety or deposit cash bail for client

An attorney, while representing a defendant, may not act as surety for or deposit cash bail for the client. [PL 2003, c. 15, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 15, §2 (NEW).

SUBCHAPTER 5

ENFORCEMENT

ARTICLE 1

GENERAL PROVISIONS

§1091. Failure to appear; penalty

1. Failure to appear. A defendant who has been admitted to either preconviction or postconviction bail and who, in fact, fails to appear as required 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 [PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more. [PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

[PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

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

[PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

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

[PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 356, §16 (AMD). PL 2003, c. 452, §H2 (RPR). PL 2003, c. 452, §X2 (AFF).

§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 until a 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 [PL 1995, c. 456, §1 (NEW).]

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more. [PL 1995, c. 456, §1 (NEW).]
[PL 2013, c. 266, §1 (AMD).]

2. Affirmative defense. It is an affirmative defense to prosecution under subsection 1 that the failure to report resulted from just cause.
[PL 2013, c. 266, §1 (NEW).]

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
[PL 2013, c. 266, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 456, §1 (NEW). PL 2013, c. 266, §1 (AMD).

§1092. Violation of condition of release

1. Violation of condition of release. A defendant who has been granted preconviction or postconviction bail and who, in fact, violates a condition of release is guilty of:

A. A Class E crime; or [PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (5), (8), (10-A) or (13). [PL 2005, c. 449, §2 (AMD).]
[PL 2005, c. 449, §2 (AMD).]

2. Affirmative defense. It is an affirmative defense to prosecution under subsection 1 that the violation resulted from just cause.
[PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
[PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

4. Limitations on authority of bail commissioner to set bail. A court may, but a bail commissioner may not, set bail for a defendant granted preconviction or post-conviction bail who has been arrested for an alleged violation of this section if:

A. The condition of release alleged to be violated relates to new criminal conduct for a crime classified as Class C or above or for a Class D or Class E crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12; [PL 2011, c. 341, §3 (NEW).]

B. The underlying crime for which preconviction or post-conviction bail was granted is classified as Class C or above; or [PL 2013, c. 519, §3 (AMD).]

C. The underlying crime for which preconviction or post-conviction bail was granted is a crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12. [PL 2013, c. 519, §3 (AMD).]

If a bail commissioner does not have sufficient information to determine whether the violation of the condition of release meets the criteria set forth under this subsection, the bail commissioner may not set bail on the violation of the condition of release.
[PL 2013, c. 519, §3 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §9 (AMD). PL 1995, c. 356, §17 (AMD). PL 2003, c. 452, §H3 (RPR). PL 2003, c. 452, §X2 (AFF). PL 2005, c. 449, §2 (AMD). PL 2011, c. 341, §3 (AMD). PL 2013, c. 519, §3 (AMD).

§1093. Revocation of preconviction bail

(REPEALED)

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §10 (AMD). PL 1989, c. 147, §6 (AMD). PL 1991, c. 393, §3 (AMD). PL 1995, c. 356, §18 (RP).

§1094. Forfeiture of bail; enforcement

When a defendant who has been admitted to either preconviction or post-conviction bail in a criminal case fails to appear as required or has violated the conditions of release, the court shall declare a forfeiture of the bail. The obligation of the defendant and any sureties may be enforced in such manner as the Supreme Judicial Court shall by rule provide and in accordance with section 224-A and Title 17-A, section 2015, subsection 4. The rules adopted by the Supreme Judicial Court must provide for notice to the defendant and any sureties of the consequences of failure to comply with the conditions of bail. [PL 2019, c. 113, Pt. C, §33 (AMD).]

If the obligation of the defendant or any surety has been reduced to judgment pursuant to the Maine Rules of Unified Criminal Procedure, Rule 46, the following provisions apply to the enforcement of the obligation. [PL 2015, c. 431, §16 (AMD).]

1. Execution. The court shall issue an execution of the judgment once the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the Supreme Judicial Court, unless the court that rendered judgment on the bail obligation has pursuant to rule ordered execution at an earlier time. The execution of the judgment is returnable within one year after issuance.
[PL 1991, c. 393, §4 (NEW).]

2. Lien on real estate, personal property and motor vehicles. An execution issued under this section creates the lien described in Title 14, section 4651-A, if properly filed according to that section. A filing or recording fee may not be charged for any execution issued under this section.
[PL 1991, c. 393, §4 (NEW).]

2-A. Violation of unsecured preconviction bail. If the court determines that an offender has violated unsecured preconviction bail and that the violation is not excused, the court shall enter an order of forfeiture of bail, which may not exceed the amount of the unsecured bail previously set. The attorney for the State may take action to collect the amount forfeited using measures authorized for the collection of unpaid restitution under Title 17-A, section 2006, including, but not limited to, entering into agreements with the offender for payment over a set period of time not to exceed one year. In order to satisfy an order of forfeiture entered under this subsection, pursuant to Title 36, section 185-A, the State Tax Assessor may withhold tax refunds owed to an offender.
[PL 2019, c. 659, Pt. D, §1 (AMD).]

3. Relation back of liens. The effective date of any execution lien created on any property pursuant to this section and Title 14, section 4651-A relates back to the date when a bail lien, as described in section 1071, was first filed or recorded in the proper place for the perfection or attachment of the lien. The relation back applies only to that portion of the bail obligation that the bail lien secured when it was recorded or filed. The remainder of the execution lien and the full amount of any execution lien created when no bail lien was ever recorded or filed, is effective and perfected from the date of the recording or filing of the execution. Any lien created pursuant to this section and Title 14, section 4651-A continues as long as the judgment issued on the bail obligation or any part of the bail obligation, plus costs and interest, has not been paid, discharged or released.
[PL 1991, c. 393, §4 (NEW).]

4. Enforcement. The lien provided by this section may be enforced by a turnover or sale order pursuant to Title 14, section 3131.
[PL 1991, c. 393, §4 (NEW).]

5. Application. This section applies to all bail obligations in effect on or after October 1, 1991 and all bail liens recorded as of or after October 1, 1991.
[PL 1991, c. 393, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1991, c. 393, §4 (RPR). PL 1997, c. 543, §21 (AMD). PL 2007, c. 31, §2 (AMD). PL 2015, c. 431, §16 (AMD). PL 2017, c. 221, §1 (AMD). PL 2019, c. 113, Pt. C, §§33, 34 (AMD). PL 2019, c. 659, Pt. D, §1 (AMD).

§1094-A. Improper contact after bail has been revoked and denied

A person is guilty of improper contact after bail has been revoked and denied if, while being detained as a result of the person's preconviction or post-conviction bail having been revoked and denied, the person intentionally or knowingly makes direct or indirect contact with a person when that contact was prohibited under a former condition of release. Violation of this section is a Class D crime.
[PL 2011, c. 604, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 604, §1 (NEW).

§1094-B. Improper contact with a family or household member prior to the setting of preconviction bail

1. Improper contact. A person is guilty of improper contact with a family or household member prior to the setting of preconviction bail if:

A. The person is being detained as a result of the person's arrest for an offense specified in section 1023, subsection 4, paragraph B-1; [PL 2013, c. 478, §2 (NEW).]

B. Preconviction bail has not been set by a justice or judge; [PL 2013, c. 478, §2 (NEW).]

C. The person is notified, in writing or otherwise, by the county jail staff or a law enforcement officer not to make direct or indirect contact with the specifically identified alleged victim of the offense for which the person is being detained; [PL 2017, c. 66, §1 (AMD).]

D. The alleged victim is a family or household member of the person; and [PL 2013, c. 478, §2 (NEW).]

E. After the notification specified in paragraph C, the person intentionally or knowingly makes direct or indirect contact with the specifically identified alleged victim. [PL 2013, c. 478, §2 (NEW).]

As used in this subsection, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.
[PL 2017, c. 66, §1 (AMD).]

2. Penalty. Violation of this section is a Class D crime.
[PL 2013, c. 478, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 478, §2 (NEW). PL 2017, c. 66, §1 (AMD).

§1094-C. Improper contact with alleged murder victim's family or household member

1. Improper contact. A person is guilty of improper contact with an alleged murder victim's family or household member if:

A. The person is being detained as a result of the person's arrest for the intentional or knowing murder of the alleged victim; [PL 2017, c. 432, Pt. A, §2 (NEW).]

B. A Harnish bail proceeding:

(1) Has not yet taken place;

(2) Has been waived in open court by the person; or

(3) Has taken place and the person's conditional right to bail has been extinguished and bail has been denied by the court; [PL 2017, c. 432, Pt. A, §2 (NEW).]

C. The person:

(1) In the circumstance specified in paragraph B, subparagraph (1) is notified, in writing or otherwise, by the detaining county jail, correctional facility or mental health institute staff not to make direct or indirect contact with any specifically identified family or household member of the alleged victim of the crime for which the person is being detained; or

(2) In the circumstance specified in paragraph B, subparagraph (2) or (3) is notified on the record or in writing by the court not to make direct or indirect contact with any specifically identified family or household member of the alleged victim of the crime for which the person is being detained; and [PL 2017, c. 432, Pt. A, §2 (NEW).]

D. After the notification specified in paragraph C, the person intentionally or knowingly makes direct or indirect contact with the specifically identified family or household member of the alleged victim of the crime for which the person is being detained. [PL 2017, c. 432, Pt. A, §2 (NEW).]

As used in this subsection, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.
[PL 2017, c. 432, Pt. A, §2 (NEW).]

2. Penalty. Violation of this section is a Class C crime.
[PL 2017, c. 432, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2017, c. 432, Pt. A, §2 (NEW).

ARTICLE 2

REVOCATION OF PRECONVICTION BAIL

§1095. Proceedings for revocation of preconviction bail

1. In general. The attorney for the State, or the court on its own motion, may move for the revocation of a defendant's preconviction bail based upon probable cause to believe that the defendant has failed to appear as required, has violated a condition of preconviction bail or has been charged with a crime allegedly committed while released on preconviction bail. The motion must set forth the essential facts underlying the alleged violation. If the defendant has not already been arrested pursuant to subsection 2, the clerk of the court shall issue, upon the request of the attorney for the State or by direction of the court, a warrant for the defendant's arrest or, in lieu of a warrant if so directed, a summons ordering the defendant to appear for a court hearing on the alleged violation. The summons must include the signature of the attorney for the State or the court, the time and place of the alleged violation and the time, place and date the person is to appear in court. If the defendant can not be located with due diligence, a hearing on the motion for revocation must be heard in the defendant's absence.
[PL 1995, c. 356, §19 (NEW).]

2. Arrest. Prior to the filing of a motion to revoke a defendant's preconviction bail under subsection 1, a law enforcement officer when requested by the attorney for the State may arrest with a warrant, or without a warrant pursuant to Title 17-A, section 15, any defendant who the law enforcement officer has probable cause to believe has failed to appear as required, has violated a condition of preconviction bail or has been charged with a crime allegedly committed while released on preconviction bail. A defendant under arrest pursuant to this section must be brought before any judge or justice of the appropriate court. The judge or justice shall determine without hearing whether the existing preconviction bail order should be modified or whether the defendant should be committed without bail pending the bail revocation hearing. If either the underlying crime or the new criminal conduct alleged is an offense specified in section 1023, subsection 4, paragraph B-1, the judge or justice shall order that the defendant be committed without bail pending the bail revocation hearing, unless the judge or justice makes findings on the record that there are conditions of release that will reasonably ensure that the defendant will not commit new crimes while out on bail, that will reasonably ensure the defendant's appearance at the time and place required and that will ensure the integrity of the judicial process and the safety of others in the community pending the bail revocation hearing. A copy of the motion for revocation must be furnished to the defendant prior to the hearing on the alleged violation, unless the hearing must be conducted in the absence of the defendant.
[PL 2011, c. 640, Pt. A, §3 (AMD).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 1997, c. 543, §22 (AMD). PL 2011, c. 341, §4 (AMD). PL 2011, c. 640, Pt. A, §3 (AMD).

§1096. Grounds for revocation of preconviction bail

A preconviction bail order of a bail commissioner may be revoked by any judge or justice, and a preconviction bail order of a judge or justice may be revoked by any judge or justice of the same court, upon a determination made after notice and opportunity for hearing that: [PL 2005, c. 449, §3 (AMD).]

1. Probable cause. Probable cause exists to believe that the defendant has committed a new crime following the setting of preconviction bail; or
[PL 1995, c. 356, §19 (NEW).]

2. Clear and convincing evidence. Clear and convincing evidence exists that the defendant has failed to appear as required or has violated any other condition of the preconviction bail.
[PL 1995, c. 356, §19 (NEW).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 2005, c. 449, §3 (AMD).

§1097. Disposition after revocation of preconviction bail

1. New criminal conduct. If the judge or justice finds that there are conditions of release that will reasonably ensure that the defendant will not continue to commit new crimes while out on bail, the judge or justice shall issue an order under section 1026. If the judicial finding is otherwise, the judge or justice shall issue an order denying bail.
[PL 1997, c. 543, §23 (RPR).]

2. Appearance of the defendant; ensuring the integrity of the judicial process; ensuring the safety of others in the community. If the judge or justice finds that there are conditions of release that will reasonably ensure the defendant's appearance at the time and place required and ensure the integrity of the judicial process and the safety of others in the community, the judge or justice shall issue an order under section 1026. If the judicial finding is otherwise, the judge or justice shall issue an order denying bail.
[PL 2007, c. 374, §13 (AMD).]

2-A. Crimes involving domestic violence. If the underlying crime is an offense specified in section 1023, subsection 4, paragraph B-1 and the new conduct found by the court pursuant to section 1096 involves new allegations of domestic violence or contact with a victim or witness in the underlying case, the judge or justice shall issue an order denying bail, unless the judge or justice makes the findings on the record required by both subsections 1 and 2. The judge or justice shall issue an order denying bail if there has been a previous revocation of preconviction bail pursuant to section 1096.
[PL 2011, c. 640, Pt. A, §4 (NEW).]

3. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court. The appeal must be in accordance with the procedures set forth in the Maine Rules of Unified Criminal Procedure, Rule 46(e)(2). The review is limited to a review of the record to determine whether the order was rationally supported by the evidence. The determination by the single justice is final and no further relief is available.
[PL 2015, c. 431, §17 (AMD).]

4. Limitations on bail. When a court has, after revocation on a complaint, ordered the defendant held without bail, the defendant is not entitled to have bail set when the same or more serious charges are brought by indictment or, if waived, by information or complaint, for the same underlying conduct. If different and lesser charges are later brought by the State for the same underlying conduct, the new lesser charges may constitute a change of circumstances pursuant to section 1026, subsection 3, paragraph C.
[PL 2015, c. 431, §18 (AMD).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 1997, c. 543, §23 (AMD). PL 1999, c. 731, §ZZZ13 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2007, c. 374, §13 (AMD). PL 2011, c. 640, Pt. A, §4 (AMD). PL 2015, c. 431, §§17, 18 (AMD).

ARTICLE 3

REVOCATION OF POST-CONVICTION BAIL

§1098. Proceedings for revocation of post-conviction bail

1. In general. The attorney for the State, or the court on its own motion, may move for the revocation of a defendant's post-conviction bail based upon probable cause to believe that the defendant has failed to appear as required, has violated a condition of post-conviction bail or has been charged with a crime allegedly committed while released on post-conviction bail. The motion must set forth

the essential facts underlying the alleged violation. If the defendant has not already been arrested pursuant to subsection 2, the clerk of the court shall issue, upon the request of the attorney for the State or by the direction of the court, a warrant for the defendant's arrest or, in lieu of a warrant if so directed, a summons ordering the defendant to appear for a court hearing on the alleged violation. The summons must include the signature of the attorney for the State or the court, the time and place of the alleged violation and the time, place and date the person is to appear in court. If the defendant can not be located with due diligence, a hearing on the motion for revocation must be heard in the defendant's absence.
[PL 1995, c. 356, §19 (NEW).]

2. Arrest. Prior to the filing of a motion to revoke a defendant's post-conviction bail under subsection 1, a law enforcement officer when requested by the attorney for the State, may arrest with a warrant, or without a warrant pursuant to Title 17-A, section 15, any defendant who the law enforcement officer has probable cause to believe has failed to appear as required, violated a condition of post-conviction bail or been charged with a crime allegedly committed while released on post-conviction bail. A defendant under arrest pursuant to this section must be brought before a judge or justice of the appropriate court. The judge or justice shall determine without hearing whether the existing post-conviction bail order should be modified or the defendant should be committed without bail pending the bail revocation hearing. A copy of the motion for revocation must be furnished to the defendant prior to the hearing on the alleged violation, unless the hearing must be conducted in the absence of the defendant.
[PL 2011, c. 341, §5 (AMD).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 2011, c. 341, §5 (AMD).

§1099. Grounds for revocation of post-conviction bail

An order of post-conviction bail entered by a judge or justice may be revoked by the judge or justice or, if that judge or justice is not available, by another judge or justice of the same court, upon determination made after notice and opportunity for hearing that: [PL 1995, c. 356, §19 (NEW).]

1. Crime charged. The defendant has in fact been charged with a crime allegedly committed after post-conviction bail was set;
[PL 1995, c. 356, §19 (NEW).]

2. Failure to appear. The defendant has failed to appear as required or has violated a condition of post-conviction bail as demonstrated by a preponderance of the evidence; or
[PL 1995, c. 356, §19 (NEW).]

3. Appeal for purposes of delay. The defendant's appeal has been taken for the purpose of delay as demonstrated by a preponderance of the evidence.
[PL 1995, c. 356, §19 (NEW).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW).

§1099-A. Disposition after revocation of post-conviction bail

1. Held without bail. The judge or justice shall order the defendant held without bail unless the judge or justice finds that under the facts of the case it would be unreasonable to do so, in which event the judge or justice shall issue an order under section 1051.
[PL 1995, c. 356, §19 (NEW).]

2. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court who shall review the revocation pursuant to the

procedures set forth in section 1051, subsection 5. The determination by the single justice is final and no further relief is available.
[PL 1999, c. 731, Pt. ZZZ, §14 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 1999, c. 731, §ZZZ14 (AMD). PL 1999, c. 731, §ZZZ42 (AFF).

SUBCHAPTER 6

MISCELLANEOUS

§1101. Forms and rules

The Supreme Judicial Court shall develop forms and adopt such rules as may be necessary to implement this chapter. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1102. Detention of juveniles charged as adults

(REPEALED)

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 65, §A44 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 2001, c. 667, §A31 (AMD). PL 2003, c. 180, §1 (RP).

§1103. Summary contempt proceeding involving a punitive sanction

The setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66, including any appeal under section 2115-B, is a matter wholly within the discretion of the court. Subchapters 4 and 5 apply. [PL 2007, c. 552, §2 (AMD).]

SECTION HISTORY

PL 1997, c. 317, §A2 (NEW). PL 2007, c. 552, §2 (AMD).

§1104. Material witness; arrest and bail

If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the presence of that person by subpoena, the court may order the arrest of that person and may require that person to give bail for that person's appearance as a witness, utilizing the same standards for release as for a defendant preconviction bailable as of right under subchapter II. Subchapters IV and V also apply. [PL 1997, c. 317, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 317, §A2 (NEW).

§1105. Substance use disorder treatment program

As a condition of post-conviction release, the court may impose the condition of participation in a substance use disorder treatment program for a period not to exceed 24 months pursuant to Title 4, chapter 8. Upon request of the Department of Corrections, the court may require the defendant to pay a substance use testing fee as a requirement of participation in the substance use disorder treatment program. If at any time the court finds probable cause that a defendant released with a condition of

participation in a substance use disorder treatment program has intentionally or knowingly violated any requirement of the defendant's participation in the substance use disorder treatment program, the court may suspend the order of bail for a period of up to 7 days for any such violation. The defendant must be given an opportunity to personally address the court prior to the suspension of an order of bail under this section. A period of suspension of bail is a period of detention under Title 17-A, section 2305. This section does not restrict the ability of the court to take actions other than suspension of the order of bail for the violation of a condition of participation in a substance use disorder treatment program or the ability of the court to entertain a motion to revoke bail under section 1098 and enter any dispositional order allowed under section 1099-A. If the court orders participation in a substance use disorder treatment program under this section, upon sentencing the court shall consider whether there has been compliance with the program. [PL 2019, c. 113, Pt. C, §35 (AMD).]

SECTION HISTORY

PL 2001, c. 318, §1 (NEW). PL 2003, c. 205, §2 (AMD). PL 2017, c. 407, Pt. A, §53 (AMD). PL 2019, c. 113, Pt. C, §35 (AMD).

CHAPTER 107

CUSTODY AND EXAMINATION OF SEXUALLY EXPLICIT MATERIAL

§1121. Limitations on examination of sexually explicit material

1. Sexually explicit material. For purposes of this section, "sexually explicit material" means the property or material described in Title 17-A, chapter 12.
[PL 2011, c. 39, §1 (NEW).]

2. Custody of sexually explicit material. Sexually explicit material subject to a criminal investigation or proceeding must remain in the care, custody and control of the attorney for the State or the court. In any criminal proceeding the attorney for the State may not release to the defendant a copy, photograph, duplicate or any other reproduction of any sexually explicit material, as long as the attorney for the State makes the sexually explicit material reasonably available to the defendant.
[PL 2015, c. 431, §19 (AMD).]

3. Reasonably available. For purposes of this section, sexually explicit material is determined to be reasonably available to the defendant if the attorney for the State provides ample opportunity for inspection, viewing and examination of the sexually explicit material at a location within the control of the attorney for the State by the defendant, the defendant's attorney, the defendant's attorney's agent or any person whom the defendant may seek to qualify to furnish expert testimony at trial.
[PL 2011, c. 39, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 39, §1 (NEW). PL 2015, c. 431, §19 (AMD).

PART 3

TRIALS

CHAPTER 201

GENERAL PROVISIONS

§1201. Power of court unaffected by existence or expiration of term

The existence or expiration of a term of court in no way affects the power of a court to act in a criminal proceeding. [PL 1965, c. 356, §43 (RPR).]

SECTION HISTORY

PL 1965, c. 356, §43 (RPR).

§1202. Postponement or continuance

The trial of any criminal case, except for a crime punishable by imprisonment for life, may be postponed by the court to a future day of the same term, or the jury may be discharged therefrom and the case continued, if justice will thereby be promoted.

§1203. Trial to proceed when dilatory pleas overruled

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §44 (RP).

§1204. Respondent present at felony trial; otherwise excused

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §44 (RP).

§1205. Certain out-of-court statements made by minors or persons with developmental disabilities describing sexual contact

A hearsay statement made by a person under the age of 16 years or a person with a developmental disability as defined in Title 5, section 19503, subsection 3, describing any incident involving a sexual act or sexual contact performed with or on the minor or person by another, may not be excluded as evidence in criminal proceedings in courts of this State if: [PL 2005, c. 557, §1 (AMD).]

1. Mental or physical well-being of a person. On motion of the attorney for the State and at an in camera hearing, the court finds that the mental or physical well-being of that person will more likely than not be harmed if that person were to testify in open court; and
[PL 1985, c. 495, §1 (RPR).]

2. Examination and cross-examination. Pursuant to order of court made on such a motion, the statement is made under oath, subject to all of the rights of confrontation secured to an accused by the Constitution of Maine or the United States Constitution and the statement has been recorded by any means approved by the court, and is made in the presence of a judge or justice.
[PL 1985, c. 495, §1 (RPR).]

SECTION HISTORY

PL 1983, c. 411 (NEW). PL 1985, c. 495, §1 (AMD). PL 1987, c. 564 (AMD). PL 1989, c. 401, §B1 (AMD). PL 2005, c. 557, §1 (AMD).

CHAPTER 203

JURIES

§1251. List of grand jurors

Prior to the commencement of each term of the court to which grand jurors are returned, in any county, the clerk of the court shall make out from the returns on the venires an alphabetical list of such jurors.

§1252. Oaths

When the grand jury is to be impaneled, the clerk shall call the first 2 persons named on the list and administer the following oath to them: "You, as grand jurors of this County of ....., solemnly swear that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows' and your own, you shall keep secret. You shall present no man for envy, hatred or malice; nor leave any man unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court orders and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you and each of you on your part shall well and truly observe and keep. So help you God."

§1253. Affirmations

When any person returned as grand juror is conscientiously scrupulous of taking an oath, he may make affirmation, substituting the word "affirm" instead of "swear" and the words "This you do under the pains and penalties of perjury" instead of "So help you God."

§1254. Juror's oath or affirmation in cases punishable by imprisonment

The following oath shall be administered to jurors in criminal cases: "You swear, that in all causes committed to you, you will give a true verdict therein, according to the law and evidence given you. So help you God." Any juror, conscientiously scrupulous of taking an oath, may affirm in the mode described in section 1253. [PL 1979, c. 541, Pt. B, §21 (AMD).]

SECTION HISTORY

PL 1977, c. 114, §27 (RPR). PL 1979, c. 541, §B21 (AMD).

§1255. Foreman

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §45 (RP).

§1255-A. Grand jury territorial authority to indict for crimes

1. General rule. Grand jury territorial authority to indict for crimes coming within the jurisdiction of the Superior Court must be exercised by the grand jury serving the county where the crime was committed.
[PL 2007, c. 526, §1 (NEW).]

2. Exceptions. The following are exceptions to subsection 1.

A. If the Chief Justice of the Supreme Judicial Court creates judicial regions for venue purposes pursuant to Title 4, section 19, each grand jury in a multicounty judicial region may share authority to indict for crimes committed in that judicial region. [PL 2007, c. 526, §1 (NEW).]

B. Grand jury territorial authority to indict for crimes may also be exercised as otherwise provided by law. [PL 2007, c. 526, §1 (NEW).]
[PL 2007, c. 526, §1 (NEW).]

3. Administration. The Supreme Judicial Court shall establish by rule or administrative order how and to what extent the shared authority of each grand jury in a multicounty judicial region to indict under subsection 2 may be exercised.

[PL 2007, c. 526, §1 (NEW).]

SECTION HISTORY

PL 2007, c. 526, §1 (NEW).

§1256. Grand jury to present all crimes

Grand juries shall present all crimes for which by law they are given territorial authority to indict, and may appoint one of their number to take minutes of their proceedings to be delivered to the attorney, if the jury so directs. When they are dismissed before the court adjourns, they may be summoned again, on any special occasion, at such time as the court directs. Evidence may be offered to the grand jury by the Attorney General, the district attorney, the assistant district attorney and, at the discretion of the presiding justice, by such other persons as said presiding justice may permit. [PL 2007, c. 526, §2 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD). PL 2007, c. 526, §2 (AMD).

§1257. Disclosures improper

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §46 (RP).

§1258. Juries for criminal offenses; challenges

When a person charged with a criminal offense, who has not waived his right to trial by jury, is put upon his trial, the clerk, under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance in a box upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time. The Supreme Judicial Court shall by rule provide the manner of exercising all challenges, and the number and order of peremptory challenges. [PL 1965, c. 482, §1 (AMD).]

Whenever by reason of the prospective length of a criminal trial the court in its discretion shall deem it advisable, it may direct that jurors in addition to the regular panel be called and impanelled to sit as alternate jurors. Such alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Such alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges and be subject to the same obligations and penalties as jurors on the regular panel. An alternate juror who does not replace a juror on the regular panel shall be discharged when the jury retires to consider its verdict. The Supreme Judicial Court shall by rule provide the number of alternate jurors, the manner of exercising all challenges to alternate jurors, and the order and number of peremptory challenges to alternate jurors. [PL 1965, c. 356, §47 (RPR).]

SECTION HISTORY

PL 1965, c. 356, §47 (RPR). PL 1965, c. 482, §1 (AMD).

§1258-A. Voir dire

Any rule of court or statute to the contrary notwithstanding, the court shall permit voir dire examination to be conducted by the parties or their attorneys under its direction. [PL 1965, c. 482, §2 (NEW).]

SECTION HISTORY

PL 1965, c. 482, §2 (NEW).

§1259. Challenges for cause

Challenges for cause shall be allowed to the prosecuting officer and the accused as in civil cases, but no member of a grand jury finding an indictment shall sit on the trial thereof, if challenged therefor by the accused. [PL 1965, c. 356, §48 (RPR).]

SECTION HISTORY

PL 1965, c. 356, §48 (RPR).

§1260. View by jury

The court may order a view by any jury in a criminal case.

CHAPTER 205

WITNESSES

SUBCHAPTER 1

GENERAL PROVISIONS

§1311. Recognizance of witnesses

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §49 (RP).

§1312. No fees to state witnesses

No costs shall be taxed for witnesses before the grand jury in a case where no bill is found nor in complaints against towns for defect of road, unless they were admitted to bail so to attend or were subpoenaed by order of the grand jury or at the request of the prosecuting officer; nor is it necessary to tender fees to witnesses subpoenaed in behalf of the State. [PL 1965, c. 356, §50 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §50 (AMD).

§1313. Punishment of state witness for nonattendance

Whoever, having been subpoenaed as a witness in behalf of the State before any court or grand jury, without reasonable cause fails to appear at the time and place designated in the subpoena, if he is not punished therefor as for contempt, is guilty of a Class E crime. [PL 1979, c. 663, §105 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §51 (AMD). PL 1979, c. 663, §105 (AMD).

§1314. No witness fees until 2nd or 3rd day in continued cases

No fees in criminal cases continued after the first term shall be allowed to witnesses on the part of the State until the 2nd day of the term in Hancock, Oxford, Franklin, Piscataquis and Aroostook; nor until the 3rd day in any other county, unless they were summoned at an earlier day. In all criminal cases, previous to the determination thereof, the court may allow such costs for justices, officers, aids, jurors and witnesses, as are provided by law, to be paid from the county treasury; but no court or judge shall allow any charge for aid or other expenses of the officer in serving a warrant, except his stated fees for service and travel unless, on his examination upon oath or on other evidence, they find such additional charges reasonable.

§1314-A. Compelling evidence in criminal or juvenile proceedings; immunity

In any criminal proceeding before a court or grand jury, or in any juvenile proceeding before a court, if a person refuses to answer questions or produce evidence of any kind on the ground that the person may be incriminated thereby, and if the attorney for the State, in writing and with the written approval of the Attorney General or, in the event the prosecution is being conducted by the office of the district attorney, the written approval of either the Attorney General or the district attorney for that district, requests the court to order that person to answer the questions or produce the evidence, and the court after notice to the witness and hearing orders, unless the court finds to do so would be clearly contrary to the public interest, that person shall comply with the order. After complying, and if, but for this section, that person would have had the right to withhold the answers given or the evidence produced by that person, that person may not be prosecuted or subjected to penalty, forfeiture or adjudication for or on account of any transaction, matter or thing concerning which, in accordance with the order, that person gave answer or produced evidence. Failure to answer questions or produce evidence as ordered by the court following notice and hearing constitutes contempt of court. The person may nevertheless be prosecuted or subjected to penalty, forfeiture or adjudication for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order. [PL 2003, c. 162, §1 (AMD).]

SECTION HISTORY

PL 1967, c. 526 (NEW). PL 1985, c. 386, §1 (AMD). PL 2003, c. 162, §1 (AMD).

§1315. Self-incrimination; failure to testify; husband or wife as witness

In all criminal trials, the accused shall, at his own request but not otherwise, be a competent witness. He shall not be compelled to testify on cross-examination to facts that would convict, or furnish evidence to convict him of any other crime than that for which he is on trial. The fact that he does not testify in his own behalf shall not be taken as evidence of his guilt. The husband or wife of the accused is a competent witness except in regard to marital communications. [PL 1969, c. 333 (AMD).]

SECTION HISTORY

PL 1969, c. 333 (AMD).

§1316. Depositions

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §52 (RP).

§1317. List of witnesses

The Attorney General, district attorney or foreperson of the grand jury shall swear or affirm, in presence of the jury, all witnesses who are to testify before them, and a list thereof, stating the cases in which they testify, must be returned into the court by the foreperson before the jury is discharged and filed and entered on record by the clerk. The clerk may not make such list public until the criminal cases at such terms have been tried or otherwise disposed of. [PL 2003, c. 299, §3 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD). PL 2003, c. 299, §3 (AMD).

§1318. Prosecuting attorneys

For purposes of this chapter, the term "prosecuting attorney" means: [PL 1979, c. 663, §106 (AMD).]

1. Attorney General. "Attorney General" where a criminal prosecution is brought by the Attorney General; and

[PL 1975, c. 775, §1 (NEW).]

2. District Attorney. "District Attorney" where a criminal prosecution is brought by a District Attorney.
[PL 1975, c. 775, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 775, §1 (NEW). PL 1979, c. 663, §106 (AMD).

§1319. Authorization of payments by a prosecuting attorney

For purposes of this chapter, when a prosecuting attorney is permitted to authorize payment of fees or expenses incurred on behalf of the State in a criminal prosecution, payment of those fees and expenses must be made by the proper authorities to the persons, municipalities or agencies to whom the payment is authorized upon certification to those authorities by the prosecuting attorney or the prosecuting attorney's designee that the payment is reasonable and necessary to the prosecution of a given criminal case. Payment may be made from the Extradition and Prosecution Expenses Account established in section 224-A. [PL 2013, c. 566, §4 (AMD).]

SECTION HISTORY

PL 1975, c. 775, §1 (NEW). PL 2013, c. 566, §4 (AMD).

§1320. Authorization of payment of witness fees of state witnesses in criminal prosecutions

In all criminal prosecutions in the Superior Court, payment of witness fees for state witnesses, fees and expenses payable on account of the services of police officers as witnesses and as complainants, and fees and expenses payable on account of the services of police officers in serving criminal process shall be made upon authorization by the prosecuting attorney or his designee. The amount of the fees and expenses shall be determined in accordance with these statutes. [PL 1975, c. 775, §1 (NEW).]

1. Payments. Payments made under this section must be made first from the Extradition and Prosecution Expenses Account established in section 224-A and, if there are insufficient funds in that account, next from the county treasury upon authorization of the prosecuting attorney, unless otherwise expressly directed by law. Payments from the county treasury must be made from the sums set aside in the county budget for the payments on account of Superior Court criminal proceedings.
[PL 2013, c. 566, §5 (AMD).]

2. Expenditures. In fixing the amount of direct expenditures by the counties in calendar year 1975 for the support of the Superior Court pursuant to Title 4, section 118, the Treasurer of State shall not consider sums expended in criminal prosecutions in the Superior Court on account of witness fees for state witnesses, fees and expenses payable on account of the services of police officers as witnesses and as complainants, and fees and expenses payable on account of the services of police officers in serving criminal process.
[PL 1975, c. 775, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 775, §1 (NEW). PL 1977, c. 63 (AMD). PL 2013, c. 566, §5 (AMD).

§1321. Child witnesses in certain sex crime cases

1. Testimony of a child outside the presence of the defendant. Upon motion by the State prior to trial and with reasonable notice to the defendant, a court may allow a child who is 14 years of age or younger to testify outside the presence of the defendant pursuant to this section in a criminal proceeding concerning a crime under Title 17-A, chapter 11 or 12 in which the child is the alleged victim.
[PL 2021, c. 395, §1 (NEW).]

2. Requirements for direct testimony outside the presence of the defendant. Direct testimony of a child outside the presence of the defendant under subsection 1 must meet the following requirements:

A. The testimony must be conducted by way of 2-way closed-circuit television or other audiovisual electronic means; [PL 2021, c. 395, §1 (NEW).]

B. The testimony must occur at a recognized children's advocacy center with only a victim or witness advocate present in the room in which the child is testifying; [PL 2021, c. 395, §1 (NEW).]

C. The opportunity for real-time cross-examination of the child must be provided to the defendant's attorney after the child's direct testimony; and [PL 2021, c. 395, §1 (NEW).]

D. The defendant must be able to observe the testimony of the child while the child is testifying and must be able to communicate with the defendant's attorney while the child is testifying. [PL 2021, c. 395, §1 (NEW).]

[PL 2021, c. 395, §1 (NEW).]

3. Exception. This section does not apply if the defendant is an attorney pro se or if the positive identification of the defendant is required.

[PL 2021, c. 395, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 395, §1 (NEW).

SUBCHAPTER 2

COSTS AND FEES

§1361. Summons to witnesses

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §53 (RP).

§1362. Costs and fees for complainants

No costs shall be allowed by such judge to complainants in any capacity; but this shall not prevent the allowance of their fees as officers to police officers and constables or for their municipalities when such police officers or constables are paid a salary or are paid upon a per diem basis by such municipalities and such officers or constables complain under authority of their municipalities or it is made their duty to do so. No witness shall be allowed in a criminal case for more than one travel, or for travel and attendance in more than one case at the same time before any judicial tribunal.

§1363. Limitation of costs and fees in criminal cases

No complainant or witness shall be allowed fees, travel and attendance in a criminal case for more than one complaint on any one day when there are other complaints against the same respondent arising out of the same transaction before any judicial tribunal.

SUBCHAPTER 3

OUT-OF-STATE WITNESSES

§1411. Short title

This subchapter may be cited as "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings."

§1412. Definitions

As used in this subchapter, the following words shall have the following meanings:

1. State. "State" shall include any territory of the United States and District of Columbia.

2. Summons. "Summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

3. Witness. "Witness" shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

§1413. Summons to testify in another state

If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this State, certifies under the seal of such court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution or grand jury investigation and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing. The judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as provided, after being paid or tendered by some properly authorized person the sum of 10¢ a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

§1414. Summons to testify in this State

If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this

State or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record within whose territorial jurisdiction the witness is found.

If the witness is summoned to attend and testify in this State, he shall be tendered the sum of 10¢ a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $15 for each day that he is required to travel and attend as a witness. In addition, such witness, upon submission of proper vouchers to the court, may be allowed reasonable allowance for meals and lodging at the discretion of the presiding justice. A witness who has appeared in accordance with the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

§1415. Exemption from arrest and service of process

If a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not while in this State pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

SUBCHAPTER 4

PRISONERS AS WITNESSES

§1461. Definitions

As used in this subchapter: [PL 1967, c. 317 (NEW).]

1. Penal institutions. "Penal institutions" includes a jail, prison, penitentiary, house of correction or other place of penal detention.
[PL 1967, c. 317 (NEW).]

2. State. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory of the United States.
[PL 1967, c. 317 (NEW).]

3. Witness. "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.
[PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1462. Summons to testify in another state

A judge of the state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this State, may certify that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, that a person who is confined in a penal institution in this State may be a material witness in the proceeding, investigation or action, and that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the Attorney General, the judge in this State shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1463. Court order

If at the hearing the judge determines that the witness may be material and necessary, that his attending and testifying are not adverse to the interests of this State or to the health or legal rights of the witness, that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order, and that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached, directing the witness to attend and testify, directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and prescribing such conditions as the judge shall determine. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1464. Terms and conditions

The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness, and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1465. Exceptions

This subchapter does not apply to any person in this State confined as mentally ill. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1466. Summon to testify in this State

If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this State, a judge of the court may certify that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, that a person who is confined in a penal institution in the other state may be a

material witness in the proceeding, investigation or action, and that his presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1467. Compliance

The judge of the court in this State may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1468. Exemption from arrest and service of process

If a witness from another state comes into or passes through this State under an order directing him to attend and testify in this or another state, he shall not while in this State pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this State under the order. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1469. Uniformity of interpretation

This subchapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1470. Short title

This subchapter may be cited as the "Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act." [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

§1471. Severability clause

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable. [PL 1967, c. 317 (NEW).]

SECTION HISTORY

PL 1967, c. 317 (NEW).

PART 4

JUDGMENT AND PROCEEDINGS

CHAPTER 301

SENTENCES

SUBCHAPTER 1

GENERAL PROVISIONS

§1701. Effect of bail following conviction and commitment

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §54 (RPR). PL 1983, c. 333 (RP).

§1701-A. Credit for confinement prior to sentencing

(REPEALED)

SECTION HISTORY

PL 1973, c. 144 (NEW). PL 1975, c. 499, §2 (RP).

§1701-B. Post-conviction bail

(REPEALED)

SECTION HISTORY

PL 1985, c. 743 (NEW). PL 1987, c. 758, §21 (RP).

§1702. No punishment until conviction; costs

1. No punishment before conviction. A person may not be punished for an offense until convicted of that offense in a court having jurisdiction over the person and case.
[PL 2003, c. 182, §1 (NEW).]

2. Costs included in sentence. If a person is convicted and the court imposes a fine, the court:

A. May sentence the defendant to pay the costs of prosecution; [PL 2003, c. 182, §1 (NEW).]

B. May sentence the defendant to pay, as restitution, the costs of drug tests, other than tests under Title 29-A, administered to the defendant by a law enforcement officer or medical personnel at the request of a law enforcement officer. The court shall transfer all amounts paid by a defendant under this paragraph to the municipal, county or state agency that incurred the costs; and [PL 2003, c. 182, §1 (NEW).]

C. Shall, if the case is prosecuted in District Court, sentence the defendant to pay a fine sufficient to cover the costs as provided in Title 4, section 173. This paragraph does not apply to defendants prosecuted for violations of Title 26, chapter 7, subchapter 1-B or for violations of Title 28-A, sections 2078 and 2223. [PL 2003, c. 182, §1 (NEW).]

[PL 2003, c. 182, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 356, §55 (AMD). PL 1975, c. 499, §3 (AMD). PL 1987, c. 45, §B2 (AMD). PL 1987, c. 737, §§C29,C106 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD). PL 2003, c. 182, §1 (RPR).

§1702-A. Fingerprints required on certain sentences

(REPEALED)

SECTION HISTORY

PL 1975, c. 398 (NEW). PL 1975, c. 668 (RP).

§1703. State Prison sentence; imprisonment for misdemeanor

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§1704. Commitment in county where convicted

Any person sentenced by the District Court to a term of imprisonment in a jail, not exceeding 4 months, shall be committed to the jail in the county in which such person is convicted, provided such county has a suitable jail, otherwise such commitment may be to any jail in the State.

§1705. Expenses of prisoners from other counties

If a person commits a crime in one county of the State and is sentenced to a term of imprisonment in a jail in a different county, the county in which the crime was committed shall pay to the other county such sum as may be agreed upon by the county commissioners of the counties for the costs of care and custody, deducting the amount received for labor. If the commissioners do not agree upon the amount to be paid, representation of the facts may be made to the Superior Court or any justice of the Superior Court, and the amount shall be determined by the court or justice, either in term time or vacation. [PL 1985, c. 242 (RPR).]

SECTION HISTORY

PL 1985, c. 242 (RPR).

§1706. Sureties to keep peace for misdemeanor

In addition to the punishment prescribed by law, the court may require any person convicted of an offense not punishable by imprisonment in the State Prison to recognize to the State, with sufficient sureties, in a reasonable sum, to keep the peace and be of good behavior for a term not exceeding 2 years, and to stand committed until he so recognizes.

§1707. Record to designated facility

Whenever a person is convicted of a crime and sentenced to a term of imprisonment that is to be served in the custody of the Department of Corrections, the clerk of the court shall make and forward to the head of the correctional facility designated as the initial place of confinement by the Commissioner of Corrections pursuant to Title 17-A, section 2304, a record containing copies of the docket entries and charging instrument, together with a statement of any fact or facts that the presiding justice may determine to be important or necessary for a full comprehension of the case. This record must be delivered to the head of the designated correctional facility within 10 days of the date the prisoner is received at that facility. At the time a person, so sentenced, is delivered to the designated correctional facility, a copy of the judgment and commitment must be given to the receiving officer at that facility. [PL 2019, c. 113, Pt. C, §36 (AMD).]

SECTION HISTORY

PL 1977, c. 114, §28 (RPR). PL 1987, c. 616 (RPR). PL 2019, c. 113, Pt. C, §36 (AMD).

§1708. Error in sentence

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §56 (RP).

§1709. Motion for new trial; newly discovered evidence

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §56 (RP).

§1710. Transfer of persons under sentence to county jails for rehabilitative reasons

(REPEALED)

SECTION HISTORY

PL 1973, c. 538 (NEW). PL 1975, c. 191, §1 (AMD). PL 1979, c. 541, §A140 (AMD). PL 1981, c. 493, §2 (AMD). PL 1989, c. 887, §1 (RPR). PL 1995, c. 368, §R1 (RP).

SUBCHAPTER 2

PENALTIES AND DURATION OF TERM

§1741. General penalty

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP). PL 1975, c. 740, §2 (REEN). PL 1979, c. 663, §107 (RP).

§1742. Punishment when previous sentence to State Prison

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§1743. Maximum and minimum terms

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

SUBCHAPTER 3

WORK-JAIL SENTENCES

§1791. Work-jail sentences

When the punishment provided by law may be imprisonment in the State Prison for 3 years or less, such punishment may be inflicted by the court, in its discretion, in any of the work-jails.

§1792. Alternative sentences to work-jails; authority of inspectors over incorrigible or dangerous convicts

When a convict is sentenced to imprisonment and labor in any of the work-jails, the court or judge may in addition sentence him to the other punishment provided by law for the same offense, with the condition that if such convict cannot be received at the work-jail to which he is sentenced, or if at any time before the expiration of said sentence, in the judgment of the inspectors of jails, he becomes incorrigible or unsafe, they may order that he suffer such alternative sentence or punishment. If said

alternative sentence is to the State Prison, the sheriff of the county where such convict is imprisoned shall forthwith, upon receiving the order of said inspectors, cause said convict to be conveyed to the State Prison at the expense of the county where he was sentenced.

§1793. Sentence to any work-jail nearest county of offense; prison sentence includes labor

The Superior Court and the District Court, in the county where a work-jail is situated or in any county where there is no work-jail, may, subject to section 1704, sentence any person convicted of an offense punishable by imprisonment to any of the work-jails nearest or most convenient to the county where the offense is committed, and all sentences of imprisonment shall include labor. The keeper of such work-jail shall receive and detain such prisoner in the same manner as if committed by a court sitting in the county where such work-jail is situated. Any officer of any county qualified to serve criminal precepts in his county may serve any precept required by this section and section 1792, whether such service is performed in whole or in part in one or more counties, and processes shall be issued and directed accordingly.

SUBCHAPTER 4

EXECUTION OF SENTENCE

§1841. Clerk's minutes authority to execute sentence

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §57 (RP).

§1842. Sentence in default of payment of fine and costs

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §2 (RP).

§1843. Removal to State Prison; clothing

When a convict is sentenced to confinement in the State Prison, the judgment of the court shall direct the sheriff of the county in which trial was had to cause such convict, without needless delay, to be removed from the county jail to the State Prison. All sheriffs and jail keepers shall strictly obey the directions of the judgment. The clerk, as soon as may be, shall deliver a certified copy of such judgment to the sheriff of the county, and he shall forthwith deliver it and the convict to said warden. The sheriff shall provide the convict with comfortable clothing in which to be removed to the State Prison. [PL 1965, c. 356, §58 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §58 (AMD).

CHAPTER 303

FINES AND COSTS

SUBCHAPTER 1

GENERAL PROVISIONS

§1901. Respondent not to be sentenced to pay costs of court as such

The Superior Court shall not, in any criminal proceeding, sentence any respondent to pay costs of court as such, but may take costs into consideration and include in any fine imposed a sum adequate to cover all or any part of them without reference to such costs and without taxing them, provided the maximum fine for the particular offense is not exceeded. [PL 1975, c. 775, §2 (RPR).]

SECTION HISTORY

PL 1975, c. 775, §2 (RPR).

§1902. Fines, forfeitures and criminal costs paid to State

All fines, forfeitures and costs in criminal cases shall be paid into the State Treasury. [PL 1975, c. 735, §15-A (RPR).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD). PL 1975, c. 623, §§17-A (RPR). PL 1975, c. 735, §§15-A (RPR).

§1903. Fines and forfeitures recovered by indictment unless otherwise provided

All fines and forfeitures, imposed as punishment for offenses or for violations or neglects of statute duties may, when no other mode is expressly provided, be recovered by indictment. When no other appropriation is expressly made, they inure to the State. [PL 1975, c. 623, §17-B (AMD).]

SECTION HISTORY

PL 1975, c. 623, §17-B (AMD).

§1904. Inability to pay fine and costs; liberation

(REPEALED)

SECTION HISTORY

PL 1965, c. 425, §10 (AMD). PL 1975, c. 499, §4 (RP).

SUBCHAPTER 2

CLERKS OF COURT

§1941. Duties of clerks as to certificates of fines

Clerks of court shall attest triplicate copies of certificates of all fees, fines and bail forfeitures imposed and accruing to the State at such intervals as the Chief Justice of the Supreme Judicial Court or his designee may direct, and deliver one of these copies to the State Auditor, to the Chief Justice or his designee and retain one in the clerk's office. [PL 1977, c. 114, §29 (RPR).]

SECTION HISTORY

PL 1975, c. 383, §15 (AMD). PL 1975, c. 408, §31 (RPR). PL 1975, c. 735, §16 (RPR). PL 1977, c. 114, §29 (RPR).

§1942. Duty of clerks to collect fines and costs or to issue process for collection

Each clerk of court, in default of payment to him of fines, forfeitures and bills of costs, shall issue warrants of distress, or such other process therefor as the court finds necessary to enforce the execution of any order, sentence or judgment in behalf of the State, deliver them to the sheriff, or to such constable as the district attorney directs, and enter of record the name of the officer and the time when they are delivered to him. [PL 1973, c. 567, §20 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD).

§1943. Fines, costs and forfeitures in Superior Court

Every clerk of a Superior Court shall render under oath a detailed account of all fines, costs and forfeitures upon convictions and sentences before the court and shall pay them into the State Treasury on or before the 15th day of the month following the collection of such fines, costs and forfeitures. Any person who fails to make such payments into the State Treasury forfeits, in each instance, double the amount so neglected to be paid over, to be recovered by indictment for the persons entitled to such fines, costs and forfeitures, and in default of payment, that person is guilty of a Class E crime. [PL 2015, c. 44, §5 (AMD).]

SECTION HISTORY

PL 1975, c. 383, §16 (AMD). PL 1975, c. 408, §31 (RPR). PL 1979, c. 663, §108 (AMD). PL 2013, c. 16, §10 (REV). PL 2015, c. 44, §5 (AMD).

SUBCHAPTER 3

SHERIFFS AND OTHER OFFICERS

§1981. Payment over of fines and costs collected

Sheriffs, jailers and constables who by virtue of their office receive any fines or forfeitures, shall forthwith pay them to the Treasurer of State. [PL 1977, c. 114, §30 (AMD).]

If any such officer neglects to pay over such fine or forfeiture for 30 days after the receipt thereof; or if he permits any person, sentenced to pay such fine or forfeiture and committed to his custody, to go at large without payment, unless by order of court, and does not within 30 days after the escape pay the amount thereof to the clerk of the court, he forfeits to the State double the amount. The Treasurer of State shall give notice of such neglect to the Attorney General, who shall sue therefor in a civil action in the name of such treasurer. [PL 1977, c. 114, §31 (AMD).]

All such fines imposed by the District Court shall be paid over to the District Court.

SECTION HISTORY

PL 1973, c. 567, §20 (AMD). PL 1975, c. 383, §17 (AMD). PL 1975, c. 408, §32 (AMD). PL 1975, c. 735, §17 (AMD). PL 1977, c. 114, §§30,31 (AMD).

§1982. Receipts for process for recovery of fines

Every sheriff or other officer to whom any process for the recovery of such fine, forfeiture or costs is committed by the clerk of courts shall, at the next session of the court in the same county, produce a receipt in full for the same or assign a satisfactory excuse for not so doing. In case of neglect, the court shall order a prosecution to be commenced therefor by the district attorney. [PL 1973, c. 567, §20 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD).

§1983. Disposal of securities for fines and costs

Each sheriff, as often as every 3 months, shall deliver to the Treasurer of State all securities taken by him for fines and costs, on the liberation of poor convicts from prison pursuant to law. [PL 1975, c. 408, §33 (AMD).]

All such securities taken for fines imposed by the District Court shall be paid over to the District Court.

SECTION HISTORY

PL 1975, c. 383, §18 (AMD). PL 1975, c. 408, §33 (AMD).

SUBCHAPTER 4

COUNTY TREASURERS

§2031. Fees claimed within 3 years

Sums allowed to any person as fees or for expenses in any criminal prosecution and payable from the State Treasury may be claimed by such person of the Treasurer of State at any time within 3 years after the allowance, and not afterwards. [PL 1975, c. 408, §34 (AMD).]

SECTION HISTORY

PL 1975, c. 383, §19 (AMD). PL 1975, c. 408, §34 (AMD).

§2032. Schedule of securities

A schedule of all securities with the amount due on each, received by the Treasurer of State from the sheriff pursuant to section 1983, shall be filed by the sheriff with the clerk. The clerk, from time to time, shall examine such securities, and, where he deems appropriate, shall request that the court order the Attorney General to take such measures for their collection as are deemed expedient or authorize the treasurer to compound and cancel them on such terms as may be ordered. [PL 1975, c. 408, §34 (AMD).]

SECTION HISTORY

PL 1975, c. 383, §20 (AMD). PL 1975, c. 408, §34 (AMD).

§2033. Treasurer's annual report to court

(REPEALED)

SECTION HISTORY

PL 1975, c. 383, §21 (AMD). PL 1975, c. 408, §34 (AMD). PL 1975, c. 735, §18 (RPR). PL 1979, c. 127, §116 (RP).

SUBCHAPTER 5

DISTRICT ATTORNEYS

§2061. Examination of records of clerks and treasurers by district attorney

District attorneys shall examine the records and files in the offices of clerks and the certificates and accounts in the offices of treasurers, relating to fines, forfeitures and bills of costs accruing to their counties; ascertain, so far as practicable, the cause of any delinquencies in paying over the same; and move the court for all necessary orders and processes to enforce the collection thereof. [PL 1973, c. 567, §20 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD).

§2062. Delinquent sheriff or other officer summoned before court by district attorney

When it appears that any sheriff or other officer is not discharged of any fine, forfeiture or bill of costs committed to him to collect, the district attorney shall cause him to be summoned and brought

before the court that imposed such fine, forfeiture or bill of costs to show a proper discharge or the cause for not collecting the same and paying it over. Such sheriff or other officer shall carry into execution all lawful orders of the court relating to the collection and payment thereof, and shall, by all other means pertaining to his office, promote and enforce the same. [PL 1973, c. 567, §20 (AMD).]

SECTION HISTORY

PL 1973, c. 567, §20 (AMD).

CHAPTER 305

APPEALS

§2111. Appeals from the District Court

1. Appeal of judgment of conviction or order to the Law Court. Except as otherwise specifically provided, in any criminal proceeding in the District Court, a defendant aggrieved by a judgment of conviction, ruling or order may appeal to the Supreme Judicial Court sitting as the Law Court.
[PL 2001, c. 471, Pt. D, §16 (AMD).]

2. Appeal to the Superior Court. If an appeal from the District Court must be taken to the Superior Court, the appeal must be to the Superior Court in the county where the offense on which the judgment of conviction or order was rendered is alleged to have been committed. Venue may be transferred at the discretion of the Chief Justice of the Superior Court.
[PL 1999, c. 731, Pt. ZZZ, §15 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

3. Time for taking of appeal. The Supreme Judicial Court shall provide by rule the time for taking the appeal and the manner and any conditions for the taking of the appeal.
[PL 1999, c. 731, Pt. ZZZ, §15 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1965, c. 356, §59 (RPR). PL 1969, c. 501, §2 (AMD). PL 1981, c. 647, §4 (AMD). PL 1987, c. 166, §1 (RPR). PL 1999, c. 731, §ZZZ15 (RPR). PL 1999, c. 731, §ZZZ42 (AFF). PL 2001, c. 471, §D16 (AMD).

§2112. Failure to prosecute appeal

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §60 (AMD). PL 1987, c. 166, §2 (RP).

§2113. Withdrawal of appeal; fees of jailer

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §61 (RP).

§2114. Defendant may make election of trial

In all Class D and E criminal proceedings, the defendant may waive the defendant's right to jury trial and elect to be tried in the District Court, as provided by rule of the Supreme Judicial Court. [PL 1999, c. 731, Pt. ZZZ, §16 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1965, c. 356, §62 (AMD). PL 1973, c. 520 (RPR). PL 1975, c. 139 (RPR). PL 1979, c. 663, §109 (AMD). PL 1981, c. 487, §1 (RPR). PL 1999, c. 731, §ZZZ16 (AMD). PL 1999, c. 731, §ZZZ42 (AFF).

§2115. Appeals from the Superior Court

In any criminal proceeding in the Superior Court, any defendant aggrieved by a judgment of conviction, ruling or order may appeal to the Supreme Judicial Court sitting as the Law Court. The Supreme Judicial Court shall provide by rule the time for taking the appeal and the manner and any conditions for the taking of the appeal. [PL 1999, c. 731, Pt. ZZZ, §17 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1965, c. 356, §63 (RPR). PL 1987, c. 166, §3 (AMD). PL 1999, c. 731, §ZZZ17 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2007, c. 475, §5 (AMD).

§2115-A. Appeals by the State

1. Appeals prior to trial. An appeal may be taken by the State in criminal cases on questions of law from the District Court and from the Superior Court to the Supreme Judicial Court sitting as the Law Court: From an order of the court prior to trial which suppresses any evidence, including, but not limited to, physical or identification evidence or evidence of a confession or admission; from an order which prevents the prosecution from obtaining evidence; from a pretrial dismissal of an indictment, information or complaint; or from any other order of the court prior to trial which, either under the particular circumstances of the case or generally for the type of order in question, has a reasonable likelihood of causing either serious impairment to or termination of the prosecution.
[PL 1999, c. 731, Pt. ZZZ, §18 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

2. Appeals after trial. An appeal may be taken by the State from the Superior Court or the District Court to the Supreme Judicial Court sitting as the Law Court after trial and after a finding of guilty by a jury or the court from the granting of a motion for a new trial, from arrest of judgment, from dismissal or from other orders requiring a new trial or resulting in termination of the prosecution in favor of the accused, when an appeal of the order would be permitted by the double jeopardy provisions of the Constitution of the United States and the Constitution of Maine.
[PL 1999, c. 731, Pt. ZZZ, §18 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

2-A. Appeal from adverse decision of the Superior Court sitting as an appellate court relative to an aggrieved defendant's appeal from the denial of a Rule 35 motion in District Court.
[PL 2015, c. 431, §20 (RP).]

2-B. Appeal from the denial of a Rule 35 motion. If a motion for correction or reduction of a sentence brought by the attorney for the State under Rule 35 of the Maine Rules of Unified Criminal Procedure is denied in whole or in part, an appeal may be taken by the State from the adverse order to the Supreme Judicial Court sitting as the Law Court.
[PL 2015, c. 431, §21 (AMD).]

3. When defendant appeals. When the defendant appeals from a judgment of conviction, it is not necessary for the State to appeal. It may argue that error in the proceedings at trial in fact supports the judgment. The State may also establish that error harmful to it was committed prior to trial or in the trial resulting in the conviction from which the defendant has appealed, which error should be corrected in the event that the Law Court reverses on a claim of error by the defendant and remands the case for a new trial. If the case is so reversed and remanded, the Law Court shall also order correction of the error established by the State.
[PL 1999, c. 731, Pt. ZZZ, §21 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

4. Time. The time for taking and the manner and any conditions for the taking of an appeal pursuant to subsection 1, 2 or 2-B are as the Supreme Judicial Court provides by rule, and an appeal taken pursuant to subsection 1 must also be taken before the defendant has been placed in jeopardy. An appeal taken pursuant to this subsection must be diligently prosecuted.
[PL 2015, c. 431, §22 (AMD).]

5. Approval of Attorney General. In any appeal taken pursuant to subsection 1, 2 or 2-B, the written approval of the Attorney General is required; except that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted, the written approval may be filed at a later date.
[PL 2015, c. 431, §23 (AMD).]

6. Liberal construction. The provisions of this section shall be liberally construed to effectuate its purposes.
[PL 1979, c. 701, §14 (AMD).]

7. Rules. The Supreme Judicial Court may provide for implementation of this section by rule.
[PL 1979, c. 343, §2 (NEW).]

8. Fees and costs. The Law Court shall allow counsel fees and costs for the defense of appeals under this section, to be paid by the Maine Commission on Indigent Legal Services under Title 4, section 1801. The compensation paid by the commission may not exceed the rates established by the commission for the payment of counsel providing indigent legal services.
[PL 2013, c. 159, §14 (AMD).]

9. Appeals to Federal Court; fees and costs. The Law Court shall allow attorney's fees for court appointed counsel when the State appeals a judgment to any Federal Court or to the United States Supreme Court on certiorari. Any fees allowed pursuant to this subsection must be paid out of the accounts of the Maine Commission on Indigent Legal Services under Title 4, section 1801. The compensation paid by the commission may not exceed the rates established by the commission for the payment of counsel providing indigent legal services.
[PL 2013, c. 159, §15 (AMD).]

SECTION HISTORY

PL 1967, c. 547, §§1,3 (NEW). PL 1971, c. 215 (AMD). PL 1977, c. 510, §3 (AMD). PL 1977, c. 564, §74 (AMD). PL 1979, c. 343, §2 (RPR). PL 1979, c. 541, §B22 (AMD). PL 1979, c. 663, §110 (AMD). PL 1979, c. 701, §14 (AMD). PL 1983, c. 105 (AMD). PL 1987, c. 234, §§1-3 (AMD). PL 1987, c. 461 (AMD). PL 1991, c. 223 (AMD). PL 1995, c. 47, §§1-3 (AMD). PL 1999, c. 731, §§ZZZ18-21 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2001, c. 17, §4 (AMD). PL 2013, c. 159, §§14,15 (AMD). PL 2015, c. 431, §§20-23 (AMD).

§2115-B. Appeal by aggrieved contemnor

1. Summary contempt proceedings involving punitive sanctions. In a summary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under the Maine Rules of Civil Procedure, Rule 66, before a Judge of the District Court or Probate Court or a Justice of the Superior Court or the Supreme Judicial Court, a contemnor who is aggrieved by an order and imposition of a punitive sanction may appeal to the Supreme Judicial Court sitting as the Law Court, as provided under section 2111 or 2115 and the applicable Maine Rules of Appellate Procedure.
[PL 2007, c. 552, §3 (AMD).]

2. Plenary contempt proceedings involving punitive sanctions. In a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under the Maine Rules of Civil Procedure, Rule 66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction may appeal to the Supreme Judicial Court sitting as

the Law Court, as provided under section 2111 or 2115 and the applicable Maine Rules of Appellate Procedure.
[PL 2007, c. 552, §3 (AMD).]

SECTION HISTORY

PL 1997, c. 317, §B1 (NEW). RR 1999, c. 2, §16 (COR). RR 1999, c. 2, §17 (AFF). PL 1999, c. 731, §ZZZ22 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2003, c. 17, §3 (AMD). PL 2007, c. 552, §3 (AMD).

§2116. Court action after federal court has acted

Whenever any federal court finds that a prisoner in any penal institution in this State has been deprived of any of the rights guaranteed to him by the Constitution of the United States before, at or after his trial, so that the judgment or sentence or both are erroneous and said court holds the case on its docket pending corrective action by the proper state official, the Attorney General may act as follows. He may file a petition in the Superior Court of the county where the prisoner was tried and convicted in term time or with any justice of said court in vacation, setting forth the petition of the prisoner to the federal court and the decision of that court, and the Superior Court of conviction or any justice thereof in vacation shall then recall the judgment and sentence held erroneous and order it stricken from the records of said court and shall set the prisoner down for trial if in term time or bind him over to the next criminal term in said county if in vacation, after setting his bail. If the sentence only is erroneous, the Superior Court of the county of conviction in term time or any justice thereof in vacation, on presentation of the Attorney General's petition, shall recall the erroneous sentence and order it stricken from the records and shall, in term time or in vacation, sentence the prisoner anew in accordance with the indictment against said prisoner.

§2117. Objections in criminal cases

For all purposes for which an exception has heretofore been necessary in criminal cases, it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor. If a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him. [PL 1965, c. 356, §64 (RPR).]

SECTION HISTORY

PL 1965, c. 356, §64 (RPR).

CHAPTER 305-A

POST-CONVICTION REVIEW

§2121. Definitions

As used in this chapter, the following terms have the following meanings. [PL 1979, c. 701, §15 (NEW).]

1. Criminal judgment. "Criminal judgment" means a judgment of conviction of a crime, the orders of adjudication and disposition in a juvenile case and a judgment of not criminally responsible by reason of insanity.
[PL 2011, c. 601, §1 (AMD).]

1-A. Assigned justice or judge. "Assigned justice or judge" means the Justice or Active Retired Justice of the Supreme Judicial Court, the Justice or Active Retired Justice of the Superior Court or the judge authorized to sit in the Superior Court on post-conviction review cases who is assigned the post-conviction review proceeding when a special assignment has been made. It means any justice, active

retired justice or authorized judge attending to the regular criminal calendar when the post-conviction review proceeding is assigned to the regular criminal calendar.
[PL 2011, c. 601, §2 (AMD).]

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 2305 and default in payment of a fine or restitution. It does not include the following Title 17-A, Part 6 court proceedings: revocation of probation, revocation of supervised release for sex offenders or revocation of administrative release. It does not include the following administrative actions: calculations of deductions pursuant to Title 17-A, section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; section 2310, subsections 3, 6 and 7; and section 2311; disciplinary proceedings resulting in a withdrawal of deductions under Title 17-A, section 2307, subsection 5; section 2308, subsection 3; section 2309, subsection 3; section 2310, subsection 4; and section 2311; 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 former section 4112.
[PL 2019, c. 113, Pt. C, §37 (AMD).]

3. Sentence. "Sentence" means the punishment imposed in a criminal proceeding or the disposition imposed in a juvenile proceeding.
[PL 1983, c. 235, §2 (RPR).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §1 (AMD). PL 1983, c. 235, §§1,2 (AMD). PL 1985, c. 209, §1 (AMD). PL 1985, c. 556, §1 (AMD). PL 1995, c. 286, §2 (AMD). PL 1997, c. 464, §1 (AMD). PL 2003, c. 29, §1 (AMD). PL 2011, c. 601, §§1-3 (AMD). PL 2013, c. 133, §3 (AMD). PL 2017, c. 148, §2 (AMD). PL 2019, c. 113, Pt. C, §37 (AMD).

§2122. Purpose

This chapter provides a comprehensive and, except for direct appeals from a criminal judgment, exclusive method of review of those criminal judgments and of post-sentencing proceedings occurring during the course of sentences. It is a remedy for illegal restraint and other impediments specified in section 2124 that have occurred directly or indirectly as a result of an illegal criminal judgment or post-sentencing proceeding. It replaces the remedies available pursuant to post-conviction habeas corpus, to the extent that review of a criminal conviction or proceedings were reviewable, the remedies available pursuant to common law habeas corpus, including habeas corpus as recognized in Title 14, sections 5501 and 5509 to 5546, coram nobis, audita querela, writ of error, declaratory judgment and any other previous common law or statutory method of review, except appeal of a judgment of conviction or juvenile adjudication and remedies that are incidental to proceedings in the trial court. The substantive extent of the remedy of post-conviction review is defined in this chapter and not defined in the remedies that it replaces; provided that this chapter provides and is construed to provide relief for those persons required to use this chapter as required by the Constitution of Maine, Article I, Section 10. [PL 2011, c. 601, §4 (AMD).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1997, c. 399, §1 (AMD). PL 2011, c. 601, §4 (AMD).

§2123. Jurisdiction and venue

1. Jurisdiction. Jurisdiction shall be in the Superior Court.
[PL 1979, c. 701, §15 (NEW).]

1-A. Supreme Court Justice or authorized Judge of the District Court. A single Justice of the Supreme Judicial Court, an Active Retired Justice of the Supreme Judicial Court or a judge authorized to sit in the Superior Court on post-conviction review cases has and shall exercise jurisdiction and has and shall exercise all of the powers, duties and authority necessary for exercising the same jurisdiction as the Superior Court relative to a post-conviction review proceeding.
[PL 2003, c. 29, §2 (AMD).]

2. Venue. Venue must be in the county in which the criminal judgment was entered. Venue may be transferred by the assigned justice or judge at that assigned justice's or judge's discretion.
[RR 2011, c. 2, §13 (COR).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1983, c. 235, §3 (AMD). PL 1983, c. 816, §B4 (AMD). PL 1985, c. 209, §2 (AMD). PL 2003, c. 29, §2 (AMD). PL 2011, c. 601, §5 (AMD). RR 2011, c. 2, §13 (COR).

§2123-A. Method of review for administrative actions not included in the definition of "post-sentencing proceeding"

Remedial relief from administrative actions occurring during the course of and pursuant to the operation of a sentence that affects whether there is incarceration or its length that are not included in the definition of "post-sentencing proceeding" in section 2121, subsection 2 is exclusively provided by Title 5, chapter 375, subchapter 7. [PL 2011, c. 601, §6 (NEW).]

SECTION HISTORY

PL 2011, c. 601, §6 (NEW).

§2124. Jurisdictional prerequisites of restraint or impediment

An action for post-conviction review of a criminal judgment of this State or of a post-sentencing proceeding following the criminal judgment may be brought if the person seeking relief demonstrates that the challenged criminal judgment or post-sentencing proceeding is causing a present restraint or other specified impediment as described in subsections 1 to 3: [PL 1997, c. 399, §2 (AMD).]

1. Present restraint or impediment by criminal judgment being challenged. Present restraint or impediment as a direct result of the challenged criminal judgment:

A. Incarceration imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]

B. Other restraint, including probation, parole or other conditional release imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]

C. Unconditional discharge imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]

C-1. Incarceration imposed by the challenged criminal judgment that is wholly satisfied at the time of sentence imposition due to detention time credits earned under Title 17-A, section 2305; [PL 2019, c. 113, Pt. C, §38 (AMD).]

D. Incarceration, other restraint or an impediment specified in paragraphs A and B that is to be served in the future, although the convicted or adjudicated person is not in execution of the sentence either because of release on bail pending appeal of the criminal judgment or because another sentence must be served first; [PL 2011, c. 601, §7 (AMD).]

E. A fine 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 1710 or inexcusably defaulted in payment

of any portion. A fine includes any imposed monetary fees, surcharges and assessments, however designated; [PL 2019, c. 113, Pt. C, §39 (AMD).]

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 2014 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 2017; [PL 2019, c. 113, Pt. C, §40 (AMD).]

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 [PL 2013, c. 266, §3 (NEW).]

G. Any other juvenile disposition imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (NEW).]

[PL 2019, c. 113, Pt. C, §§38-40 (AMD).]

1-A. Present or future restraint by commitment to the Commissioner of Health and Human Services. Present restraint or impediment as a direct result of commitment to the custody of the Commissioner of Health and Human Services pursuant to section 103 imposed as a result of being found not criminally responsible by reason of insanity that is challenged or future restraint or impediment as a result of such an order of commitment that is challenged when a sentence involving imprisonment is or will be served first.

A claim for postconviction review is not allowed under this subsection relative to any court proceeding or administrative action that affects release or discharge pursuant to section 104-A;
[PL 2011, c. 601, §7 (AMD).]

2. Post-sentencing proceeding. Incarceration or increased incarceration imposed pursuant to a post-sentencing proceeding following a criminal judgment, although the criminal judgment itself is not challenged; or
[PL 1979, c. 701, §15 (NEW).]

3. Present indirect impediment. Present restraint or impediment resulting indirectly from the challenged criminal judgment of this State:

A. Incarceration pursuant to a sentence imposed in this State, in another state or in a Federal Court for a crime punishable by incarceration for a year or more, if the length of the incarceration is greater than it would otherwise have been in the absence of the challenged criminal judgment of this State. The prior criminal judgment that is challenged must be for a crime punishable by incarceration for a year or more. This requirement is not satisfied by a showing only that the court imposing the present sentence was aware of the challenged criminal judgment or if it appears from the length or seriousness of the person's total criminal record that the challenged criminal judgment, taking into account its seriousness and date, could have little or no effect on the length of incarceration under the subsequent sentence; [PL 2011, c. 601, §7 (AMD).]

B. [PL 2011, c. 601, §7 (RP).]

C. [PL 2011, c. 601, §7 (RP).]

D. Incarceration pursuant to a sentence imposed in this State, in another state or in a Federal Court for a crime for which proof of the criminal judgment of this State that is challenged is an element of, or must constitutionally be treated as an element of, the new crime. This requirement is not satisfied unless the new crime is, in the case of a crime in this State, punishable by incarceration of one year or more or, in the case of a crime in another jurisdiction, a felony or an infamous crime; or [PL 2011, c. 601, §7 (NEW).]

E. A criminal judgment in this State pursuant to a plea of guilty or nolo contendere accepted by a trial court on or after March 31, 2010 by a represented defendant who is not a United States citizen

and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding. [PL 2011, c. 601, §7 (NEW).]

[PL 2011, c. 601, §7 (AMD).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1983, c. 235, §§4,5 (AMD). PL 1985, c. 209, §3 (AMD). RR 1995, c. 2, §32 (COR). PL 1995, c. 286, §3 (AMD). PL 1997, c. 399, §2 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B7 (REV). PL 2011, c. 601, §7 (AMD). PL 2013, c. 266, §§2, 3 (AMD). PL 2019, c. 113, Pt. C, §§38-40 (AMD).

§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, section 2128 unless section 2128-A applies, or section 2128-B. [PL 2013, c. 266, §4 (AMD).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §2 (AMD). PL 2011, c. 601, §8 (AMD). PL 2013, c. 266, §4 (AMD).

§2126. Exhaustion

A person under restraint or impediment specified in section 2124 must also demonstrate that 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, 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. 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. [PL 2013, c. 266, §5 (AMD).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §3 (AMD). PL 1985, c. 556, §2 (AMD). PL 2013, c. 266, §5 (AMD).

§2127. Mootness

(REPEALED)

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §4 (RP).

§2128. Waiver of grounds for relief

A person under restraint or impediment specified in section 2124 shall demonstrate that any ground of relief has not been waived. The bases of waiver are as follows. [PL 2011, c. 601, §9 (AMD).]

1. Errors claimable on direct appeal. Errors at the trial that have been or could have been raised on a direct appeal, whether or not such an appeal was taken, may not be raised in an action for post-conviction review under this chapter, except that if the failure of the convicted or adjudicated person to take an appeal or to raise certain issues on appeal is excusable and the errors not appealed may result in reversal of the criminal judgment, the court may order that an appeal be taken as provided in section 2130.

[PL 2011, c. 601, §9 (AMD).]

2. Errors claimable in federal habeas corpus.

[PL 2011, c. 601, §9 (RP).]

3. Waiver of grounds not raised in prior post-conviction review action. All grounds for relief from a criminal judgment or from a post-sentencing proceeding must be raised in a single post-conviction review action and any grounds not so raised are waived unless the Constitution of Maine or the Constitution of the United States otherwise requires or unless the court determines that the ground could not reasonably have been raised in an earlier action.
[PL 2011, c. 601, §9 (AMD).]

4. Prior challenges. A person who has previously challenged a criminal judgment or a post-sentencing proceeding under former Title 14, sections 5502 to 5508 or its predecessors may not challenge the criminal judgment or post-sentencing proceeding by post-conviction review unless the court determines that a ground claimed in the action for post-conviction review could not reasonably have been raised in the earlier action.
[PL 2011, c. 601, §9 (AMD).]

5. Filing deadline for direct impediment.

[PL 2011, c. 601, §9 (RP).]

6. Filing deadline for indirect impediment.
[PL 2011, c. 601, §9 (RP).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1983, c. 235, §6 (AMD). PL 1987, c. 402, §A110 (AMD). PL 1995, c. 286, §4 (AMD). PL 1997, c. 399, §§3,4 (AMD). PL 1997, c. 399, §5 (AFF). PL 2011, c. 601, §9 (AMD).

§2128-A. Exceptions to waiver

The assertion of a right under the Constitution of the United States may not be held waived by its nonassertion at trial or on appeal if the assertion of the right would be held not waived in a federal habeas corpus proceeding brought by the convicted or adjudicated person pursuant to 28 United States Code, Sections 2241 to 2254. [PL 2011, c. 601, §10 (NEW).]

SECTION HISTORY

PL 2011, c. 601, §10 (NEW).

§2128-B. Time for filing

The following filing deadlines apply. [PL 2011, c. 601, §11 (NEW).]

1. Filing deadline for direct impediment. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 1 or 1-A. The limitation period runs from the latest of the following:

A. The date of final disposition of the direct appeal from the underlying criminal judgment or the expiration of the time for seeking the appeal; [PL 2011, c. 601, §11 (NEW).]

B. The date on which the constitutional right, state or federal, asserted was initially recognized by the Law Court or the Supreme Court of the United States if the right has been newly recognized by that highest court and made retroactively applicable to cases on collateral review; or [PL 2011, c. 601, §11 (NEW).]

C. The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. [PL 2011, c. 601, §11 (NEW).]

The time during which a properly filed petition for writ of certiorari to the Supreme Court of the United States with respect to the same criminal judgment is pending is not counted toward any period of limitation under this subsection.

[PL 2011, c. 601, §11 (NEW).]

2. Filing deadline for post-sentencing proceedings. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a post-sentencing proceeding under section 2124, subsection 2. The limitation period runs from the later of the following:

A. The date of filing of the final judgment in the court proceeding occurring during the course of and pursuant to the operation of the underlying sentence that results in incarceration or increased incarceration; or [PL 2011, c. 601, §11 (NEW).]

B. The date of the final administrative action occurring during the course of and pursuant to the operation of the underlying sentence that results in incarceration or increased incarceration. [PL 2011, c. 601, §11 (NEW).]

[PL 2011, c. 601, §11 (NEW).]

3. Filing deadline for indirect impediment. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraphs A and D. The one-year limitation period runs from the date of imposition of a sentence for the new crime resulting in the indirect impediment. A 60-day period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraph E. 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.

[PL 2011, c. 601, §11 (NEW); PL 2011, c. 601, §14, 15 (AFF).]

SECTION HISTORY

PL 2011, c. 601, §11 (NEW). PL 2011, c. 601, §§14, 15 (AFF).

§2129. Petition and procedure

1. Filing of petition. Petitions shall be filed as follows.

A. A proceeding for post-conviction review shall be commenced by filing a petition in the Superior Court in the county specified in section 2123. [PL 1981, c. 238, §5 (NEW).]

B. If the petitioner desires to have counsel appointed, he shall file an affidavit of indigency in the form prescribed by the Supreme Judicial Court. If the petitioner is incarcerated, the affidavit shall be accompanied by a certificate of the appropriate officer of the institution in which the petitioner is incarcerated as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution. The failure to include an affidavit of indigency with the petition does not bar the court from appointing counsel upon a subsequent filing of an affidavit of indigency. [PL 1981, c. 238, §5 (NEW).]

C. Once the petition has been filed, the clerk shall forward a copy of the petition and any separate documents filed with it to the Chief Justice of the Superior Court and to the prosecutorial office that earlier represented the State in the underlying criminal or juvenile proceeding. [PL 2003, c. 29, §3 (AMD).]

[PL 2003, c. 29, §3 (AMD).]

2. Assignment of case.

[PL 2003, c. 29, §4 (RP).]

3. Representation of respondent. In all proceedings for postconviction review, the State may be represented by the prosecutorial office that earlier represented the State in the underlying criminal or juvenile proceeding. On a case-by-case basis, a different prosecutorial office may represent the State on agreement between the 2 prosecutorial offices.

[PL 1991, c. 622, Pt. D (RPR).]

4. Bail pending disposition of petition. Pending final disposition, the assigned justice or judge may order the release of the petitioner on bail at such time and under such circumstances and conditions as the Supreme Judicial Court provides by rule.
[PL 2011, c. 601, §12 (AMD).]

5. Procedure in proceedings pursuant to this chapter. In all respects not covered by statute, the procedure in proceedings under this chapter is as the Supreme Judicial Court provides by rule.
[PL 2003, c. 29, §5 (AMD).]

6. Amendment to petition.

[PL 1981, c. 238, §5 (RP).]

7. Representation of respondent.

[PL 1981, c. 238, §5 (RP).]

8. Response.

[PL 1981, c. 238, §5 (RP).]

9. Discovery.

[PL 1981, c. 238, §5 (RP).]

10. Determination by court; hearing.

[PL 1981, c. 238, §5 (RP).]

11. Bail pending dispostion of petition.

[PL 1981, c. 238, §5 (RP).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §5 (RPR). PL 1983, c. 688, §9 (AMD). PL 1985, c. 209, §4 (AMD). PL 1985, c. 556, §3 (AMD). PL 1991, c. 622, §D (AMD). PL 2003, c. 29, §§3-5 (AMD). PL 2011, c. 601, §12 (AMD).

§2130. Relief

If the court determines that relief should be granted, it shall order appropriate relief, including: Release from incarceration or other restraint; reversal of the criminal judgment, including one entered upon a plea of guilty or nolo contendere; entry of judgment for a lesser included offense; reversal of another order or decision, with or without affording the State or other party a new hearing; granting the right to take an appeal from the criminal judgment; correction of errors appearing as a matter of record; resentencing or a new sentence; and entry of an order altering the amount of time that a person incarcerated under a sentence has served or must serve. The judgment making final disposition is a final judgment for purposes of review by the Law Court. When relief is granted to the petitioner and release is appropriate, the justice may release a petitioner on bail pending appeal. [RR 2009, c. 2, §32 (COR).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §6 (AMD). RR 2009, c. 2, §32 (COR).

§2131. Review of final judgment

A final judgment entered under section 2130 may be reviewed by the Supreme Judicial Court sitting as the Law Court. [PL 2003, c. 17, §4 (RPR).]

1. Appeal by petitioner. A petitioner aggrieved by the final judgment may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

[PL 2003, c. 17, §4 (RPR).]

2. Appeal by State. The State aggrieved by the final judgment may appeal as of right and no certificate of approval by the Attorney General is required. The time for taking the appeal and the manner and any conditions for the taking of an appeal are as the Supreme Judicial Court provides by rule.
[PL 2003, c. 17, §4 (RPR).]

3. Procedure on appeal.

[PL 2003, c. 17, §4 (RP).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §§7,8 (AMD). PL 2003, c. 17, §4 (RPR).

§2132. Applicability

Both the substantive and procedural provisions of this chapter shall apply to any action for post-conviction review commenced after the effective date of this chapter. In the case of any action under former Title 14, sections 5502 to 5508 or any other action for collateral review of a conviction or of consequences resulting from a criminal judgment which was commenced prior to the effective date of this chapter and which is pending on the effective date, the petition may be amended to assert any basis for jurisdiction under section 2124 or any grounds for relief not available under prior law; provided that failure to do so shall not constitute waiver pursuant to section 2128, subsection 3. In any pending action brought under prior law, the court in its discretion may apply any of the procedural provisions of this chapter. [PL 1987, c. 402, Pt. A, §111 (AMD).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1987, c. 402, §A111 (AMD).

CHAPTER 305-B

POST-JUDGMENT CONVICTION MOTION FOR DNA ANALYSIS

§2136. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2001, c. 469, §1 (NEW).]

1. CODIS. "CODIS" means the Federal Bureau of Investigation's national DNA identification index system that allows for storage and exchange of DNA records submitted by state and local forensic DNA laboratories and is derived from the Combined DNA Index System.
[PL 2001, c. 469, §1 (NEW).]

2. Crime lab. "Crime lab" means the Maine State Police Crime Laboratory located in Augusta.
[PL 2001, c. 469, §1 (NEW).]

3. DNA. "DNA" means deoxyribonucleic acid.
[PL 2001, c. 469, §1 (NEW).]

4. DNA analysis. "DNA analysis" means DNA typing tests that derive identification information specific to a person from that person's DNA.
[PL 2001, c. 469, §1 (NEW).]

5. DNA record. "DNA record" means DNA identification information obtained from DNA analysis and stored in the state DNA data base or CODIS.
[PL 2001, c. 469, §1 (NEW).]

6. DNA sample. "DNA sample" means a blood sample provided by a person convicted of one of the offenses listed in this chapter or submitted to the crime lab for analysis pursuant to a criminal investigation.
[PL 2001, c. 469, §1 (NEW).]

7. State DNA data base. "State DNA data base" means the DNA identification record system administered by the Chief of the State Police.
[PL 2001, c. 469, §1 (NEW).]

8. State DNA data bank. "State DNA data bank" means the repository of DNA samples maintained by the Chief of the State Police at the crime lab collected pursuant to chapter 194 and this chapter.
[PL 2001, c. 469, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 469, §1 (NEW).

§2137. Postjudgment of conviction motion for DNA analysis; new trial based on analysis results

1. Motion. A person who has been convicted of and sentenced for a crime under the laws of this State that carries the potential punishment of imprisonment of at least one year and for which the person is in actual execution of either a pre-Maine Criminal Code sentence of imprisonment, including parole, or a sentencing alternative pursuant to Title 17-A, section 1502, subsection 2 that includes a term of imprisonment or is subject to a sentence of imprisonment that is to be served in the future because another sentence must be served first may file a written postjudgment of conviction motion in the underlying criminal proceeding moving the court to order DNA analysis of evidence in the control or possession of the State that is related to the underlying investigation or prosecution that led to the person's conviction and a new trial based on the results of that analysis as authorized by this chapter. For criminal proceedings in which DNA testing was conducted before September 1, 2006, the person may file a written postjudgment of conviction motion in the underlying criminal proceeding moving the court for a new trial based on the results of the DNA testing already conducted using the standard set forth in this chapter if the DNA test results show that the person is not the source of the evidence.
[PL 2019, c. 113, Pt. C, §41 (AMD).]

2. Time for filing. A motion under this section must be filed by the later of:

A. September 1, 2008, including a motion pertaining to criminal proceedings in which DNA testing was conducted before September 1, 2006; [PL 2005, c. 659, §1 (NEW); PL 2005, c. 659, §6 (AFF).]

B. Two years after the date of conviction; and [PL 2005, c. 659, §1 (NEW); PL 2005, c. 659, §6 (AFF).]

C. In cases in which the request for analysis is based on the existence of new technology with respect to DNA analysis that is capable of providing new material information, within 2 years from the time that the technology became commonly known and available. [PL 2005, c. 659, §1 (NEW); PL 2005, c. 659, §6 (AFF).]
[PL 2005, c. 659, §1 (NEW); PL 2005, c. 659, §6 (AFF).]

SECTION HISTORY

PL 2001, c. 469, §1 (NEW). PL 2005, c. 659, §1 (RPR). PL 2005, c. 659, §6 (AFF). PL 2019, c. 113, Pt. C, §41 (AMD).

§2138. Motion; process

1. Filing motion. A person authorized in section 2137 who chooses to move for DNA analysis shall file the motion in the underlying criminal proceeding. The motion must be assigned to the trial

judge or justice who imposed the sentence unless that judge or justice is unavailable, in which case the appropriate chief judge or chief justice shall assign the motion to another judge or justice. Filing and service must be made in accordance with Rule 49 of the Maine Rules of Unified Criminal Procedure.
[PL 2015, c. 431, §24 (AMD).]

2. Preservation of evidence. If a motion is filed under this chapter, the court shall order the State to preserve during the pendency of the proceeding all evidence in the State's possession or control that could be subjected to DNA analysis. The State shall prepare an inventory of the evidence and submit a copy of the inventory to the defense and the court. If evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions.
[PL 2001, c. 469, §1 (NEW).]

3. Counsel. If the court finds that the person filing a motion under section 2137 is indigent, the court may appoint counsel for the person at any time during the proceedings under this chapter.
[PL 2001, c. 469, §1 (NEW).]

4. Proof required.

[PL 2005, c. 659, §2 (RP); PL 2005, c. 659, §6 (AFF).]

4-A. Standard for ordering DNA analysis. The court shall order DNA analysis if a person authorized under section 2137 presents prima facie evidence that:

A. A sample of the evidence is available for DNA analysis; [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

B. The evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been substituted, tampered with, replaced or altered in a material way; [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

C. The evidence was not previously subjected to DNA analysis or, if previously analyzed, will be subject to DNA analysis technology that was not available when the person was convicted; [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

D. The identity of the person as the perpetrator of the crime that resulted in the conviction was at issue during the person's trial; and [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

E. The evidence sought to be analyzed, or the additional information that the new technology is capable of providing regarding evidence sought to be reanalyzed, is material to the issue of whether the person is the perpetrator of, or accomplice to, the crime that resulted in the conviction. [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]
[PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

5. Court finding; analysis ordered. The court shall state its findings of fact on the record or shall make written findings of fact supporting its decision to grant or deny a motion to order DNA analysis. If the court grants a motion for DNA analysis under this section, the crime lab shall perform DNA analysis on the identified evidence and on a DNA sample obtained from the person.
[PL 2001, c. 469, §1 (NEW).]

6. Appeal from court decision to grant or deny motion to order DNA analysis. An aggrieved person may not appeal as a matter of right from the denial of a motion to order DNA analysis. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule. The State may not appeal as a matter of right from a court order to grant a motion to order DNA analysis. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule.
[PL 2011, c. 230, §1 (AMD).]

7. Payment. If the person authorized in section 2137 is able, the person shall pay for the cost of the DNA analysis. If the court finds that the person is indigent, the crime lab shall pay for the cost of DNA analysis ordered under this section.
[PL 2001, c. 469, §1 (NEW).]

8. Results. The crime lab shall provide the results of the DNA analysis under this chapter to the court, the person authorized in section 2137 and the attorney for the State. Upon motion by the person or the attorney for the State, the court may order that copies of the analysis protocols, laboratory procedures, laboratory notes and other relevant records compiled by the crime lab be provided to the court and to all parties.

A. If the results of the DNA analysis are inconclusive or show that the person is the source of the evidence, the court shall deny any motion for a new trial. If the DNA analysis results show that the person is the source of the evidence, the defendant's DNA record must be added to the state DNA data base and state DNA data bank. [PL 2001, c. 469, §1 (NEW).]

B. If the results of the DNA analysis show that the person is not the source of the evidence and the person does not have counsel, the court shall appoint counsel if the court finds that the person is indigent. The court shall then hold a hearing pursuant to subsection 10. [PL 2005, c. 659, §4 (AMD); PL 2005, c. 659, §6 (AFF).]
[PL 2005, c. 659, §4 (AMD); PL 2005, c. 659, §6 (AFF).]

9. Request for reanalysis. Upon motion of the attorney for the State, the court shall order reanalysis of the evidence and shall stay the person's motion for a new trial pending the results of DNA analysis.
[PL 2001, c. 469, §1 (NEW).]

10. Standard for granting new trial; court's findings; new trial granted or denied. If the results of the DNA testing under this section show that the person is not the source of the evidence, the person authorized in section 2137 must show by clear and convincing evidence that:

A. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person show that the person is actually innocent. If the court finds that the person authorized in section 2137 has met the evidentiary burden of this paragraph, the court shall grant a new trial; [PL 2005, c. 659, §5 (NEW); PL 2005, c. 659, §6 (AFF).]

B. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial; or [PL 2005, c. 659, §5 (NEW); PL 2005, c. 659, §6 (AFF).]

C. All of the prerequisites for obtaining a new trial based on newly discovered evidence are met as follows:

(1) The DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial;

(2) The proferred DNA test results have been discovered by the person since the trial;

(3) The proferred DNA test results could not have been obtained by the person prior to trial by the exercise of due diligence;

(4) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are material to the issue as to who is responsible for the crime for which the person was convicted; and

(5) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are not merely cumulative or impeaching, unless it is clear that such impeachment would have resulted in a different verdict. [PL 2005, c. 659, §5 (NEW); PL 2005, c. 659, §6 (AFF).]

The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person authorized in section 2137 a new trial under this section. If the court finds that the person authorized in section 2137 has met the evidentiary burden of paragraph A, the court shall grant a new trial.

For purposes of this subsection, "all the other evidence in the case, old and new," means the evidence admitted at trial; evidence admitted in any hearing on a motion for new trial pursuant to Rule 33 of the Maine Rules of Unified Criminal Procedure; evidence admitted at any collateral proceeding, state or federal; evidence admitted at the hearing conducted under this section relevant to the DNA testing and analysis conducted on the sample; and evidence relevant to the identity of the source of the DNA sample.
[PL 2015, c. 431, §25 (AMD).]

11. Appeal from a court decision to grant or deny a motion for new trial. The State or an aggrieved person may appeal as a matter of right from a court decision to grant or deny the person a new trial to the Supreme Judicial Court, sitting as the Law Court. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule.
[PL 2011, c. 230, §2 (AMD).]

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. 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. 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.
[PL 2013, c. 266, §6 (AMD).]

13. Victim notification. When practicable, the attorney for the State shall make a good faith effort to give written notice of a motion under this section to the victim of the person described in subsection 1 or to the victim's family if the victim is deceased. The notice must be by first-class mail to the victim's last known address. Upon the victim's request, the attorney for the State shall give the victim notice of the time and place of any hearing on the motion and shall inform the victim of the court's grant or denial of a new trial to the person.
[PL 2001, c. 469, §1 (NEW).]

14. Preservation of biological evidence. Effective October 15, 2001, the investigating law enforcement agency shall preserve any biological evidence identified during the investigation of a crime or crimes for which any person may file a postjudgment of conviction motion for DNA analysis under this section. The evidence must be preserved for the period of time that any person is incarcerated in connection with that case.
[PL 2001, c. 469, §1 (NEW).]

15. Report. Beginning January 2003 and annually thereafter, the Department of Public Safety shall report on post-conviction DNA analysis to the joint standing committee of the Legislature having jurisdiction over criminal justice matters. The report must include the number of postjudgment of conviction analyses completed, costs of the analyses and the results. The report also may include recommendations to improve the postjudgment of conviction analysis process.
[PL 2001, c. 469, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 469, §1 (NEW). PL 2005, c. 659, §§2-5 (AMD). PL 2005, c. 659, §6 (AFF). PL 2011, c. 230, §§1, 2 (AMD). PL 2011, c. 601, §13 (AMD). PL 2013, c. 266, §6 (AMD). PL 2015, c. 431, §§24, 25 (AMD).

CHAPTER 306

APPELLATE REVIEW OF CERTAIN SENTENCES

§2141. Appellate division of the Supreme Judicial Court for review of certain sentences

(REPEALED)

SECTION HISTORY

PL 1965, c. 419, §§1,3 (NEW). PL 1975, c. 427, §1 (AMD). PL 1977, c. 510, §4 (AMD). PL 1979, c. 13, §8 (AMD). PL 1989, c. 218, §1 (RP).

§2142. Procedure for appeal; hearing and determination

(REPEALED)

SECTION HISTORY

PL 1965, c. 419, §§1,3 (NEW). PL 1967, c. 494, §§15-B (AMD). PL 1973, c. 625, §289 (AMD). PL 1975, c. 427, §2 (AMD). PL 1977, c. 510, §§5,6 (AMD). PL 1979, c. 541, §A141 (AMD). PL 1989, c. 218, §2 (RP).

§2143. Notice of dismissal of appeal; procedure on amendment of judgment

(REPEALED)

SECTION HISTORY

PL 1965, c. 419, §§1,3 (NEW). PL 1975, c. 427, §3 (AMD). PL 1977, c. 510, §7 (AMD). PL 1989, c. 218, §3 (RP).

§2144. Duty of clerk when appeal heard in another county

(REPEALED)

SECTION HISTORY

PL 1965, c. 419, §§1,3 (NEW). PL 1977, c. 510, §8 (AMD). PL 1989, c. 218, §4 (RP).

CHAPTER 306-A

SUPREME JUDICIAL COURT SENTENCE REVIEW

§2151. Application to the Supreme Judicial Court by defendant for review of certain sentences

In cases arising in the District Court or the Superior Court in which a defendant has been convicted of a criminal offense and sentenced to a term of imprisonment of one year or more, the defendant may apply to the Supreme Judicial Court, sitting as the Law Court, for review of the sentence, except: [PL 1997, c. 354, §1 (AMD).]

1. Different term could not be imposed. In any case in which a different term of imprisonment could not have been imposed;
[PL 1999, c. 731, Pt. ZZZ, §23 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

2. Plea agreements. In any case in which the particular disposition involving imprisonment was imposed as a result of a court accepting a recommendation of the type specified in the Maine Rules of Unified Criminal Procedure, Rule 11A, subsection (a)(2) or (a)(4); or
[PL 2015, c. 431, §26 (AMD).]

3. Restitution. As limited by Title 17-A, section 2017.
[PL 2019, c. 113, Pt. C, §42 (AMD).]

SECTION HISTORY

PL 1989, c. 218, §5 (NEW). PL 1997, c. 354, §1 (AMD). PL 1999, c. 731, §§ZZZ23,24 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2015, c. 431, §26 (AMD). PL 2019, c. 113, Pt. C, §42 (AMD).

§2152. Sentence Review Panel of the Supreme Judicial Court

There shall be a Sentence Review Panel of the Supreme Judicial Court to consider applications for leave to appeal from sentence, and no appeal of the sentence may proceed before the Supreme Judicial Court unless leave to appeal is first granted by the panel. The Sentence Review Panel shall consist of 3 justices of the Supreme Judicial Court to be designated from time to time by the Chief Justice of the Supreme Judicial Court. No justice may sit or act on an appeal from a sentence imposed by that justice. Leave to appeal shall be granted if any one of the 3 panelists votes in favor of granting leave. If leave to appeal is denied, the decision of the panel shall be final and subject to no further review. [PL 1989, c. 218, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 218, §5 (NEW).

§2153. Procedure for application

The time for filing an application for leave to appeal and the manner and any conditions for the taking of the appeal shall be as the Supreme Judicial Court shall by rule provide. [PL 1989, c. 218, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 218, §5 (NEW).

§2154. Purposes of sentence review by Supreme Judicial Court

The general objectives of sentence review by the Supreme Judicial Court are: [PL 1989, c. 218, §5 (NEW).]

1. Sentence correction. To provide for the correction of sentences imposed without due regard for the sentencing factors set forth in this chapter;
[PL 1991, c. 525, §1 (RPR).]

2. Promote respect for law. To promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process;
[PL 1989, c. 218, §5 (NEW).]

3. Rehabilitation. To facilitate the possible rehabilitation of an offender by reducing manifest and unwarranted inequalities among the sentences of comparable offenders; and
[PL 1989, c. 218, §5 (NEW).]

4. Sentencing criteria. To promote the development and application of criteria for sentencing which are both rational and just.
[PL 1989, c. 218, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 218, §5 (NEW). PL 1991, c. 525, §1 (AMD).

§2155. Factors to be considered by Supreme Judicial Court

In reviewing a criminal sentence, the Supreme Judicial Court shall consider: [PL 1991, c. 525, §2 (AMD).]

1. Propriety of sentence. The propriety of the sentence, having regard to the nature of the offense, the character of the offender, the protection of the public interest, the effect of the offense on the victim and any other relevant sentencing factors recognized under law; and
[PL 1991, c. 525, §2 (AMD).]

2. Manner in which sentence was imposed. The manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.
[PL 1989, c. 218, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 218, §5 (NEW). PL 1991, c. 525, §2 (AMD).

§2156. Relief

1. Substitution of sentence or remand.

[PL 1991, c. 525, §3 (RP).]

1-A. Remand. If the Supreme Judicial Court determines that relief should be granted, it must remand the case to the court that imposed the sentence for any further proceedings that could have been conducted prior to the imposition of the sentence under review and for resentencing on the basis of such further proceedings provided that the sentence is not more severe than the sentence appealed.
[PL 1991, c. 525, §4 (NEW).]

2. Affirmation of sentence. If the Supreme Judicial Court determines that relief should not be granted, it shall affirm the sentence under review.
[PL 1989, c. 218, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 218, §5 (NEW). PL 1991, c. 525, §§3,4 (AMD).

§2157. Sentence not stayed nor bail authorized for sentence appeal

1. Execution of sentence not stayed. An appeal under this chapter shall not stay the execution of a sentence.
[PL 1989, c. 218, §5 (NEW).]

2. Bail unavailable. Bail has no application to an appeal under this chapter.
[PL 1989, c. 218, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 218, §5 (NEW).

CHAPTER 307

PARDONS AND COMMUTATION OF SENTENCES

§2161. Notice to district attorney and Attorney General of all petitions for pardon or commutation

On all petitions to the Governor for pardon or commutation of sentences, written notice thereof shall be given to the Attorney General and the district attorney for the county where the case was tried at least 4 weeks before the time of the hearing thereon, and 4 weeks' notice in a newspaper of general circulation in said county. If the crime for which said pardon is asked or for which commutation of sentence is sought is punishable by imprisonment in the State Prison, the Attorney General or the district attorney for the county where the case was tried shall, upon the request of the Governor, attend the meeting of the Governor or the Parole Board at which the petition is to be heard and the Governor shall allow said district attorney his necessary expenses for such attendance and a reasonable compensation for said district attorney's services to be paid from the State Treasury out of the appropriation for costs in criminal prosecutions. The Governor may require the judge and prosecuting officer who tried the case to furnish him or the Parole Board a concise statement thereof as proved at the trial and any other facts bearing on the propriety of granting pardon or commutation. [PL 1987, c. 667, §16 (AMD).]

SECTION HISTORY

PL 1967, c. 428, §2 (AMD). PL 1969, c. 319, §1 (AMD). PL 1973, c. 567, §20 (AMD). PL 1973, c. 625, §289 (AMD). PL 1973, c. 788, §62 (AMD). PL 1975, c. 771, §158 (AMD). PL 1987, c. 667, §16 (AMD).

§2161-A. Expungement of records

(REPEALED)

SECTION HISTORY

PL 1973, c. 691 (NEW). PL 1975, c. 763, §1 (RP). PL 1975, c. 771, §159 (AMD). PL 1977, c. 78, §117 (RP).

§2162. Commutation to jail

When a person is sentenced and committed to the custody of the Department of Corrections, the Governor may, if the Governor considers it consistent with the public interest and the welfare of the prisoner, commute that prisoner's sentence to imprisonment in any county jail, there to be supported at the charge of the State at an expense not exceeding the price paid for the support of other prisoners in that county jail. [PL 2005, c. 329, §1 (AMD).]

SECTION HISTORY

PL 1973, c. 625, §289 (AMD). PL 1975, c. 771, §160 (AMD). PL 2005, c. 329, §1 (AMD).

§2163. Conditional pardons by Governor

In any case in which the Governor is authorized by the Constitution to grant a pardon, he may, upon petition of the person convicted, grant it upon such conditions and with such restrictions and under such limitations as he deems proper, and he may issue his warrant to all proper officers to carry such pardon into effect; which warrant shall be obeyed and executed instead of the sentence originally awarded. [PL 1975, c. 771, §161 (AMD).]

SECTION HISTORY

PL 1975, c. 771, §161 (AMD).

§2164. Violations of conditions; rearrest

When a convict has been pardoned on conditions to be observed and performed by him, and the Warden of the State Prison or keeper of the jail where the convict was confined has reason to believe that he has violated the same, such officer shall forthwith cause him to be arrested and detained until the case can be examined by the Governor, and the officer making the arrest shall forthwith give them notice thereof, in writing. [PL 1975, c. 771, §162 (AMD).]

SECTION HISTORY

PL 1975, c. 771, §162 (AMD).

§2165. Remand to prison on finding of violation

The Governor shall, upon receiving the notice provided for in section 2164, examine the case of such convict, and if it appears by his own admission or by evidence that he has violated the conditions of his pardon, the Governor shall order him to be remanded and confined for the unexpired term of the sentence. In computing the period of his confinement, the time between the pardon and the subsequent arrest shall not be reckoned as part of the term of his sentence. If it appears to the Governor that he has not broken the conditions of his pardon, he shall be discharged. [PL 1975, c. 771, §163 (AMD).]

SECTION HISTORY

PL 1975, c. 771, §163 (AMD).

§2166. Return of warrant for pardon or commutation

When a convict is pardoned or his punishment is commuted, the officer to whom the warrant for that purpose is issued shall, as soon as may be after executing the same, make return thereof, under his hand, with his doings thereon, to the office of the Secretary of State. He shall file in the clerk's office of the court in which the offender was convicted an attested copy of the warrant and return, a brief abstract whereof the clerk shall subjoin to the record of the conviction and sentence.

§2167. References to pardoned crime deleted from Federal Bureau of Investigation's identification record

In any criminal case in which the Governor grants a convicted person a full and free pardon, that person, after the expiration of 10 years from the date the person is finally discharged from any sentence imposed as a result of the conviction, may make written application to the State Bureau of Identification to have all references to the pardoned crime deleted from the Federal Bureau of Investigation's identification record. Following receipt of an application, the State Bureau of Identification shall make the necessary arrangements with the identification division of the Federal Bureau of Investigation to have all references to the pardoned crime deleted from the Federal Bureau of Investigation's identification record and any state materials returned to the contributing agency if the application is timely and the person has not been convicted of a crime in this State or any other jurisdiction since the full and free pardon was granted and has no formal charging instrument for a crime pending in this State or any other jurisdiction. [PL 2017, c. 288, Pt. A, §16 (AMD).]

SECTION HISTORY

PL 1993, c. 665, §1 (NEW). PL 2017, c. 288, Pt. A, §16 (AMD).

CHAPTER 308

POST-JUDGMENT MOTION WHEN PERSON'S IDENTITY HAS BEEN STOLEN AND USED IN A CRIMINAL, CIVIL VIOLATION OR TRAFFIC INFRACTION PROCEEDING

§2181. Application

This chapter is not intended to and may not be used to provide relief to a person who has stolen another person's identity and falsely used the identity in a criminal, civil violation or traffic infraction proceeding. [PL 2009, c. 287, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 287, §1 (NEW).

§2182. Post-judgment motion for determination of factual innocence and correction of record

1. Motion; persons who may file. A person who reasonably believes that the person's identity has been stolen and falsely used by another in a criminal, civil violation or traffic infraction proceeding in which a final judgment has been entered may file a written motion in the underlying criminal, civil violation or traffic infraction proceeding seeking a court determination of factual innocence and correction of the court records and related criminal justice agency records. The same motion may also be filed on behalf of such a person by an attorney for the State or by the court.
[PL 2009, c. 287, §1 (NEW).]

2. Time for filing. A motion for determination of factual innocence and correction of record must be filed:

A. By June 1, 2010 for a criminal, civil violation or traffic infraction proceeding finalized prior to the effective date of this section in which the person is aware that the person's identity had been stolen and falsely used by another; and [PL 2009, c. 287, §1 (NEW).]

B. One year from the date the person becomes aware that the person's identity has been stolen and falsely used by another in a criminal, civil violation or traffic infraction proceeding finalized after the effective date of this section. [PL 2009, c. 287, §1 (NEW).]

[PL 2009, c. 287, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 287, §1 (NEW).

§2183. Motion and hearing; process

1. Filing motion. A motion filed pursuant to section 2182 must be filed in the underlying criminal, civil violation or traffic infraction proceeding. The appropriate chief judge or justice shall specially assign the motion. The judge or justice to whom the motion is assigned shall determine upon whom and how service of the motion is to be made and enter an order in this regard.
[PL 2009, c. 287, §1 (NEW).]

2. Counsel. In cases involving a criminal conviction, if the court finds that the person who files the motion under section 2182 or on whose behalf the motion is filed is indigent, the court may appoint counsel for the person at any time during the proceedings under this chapter.
[PL 2009, c. 287, §1 (NEW).]

3. Representation of the State. The prosecutorial office that represented the State in the underlying criminal, civil violation or traffic infraction proceeding shall represent the State for purposes of this chapter. If the underlying criminal, civil violation or traffic infraction proceeding was disposed of without the appearance of an attorney for the State, the office of the District Attorney in whose district the crime, civil violation or traffic infraction was committed shall represent the State for purposes of this chapter. On a case-by-case basis, a different prosecutorial office may represent the State on agreement between the 2 prosecutorial offices.
[PL 2009, c. 287, §1 (NEW).]

4. Evidence. The Maine Rules of Evidence do not apply to the hearing on the motion under this section, and evidence presented at the hearing by the participants may include testimony, affidavits and other reliable hearsay evidence as permitted by the court.

[PL 2009, c. 287, §1 (NEW).]

5. Hearing; certification of results. The judge or justice to whom the motion was assigned pursuant to subsection 1 shall hold a hearing on the motion under this section. At the conclusion of the hearing, if the court finds that the person who filed the motion under section 2182 has established by clear and convincing evidence relative to a criminal proceeding or by a preponderance of the evidence relative to a civil violation or traffic infraction proceeding that the person is not the person who committed the crime, civil violation or traffic infraction, the court shall find the person factually innocent of that crime, civil violation or traffic infraction and shall issue a written order certifying this determination. If at the conclusion of the hearing the court finds otherwise as to the motion, the court shall deny the motion and shall issue a written order certifying this determination. The order must contain written findings of fact supporting the court's decision granting or denying the motion. A copy of the court's written order granting or denying the motion must be provided to the person.
[PL 2009, c. 287, §1 (NEW).]

6. Correction of the record. If the court grants the motion following the hearing in subsection 5, it shall additionally determine what court records and related criminal justice records require correction and shall enter a written order specifying the corrections to be made in the court records and the records of each of the appropriate criminal justice agencies.
[PL 2009, c. 287, §1 (NEW).]

7. Subsequent discovery of fraud or misrepresentation. If the court that has issued an order certifying a determination of factual innocence pursuant to subsection 5 subsequently discovers that the motion or information submitted in support of the motion may contain material misrepresentation or fraud, the court may, after giving notice to the participants, hold a hearing. At the conclusion of the hearing, if the court finds by a preponderance of the evidence the existence of material misrepresentation or fraud, it may, by written order, vacate its earlier order certifying a determination of factual innocence and modify accordingly any record correction earlier made pursuant to subsection 6. The written order must contain findings of fact supporting its decision to vacate or not to vacate.
[PL 2009, c. 287, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 287, §1 (NEW).

§2184. Review of determination of factual innocence; review of subsequent vacating of determination

A final judgment entered under section 2183, subsection 5 or 7 may be reviewed by the Supreme Judicial Court sitting as the Law Court. [PL 2009, c. 287, §1 (NEW).]

1. Appeal by the person. A person aggrieved by the final judgment under section 2183, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.
[PL 2009, c. 287, §1 (NEW).]

2. Appeal by the State. If the State is aggrieved by the final judgment under section 2183, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the Attorney General is not required. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.
[PL 2009, c. 287, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 287, §1 (NEW).

CHAPTER 309

COMMITMENT OF MENTALLY ILL PRISONERS

§2211. Convict or person detained alleged to be mentally ill; prehearing procedure (REPEALED)

SECTION HISTORY

PL 1965, c. 58, §2 (RP).

§2211-A. Persons confined; hospitalization for mental illness

1. Prohibition. A person with serious mental illness may not be detained or confined solely because of that mental illness in any jail, prison or other detention or correctional facility unless that person is being detained or serving a sentence for commission of a crime.
[PL 1995, c. 431, §1 (NEW).]

2. Application for hospitalization required. A sheriff or other person responsible for any county or local detention or correctional facility who believes that a person confined in that facility is mentally ill and requires hospitalization shall apply, in writing, for the admission of that person to a hospital for the mentally ill, giving the reasons for requesting the admission. The application and certification must be in accordance with the requirements of Title 34-B, section 3863.
[PL 1995, c. 431, §1 (NEW).]

3. Terms of admission. A person with respect to whom application and certification are made may be admitted to a hospital for the mentally ill. Except as otherwise specifically provided in this section, Title 34-B, chapter 3, subchapter IV, articles I and III, except section 3868, are applicable to a person admitted under this section as if the admission were applied for under Title 34-B, section 3863.
[PL 1995, c. 431, §1 (NEW).]

3-A. Authorization of hospitalization. When a person who is hospitalized in a psychiatric hospital under the provisions of Title 34-B, chapter 3 is sentenced to serve a straight term of imprisonment or a split sentence in a county jail, the person must remain hospitalized as long as continued hospitalization is appropriate under Title 34-B, chapter 3. The sheriff shall promptly process the person to initiate execution of the sentence in a manner that disrupts the person's hospitalization as little as possible. The provisions of this section apply as if the person had been transferred to the hospital after beginning serving the sentence at the county jail.
[PL 2009, c. 281, §1 (NEW).]

4. No effect on sentence; jurisdiction retained. Admission of a person to a hospital under this section has no effect on a sentence then being served, on an existing commitment on civil process or on detention pending any stage of a criminal proceeding in which that person is the defendant, and the court having jurisdiction retains its jurisdiction. The sentence continues to run and any commitment or detention remains in force unless terminated in accordance with law.
[PL 1995, c. 431, §1 (NEW).]

5. Disposition of application and certification. A copy of the document by which a person is held in confinement, attested by the sheriff or other person responsible for any county or local detention or correctional facility, must accompany the application for admission. Following that person's admission to a hospital for the mentally ill under this section, a copy of the application and certification similarly attested must be filed with the court having jurisdiction over any civil or criminal case in which that person is the defendant. If a criminal proceeding is pending against the person admitted, the clerk of the court shall forward a copy of the application and certification to the attorney for the defendant and the attorney for the State.
[PL 1995, c. 431, §1 (NEW).]

6. Discharge from hospital. If the sentence being served at the time of admission has not expired or commitment on civil process or detention has not been terminated in accordance with law at the time the person is ready for discharge from hospitalization, that person must be returned by the sheriff or deputy sheriff of the county from which the person was admitted to the facility from which the person was admitted.
[PL 1995, c. 431, §1 (NEW).]

7. Transportation expenses. The county where the incarceration originated shall pay all expenses incident to transportation of a person between the hospital and the detention or correctional facility pursuant to this section.
[PL 1995, c. 431, §1 (NEW).]

8. Competency hearing. Admission to a hospital under this section may not be used to examine or observe a person for the purpose of a criminal proceeding pending in court. Before the trial of a defendant admitted for hospitalization under this section, the court may, at any time upon motion of the defendant's attorney or the attorney for the State or upon the court's own motion, hold a hearing with respect to the competence of that person to stand trial as provided in section 101-D and appropriate disposition may be made. The court's order following a hearing may terminate an admission effected under this section.
[PL 2009, c. 268, §5 (AMD).]

9. Alternative; voluntary commitment. If hospitalization is recommended by a licensed physician or licensed psychologist, a person confined in a county or local detention or correctional facility may apply for informal admission to a hospital for the mentally ill under Title 34-B, sections 3831 and 3832, in which case all other provisions of this section as to notice of status as an inmate of a county or local detention or correctional facility, notice to the court and counsel, transportation and expenses and the continuation and termination of sentence, commitment or detention apply. Except as otherwise provided in this section, the provisions of law applicable to persons admitted to a hospital for the mentally ill under Title 34-B, sections 3831 and 3832 apply to a person confined and admitted to a hospital for the mentally ill under those sections.
[PL 1995, c. 431, §1 (NEW).]

10. Reincarceration planning. For each person hospitalized pursuant to this section, the Department of Health and Human Services, in consultation with the sheriff or other person responsible for the local or county correctional facility and before the person is transferred back to the correctional facility, shall develop a written treatment plan describing the recommended treatment to be provided to the person.
[PL 2001, c. 659, Pt. D, §1 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

PL 1965, c. 58, §1 (NEW). PL 1969, c. 403, §1 (RPR). PL 1973, c. 547, §§4-6 (AMD). PL 1973, c. 716, §§1,2 (AMD). PL 1975, c. 559, §§2-4 (AMD). PL 1987, c. 402, §A112 (AMD). PL 1995, c. 431, §1 (RPR). PL 2001, c. 659, §D1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2009, c. 268, §5 (AMD). PL 2009, c. 281, §1 (AMD).

§2212. Procedure at hearing

(REPEALED)

SECTION HISTORY

PL 1965, c. 58, §2 (RP).

§2213. Recovery before expiration of sentence

(REPEALED)

SECTION HISTORY

PL 1965, c. 58, §2 (RP).

§2214. Costs and expenses; attorney's and physician's compensation

(REPEALED)

SECTION HISTORY

PL 1965, c. 58, §2 (RP).

§2215. Commitment of inmates of jails and persons under indictment

(REPEALED)

SECTION HISTORY

PL 1969, c. 403, §2 (RP).

§2216. District Court Judge may hold court in towns where prisons or jails are located

(REPEALED)

SECTION HISTORY

PL 1965, c. 58, §2 (RP).

§2217. Commitment when motion for sentence is made; proceedings if insane at expiration of term; support

(REPEALED)

SECTION HISTORY

PL 1969, c. 403, §3 (RP).

§2217-A. Support in a state mental hospital of persons admitted from county jails

Persons admitted under section 2211-A, except convicts in execution of sentence, shall be supported in a state hospital for the mentally ill as provided in Title 34, chapter 195. [PL 1969, c. 403, §4 (NEW).]

SECTION HISTORY

PL 1969, c. 403, §4 (NEW).

§2218. Transportation of women

When a woman is to be transported to or from a state hospital for the mentally ill under this chapter, the officer making application for her admission shall, unless she is to be accompanied by her husband or any adult relative, designate a woman to be an attendant or one of the attendants to accompany her. [PL 1969, c. 403, §5 (RPR).]

SECTION HISTORY

PL 1969, c. 403, §5 (RPR).

CHAPTER 310

POST-JUDGMENT MOTION BY PERSON SEEKING TO SATISFY THE PREREQUISITES FOR OBTAINING SPECIAL RESTRICTIONS ON DISSEMINATION AND USE OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN CRIMINAL CONVICTIONS

§2251. Definitions

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

§2252. Statutory prerequisites for obtaining special restrictions on dissemination and use of criminal history record information for a criminal conviction

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). PL 2019, c. 113, Pt. C, §43 (AMD). MRSA T. 15 §2259 (RP).

§2253. Motion; persons who may file

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

§2254. Motion and hearing; process

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

§2255. Special restrictions on dissemination and use of criminal history record information relating to criminal conviction

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

§2256. Limited disclosure of eligible criminal conviction

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

§2257. Unlawful dissemination

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

§2258. Review of determination of eligibility; review of determination of subsequent criminal conviction

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

§2259. Repeal

(REPEALED)

SECTION HISTORY

PL 2015, c. 354, §1 (NEW). MRSA T. 15 §2259 (RP).

CHAPTER 311

INTERSTATE COMPACT ON THE MENTALLY DISORDERED OFFENDER

§2301. Short title

This chapter may be cited as the "Interstate Compact on the Mentally Disordered Offender" and is hereinafter in this chapter called the "compact." [PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2302. Purpose and policy -- Article I

1. Policy. The party states, desiring by common action to improve their programs for the care and treatment of mentally disordered offenders, declare that it is the policy of each of the party states to:

A. Strengthen their own programs and laws for the care and treatment of the mentally disordered offender; [PL 1979, c. 303 (NEW).]

B. Encourage and provide for such care and treatment in the most appropriate locations, giving due recognition to the need to achieve adequacy of diagnosis, care, treatment, aftercare and auxiliary services and facilities and, to every extent practicable, to do so in geographic locations convenient for providing a therapeutic environment; [PL 1979, c. 303 (NEW).]

C. Authorize cooperation among the party states in providing services and facilities, when it is found that cooperative programs can be more effective and efficient than programs separately pursued; [PL 1979, c. 303 (NEW).]

D. Place each mentally disordered offender in a legal status which will facilitate his care, treatment and rehabilitation; [PL 1979, c. 303 (NEW).]

E. Authorize research and training of personnel on a cooperative basis, in order to improve the quality or quantity of personnel available for the proper staffing of programs, services and facilities for mentally disordered offenders; and [PL 1979, c. 303 (NEW).]

F. Care for and treat mentally disordered offenders under conditions which will improve the public safety. [PL 1979, c. 303 (NEW).]

[PL 1979, c. 303 (NEW).]

2. Purpose. Within the policies set forth in this Article, it is the purpose of this compact to:

A. Authorize negotiation, entry into, and operations under contractual arrangements among any 2 or more of the party states for the establishment and maintenance of cooperative programs in any one or more of the fields for which specific provision is made in the several Articles of this compact; [PL 1979, c. 303 (NEW).]

B. Set the limits within which such contracts may operate, so as to assure protection of the civil rights of mentally disordered offenders and protection of the rights and obligations of the public and of the party states; and [PL 1979, c. 303 (NEW).]

C. Facilitate the proper disposition of criminal charges pending against mentally disordered offenders, so that programs for their care, treatment and rehabilitation may be carried on efficiently. [PL 1979, c. 303 (NEW).]

[PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2303. Definitions -- Article II

1. Mentally disordered offender. "Mentally disordered offender" means a person who has been determined, by adjudication or other method legally sufficient for the purpose in the party state where the determination is made, to be mentally ill and:

A. Is under sentence for the commission of crime; or [PL 1979, c. 303 (NEW).]

B. Who is confined or committed on account of the commission of an offense for which, in the absence of mental illness, said person would be subject to incarceration in a penal or correctional facility. [PL 1979, c. 303 (NEW).]

[PL 1979, c. 303 (NEW).]

2. Patient. "Patient" means a mentally disordered offender who is cared for, treated or transferred pursuant to this compact.

[PL 1979, c. 303 (NEW).]

3. Sending state. "Sending state" means a state party to this compact in which the mentally disordered offender was convicted; or the state in which he would be subject to trial on or conviction of an offense, except for his mental condition; or, within the meaning of Article V of this compact, the state whose authorities have filed a petition in connection with an untried indictment, information or complaint.

[PL 1979, c. 303 (NEW).]

4. Receiving state. "Receiving state" means a state party to this compact to which a mentally disordered offender is sent for care, aftercare, treatment or rehabilitation, or, within the meaning of Article V of this compact, the state in which a petition in connection with an untried indictment, information or complaint has been filed.

[PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2304. Contracts -- Article III

1. Contracts. Each party state may make one or more contracts with any one or more of the other party states for the care and treatment of mentally disordered offenders on behalf of a sending state in facilities situated in receiving states, or for the participation of such mentally disordered offenders in programs of aftercare on conditional release administered by the receiving state. Any such contract shall provide for:

A. Its duration; [PL 1979, c. 303 (NEW).]

B. Payments to be made to the receiving state by the sending state for care, treatment and extraordinary services, if any; [PL 1979, c. 303 (NEW).]

C. Determination of responsibility for ordering or permitting the furnishing of extraordinary services, if any; [PL 1979, c. 303 (NEW).]

D. Participation in compensated activities, if any, available to patients; the disposition or crediting of any payment received by patients on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom; [PL 1979, c. 303 (NEW).]

E. Delivery and retaking of mentally disordered offenders; and [PL 1979, c. 303 (NEW).]

F. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states. [PL 1979, c. 303 (NEW).]

[PL 1979, c. 303 (NEW).]

2. Facility. Prior to the construction or completion of construction of any facility for mentally disordered offenders or addition to such facility by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the facility or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the facility to be kept available for use by patients under this compact. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.
[PL 1979, c. 303 (NEW).]

3. Training of personnel. A party state may contract with any one or more other party states for the training of professional or other personnel whose services, by reason of such training, would become available for or be improved in respect of ability to participate in the care and treatment of mentally disordered offenders. Such contracts may provide for such training to take place at any facility being operated or to be operated for the care and treatment of mentally disordered offenders; at any institution or facility having resources suitable for the offering of such training; or may provide for the separate establishment of training facilities, provided that no such separate establishment shall be undertaken, unless it is determined that an appropriate existing facility or institution cannot be found at which to conduct the contemplated program. Any contract entered into pursuant to this subsection shall provide for:

A. The administration, financing and precise nature of the program; [PL 1979, c. 303 (NEW).]

B. The status and employment or other rights of the trainees; and [PL 1979, c. 303 (NEW).]

C. All other necessary matters. [PL 1979, c. 303 (NEW).]
[PL 1979, c. 663, §111 (AMD).]

4. Contract not inconsistent. No contract entered into pursuant to this compact shall be inconsistent with any provision thereof.
[PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW). PL 1979, c. 663, §111 (AMD).

§2305. Procedure and rights -- Article IV

1. Custody, care and treatment. Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that custody, care and treatment in, or transfer of a patient to, a facility within the territory of another party state, or conditional release for aftercare in another party state is necessary in order to provide adequate care and treatment or is desirable in order to provide an appropriate program of therapy or other treatment, or is desirable for clinical reasons, the officials may direct that the custody, care and treatment be within a facility or in a program of aftercare within the territory of that other party state, the receiving state to act in that regard solely as agent for the sending state.
[PL 1979, c. 303 (NEW).]

2. Access to facility. The appropriate officials of any state party to this compact shall have access at all reasonable times, to any facility in which it has a contractual right to secure care or treatment of patients for the purpose of inspection and visiting such of its patients as may be in the facility or served by it.
[PL 1979, c. 303 (NEW).]

3. Sending state; jurisdiction. Except as otherwise provided in Article VI, patients in a facility pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state

and may at any time be removed for transfer to a facility within the sending state, for transfer to another facility in which the sending state may have a contractual or other right to secure care and treatment of patients, for release on aftercare or other conditional status, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.
[PL 1979, c. 303 (NEW).]

4. Reports. Each receiving state shall provide regular reports to each sending state on the patients of that sending state in facilities pursuant to this compact, including a psychiatric and behavioral record of each patient, and certify that record to the official designated by the sending state, in order that each patient may have the benefit of his or her record in determining and altering the disposition of that patient in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.
[PL 1979, c. 303 (NEW).]

5. Treatment. All patients who may be in a facility or receiving aftercare from a facility pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for, treated and supervised in accordance with the standards pertaining to the program administered at the facility. The fact of presence in a receiving state shall not deprive any patient of any legal rights which that patient would have had if in custody or receiving care, treatment or supervision as appropriate in the sending state.
[PL 1979, c. 303 (NEW).]

6. Hearing or hearings. Any hearing or hearings to which a patient present in a receiving state pursuant to this compact may be entitled by the laws of the sending state shall be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. The record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this shall be borne by the sending state.
[PL 1979, c. 303 (NEW).]

7. Confinement. Any patient confined pursuant to this compact shall be released within the territory of the sending state unless the patient, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.
[PL 1979, c. 303 (NEW).]

8. Civil process. Any patient pursuant to the terms of this compact shall be subject to civil process and shall have any and all rights to sue, be sued and participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if in any appropriate facility of the sending state or being supervised therefrom, as the case may be, located within such state.
[PL 1979, c. 303 (NEW).]

9. Exercise of power. The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any patient shall not be

deprived of or restricted in his exercise of any power in respect of any patient pursuant to the terms of this compact.
[PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2306. Disposition of charges -- Article V

1. Responsibility. Whenever the authorities responsible for the care and treatment of a mentally disordered offender, whether convicted or adjudicated in the state or subject to care, aftercare, treatment or rehabilitation pursuant to a contract, are of the opinion that charges based on untried indictments, informations or complaints in another party state present obstacles to the proper care and treatment of a mentally disordered offender or to the planning or execution of a suitable program for him, such authorities may petition the appropriate court in the state where the untried indictment, information or complaint is pending for prompt disposition thereof. If the mentally disordered offender is a patient in a receiving state, the appropriate authorities in the receiving state, shall, if they concur in the recommendation, file the petition contemplated by this subsection.
[PL 1979, c. 303 (NEW).]

2. Hearing on petition. The court shall hold a hearing on the petition within 30 days of the filing thereof. Such hearing shall be only to determine whether the proper safeguarding and advancement of the public interest, the condition of the mentally disordered offender, and the prospects for more satisfactory care, treatment and rehabilitation of him warrant disposition of the untried indictment, information or complaint prior to termination of the defendant's status as a mentally disordered offender in the sending state. The prosecuting officer of the jurisdiction from which the untried indictment, information or complaint is pending, the petitioning authorities and such other persons as the court may determine shall be entitled to be heard.
[PL 1979, c. 303 (NEW).]

3. Adjournment or continuance. Upon any hearing pursuant to this Article, the court may order such adjournments or continuances as may be necessary for the examination or observation of the mentally disordered offender or for the securing of necessary evidence. In granting or denying any such adjournment or continuance, the court shall give primary consideration to the purposes of this compact and more particularly to the need for expeditious determination of the legal and mental status of a mentally disordered offender so that his care, treatment and discharge to the community only under conditions which will be consonant with the public safety may be implemented.
[PL 1979, c. 303 (NEW).]

4. Petition pending. The presence of a mentally disordered offender within a state wherein a petition is pending or being heard pursuant to this Article, or his presence within any other state through which he is being transported in connection with such petition or hearing, shall be only for the purposes of this compact, and no court, agency or person shall have or obtain jurisdiction over such mentally disordered offender for any other purpose by reason of his presence pursuant to this Article. The mentally disordered offender shall, at all times, remain in the custody of the sending state. Any acts of officers, employees or agencies of the receiving state in providing or facilitating detention, housing or transportation for the mentally disordered offender shall be only as agents for the sending state.
[PL 1979, c. 303 (NEW).]

5. Untried indictment. Promptly upon conclusion of the hearing, the court shall dismiss the untried indictment, information or complaint, if it finds that the purposes enumerated in subsection 2 would be served thereby. Otherwise, the court shall make such order with respect to the petition and the untried indictment, information or complaint as may be appropriate in the circumstances and consistent with the status of the defendant as a mentally disordered offender in the custody of and subject to the jurisdiction of the sending state.

[PL 1979, c. 303 (NEW).]

6. Established or adjudicated. No fact or other matter established or adjudicated at any hearing pursuant to this Article, or in connection therewith, shall be deemed established or adjudicated, nor shall the same be admissible in evidence, in any subsequent prosecution of the untried indictment, information or complaint concerned in a petition filed pursuant to this Article unless:

A. The defendant or his duly empowered legal representative requested or expressly acquiesced in the making of the petition, and was afforded an opportunity to participate in person in the hearing; or [PL 1979, c. 303 (NEW).]

B. The defendant himself offers or consents to the introduction of the determination or adjudication of such subsequent proceedings. [PL 1979, c. 303 (NEW).]

[PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2307. Acts not reviewable in receiving state; return -- Article VI

1. Decision. Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to remove a patient from the receiving state, there is pending against the patient within such state any criminal charge or if the patient is suspected of having committed within such state a criminal offense, the patient shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport patients pursuant to this compact through any and all states party to this compact without interference.

[PL 1979, c. 303 (NEW).]

2. Escape. A patient who escapes while receiving care and treatment or who violates provisions of aftercare by leaving the jurisdiction, or while being detained or transported pursuant to this compact shall be deemed an escapee from the sending state and from the state in which the facility is situated or the aftercare was being provided. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for return shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

[PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2308. Federal aid -- Article VII

Any state party to this compact may accept federal aid for use in connection with any facility or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any patient in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided that, if such program or activity is not part of the customary regimen of the facility or program, the express consent of the appropriate official of the sending state shall be required therefor. [PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2309. Entry into force -- Article VIII

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any 2 states from among the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. Thereafter, this compact shall enter into force and become effective and binding as to any other of these states, or any other state upon similar action by such state. [PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2310. Withdrawal and termination -- Article IX

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in that statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such patients as it may have in other party states pursuant to the provisions of this compact. [PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2311. Other arrangements unaffected -- Article X

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the custody, care, treatment, rehabilitation or aftercare of patients nor to repeal any other laws of a party state authorizing the making of cooperative arrangements. [PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2312. Construction and severability -- Article XI

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [PL 1979, c. 303 (NEW).]

SECTION HISTORY

PL 1979, c. 303 (NEW).

§2313. Contracts authorized

The Department of Health and Human Services may negotiate and enter into contracts on behalf of this State pursuant to Article III of the compact and may perform such contracts; provided that no funds, personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on account of any such contract, unless legally available therefor. [PL 1981, c. 493, §101 (AMD); PL 1995, c. 560, Pt. K, §82 (AMD); PL 1995, c. 560, Pt. K, §83 (AFF); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

PL 1979, c. 303 (NEW). PL 1981, c. 493, §2 (AMD). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV).

PART 5

JUVENILE OFFENDERS

CHAPTER 401

GENERAL PROVISIONS

§2501. Purpose

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §4 (RP).

§2502. Definitions

(REPEALED)

SECTION HISTORY

PL 1969, c. 433, §19 (AMD). PL 1971, c. 598, §16 (AMD). PL 1973, c. 351 (AMD). PL 1973, c. 788, §63 (AMD). PL 1975, c. 62, §§1,2 (AMD). PL 1977, c. 520, §5 (RP).

§2503. Mentally retarded and mentally ill juveniles

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §6 (RP).

CHAPTER 403

JURISDICTION

§2551. District Court as juvenile court

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §7 (RP).

§2552. Offenses and acts

(REPEALED)

SECTION HISTORY

PL 1969, c. 52 (AMD). PL 1969, c. 368 (AMD). PL 1969, c. 590, §19 (AMD). PL 1971, c. 356, §17 (AMD). PL 1971, c. 544, §51 (AMD). PL 1975, c. 363 (AMD). PL 1975, c. 430, §21 (AMD). PL 1975, c. 623, §18 (AMD). PL 1975, c. 731, §15 (AMD). PL 1977, c. 520, §8 (RP).

§2553. Uniform compact petition

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §9 (RP).

§2554. Superior Court; juveniles before it on grand jury indictment

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §10 (RP).

§2555. Possession of marijuana by minor

(REPEALED)

SECTION HISTORY

PL 1975, c. 499, §§4-A (NEW). PL 1977, c. 520, §11 (RP).

CHAPTER 405

PROCEEDINGS AND ADJUDICATION

§2601. Initiation of proceeding against juveniles

(REPEALED)

SECTION HISTORY

PL 1977, c. 518, §1 (AMD). PL 1977, c. 520, §12 (RP). PL 1977, c. 607, §1 (AMD).

§2602. Petition

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §12 (RP).

§2602-A. Juvenile court intake workers

(REPEALED)

SECTION HISTORY

PL 1977, c. 518, §2 (NEW). PL 1977, c. 607, §2 (RP).

§2603. Citation

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §12 (RP).

§2604. Warrant

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §12 (RP).

§2605. Service

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §12 (RP).

§2606. Record

(REPEALED)

SECTION HISTORY

PL 1971, c. 528, §1 (AMD). PL 1977, c. 481, §1 (AMD). PL 1977, c. 520, §13 (RP).

§2607. Notice when juvenile arrested

(REPEALED)

SECTION HISTORY

PL 1971, c. 528, §2 (AMD). PL 1973, c. 625, §289 (AMD). PL 1977, c. 520, §14 (RP).

§2608. Custody pending disposition

(REPEALED)

SECTION HISTORY

PL 1967, c. 160 (AMD). PL 1975, c. 538, §1 (RPR). PL 1977, c. 520, §15 (RP).

§2609. Hearings in juvenile courts

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §16 (RP).

§2610. Procedure in juvenile courts

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §16 (RP).

§2611. Juvenile court's powers of disposition

(REPEALED)

SECTION HISTORY

PL 1967, c. 195, §1 (AMD). PL 1967, c. 391, §1 (AMD). PL 1967, c. 544, §42 (AMD). PL 1969, c. 192, §§1,2 (AMD). PL 1969, c. 542 (AMD). PL 1971, c. 121, §§1,2 (AMD). PL 1971, c. 528, §3 (AMD). PL 1971, c. 622, §59 (AMD). P&SL 1973, c. 53 (AMD). PL 1973, c. 522, §1 (AMD). PL 1973, c. 625, §85 (AMD). PL 1973, c. 625, §289 (AMD). PL 1975, c. 62, §3 (AMD). PL 1975, c. 538, §§2-7 (AMD). PL 1975, c. 756, §§2-4 (AMD). PL 1977, c. 520, §17 (RP).

CHAPTER 407

APPEALS

§2661. Review or appeal

(REPEALED)

SECTION HISTORY

PL 1967, c. 188 (AMD). PL 1969, c. 501, §3 (AMD). PL 1975, c. 538, §8 (AMD). PL 1977, c. 520, §18 (RP).

§2662. Record on appeal

(REPEALED)

SECTION HISTORY

PL 1967, c. 389 (AMD). PL 1977, c. 520, §19 (RP).

§2663. Custody or detention pending appeal

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §20 (RP).

§2664. Hearings on appeal in Superior Court

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §20 (RP).

§2665. Disposition of appeals

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §20 (RP).

§2666. Superior Court appeal record

(REPEALED)

SECTION HISTORY

PL 1973, c. 625, §86 (AMD). PL 1977, c. 520, §21 (RP).

§2667. Appeals to law court

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §22 (RP).

CHAPTER 409

MAINE YOUTH CENTER

§2711. Definitions

(REPEALED)

SECTION HISTORY

PL 1967, c. 195, §2 (AMD). PL 1975, c. 756, §5 (AMD). PL 1983, c. 459, §1 (RP).

§2712. Establishment; location; personnel

(REPEALED)

SECTION HISTORY

PL 1967, c. 194 (AMD). PL 1967, c. 195, §3 (AMD). PL 1967, c. 499 (AMD). PL 1975, c. 482 (AMD). PL 1975, c. 756, §6 (RPR). PL 1979, c. 681, §1 (RPR). PL 1981, c. 493, §2 (AMD). PL 1981, c. 619, §1 (AMD). PL 1983, c. 176, §A4 (AMD). PL 1983, c. 459, §1 (RP).

§2713. Confinement; federal law

(REPEALED)

SECTION HISTORY

PL 1983, c. 459, §1 (RP).

§2714. Commitment

(REPEALED)

SECTION HISTORY

PL 1967, c. 195, §4 (AMD). PL 1969, c. 191 (AMD). P&SL 1973, c. 53 (AMD). PL 1973, c. 788, §64 (AMD). PL 1975, c. 62, §4 (AMD). PL 1975, c. 538, §9 (RPR). PL 1975, c. 756, §7 (AMD). PL 1979, c. 127, §117 (AMD). PL 1979, c. 169 (AMD). PL 1983, c. 459, §1 (RP).

§2715. Certification by committing judge

(REPEALED)

SECTION HISTORY

PL 1975, c. 756, §8 (AMD). PL 1983, c. 459, §1 (RP).

§2716. Guardianship; entrustment

(REPEALED)

SECTION HISTORY

PL 1965, c. 9 (AMD). PL 1965, c. 456 (AMD). PL 1967, c. 506 (AMD). PL 1969, c. 485, §1 (AMD). PL 1969, c. 590, §20 (AMD). PL 1971, c. 92 (AMD). PL 1975, c. 69, §1 (AMD). PL 1975, c. 106 (AMD). PL 1975, c. 293, §4 (AMD). PL 1975, c. 538, §10 (AMD). PL 1975, c. 756, §9 (AMD). PL 1983, c. 176, §A5 (AMD). PL 1983, c. 459, §1 (RP). PL 1985, c. 506, §A18 (RP).

§2717. Incorrigibles; transfers to correction centers; return

(REPEALED)

SECTION HISTORY

PL 1967, c. 391, §2 (RPR). PL 1969, c. 192, §3 (RP).

§2718. Discharge

(REPEALED)

SECTION HISTORY

PL 1965, c. 3 (AMD). PL 1975, c. 62, §5 (AMD). PL 1975, c. 538, §11 (AMD). PL 1983, c. 459, §1 (RP).

§2719. Offenses while under commitment

(REPEALED)

SECTION HISTORY

PL 1971, c. 121, §3 (NEW). PL 1973, c. 788, §65 (AMD). PL 1975, c. 538, §12 (RPR). PL 1977, c. 510, §1 (RP). PL 1977, c. 520, §23 (RP).

§2720. Use of seclusion

(REPEALED)

SECTION HISTORY

PL 1975, c. 553, §1 (NEW). PL 1983, c. 459, §1 (RP).

PART 6

MAINE JUVENILE CODE

CHAPTER 501

GENERAL PROVISIONS

§3001. Title

This Part shall be known and may be cited as the Maine Juvenile Code. [PL 1977, c. 520, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW).

§3002. Purposes and construction

1. Purposes. The purposes of this Part are:

A. To secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile's own home, as will best serve the juvenile's welfare and the interests of society; [PL 1997, c. 645, §1 (AMD).]

B. To preserve and strengthen family ties whenever possible, including improvement of home environment; [PL 1977, c. 520, §1 (NEW).]

C. To remove a juvenile from the custody of the juvenile's parents only when the juvenile's welfare and safety or the protection of the public would otherwise be endangered or, when necessary, to punish a child adjudicated, pursuant to chapter 507, as having committed a juvenile crime; [PL 1997, c. 645, §1 (AMD).]

D. To secure for any juvenile removed from the custody of the juvenile's parents the necessary treatment, care, guidance and discipline to assist that juvenile in becoming a responsible and productive member of society; [PL 1997, c. 645, §1 (AMD).]

E. To provide procedures through which the provisions of the law are executed and enforced and that ensure that the parties receive fair hearings at which their rights as citizens are recognized and protected; and [PL 1997, c. 645, §1 (AMD).]

F. To provide consequences, which may include those of a punitive nature, for repeated serious criminal behavior or repeated violations of probation conditions. [PL 1997, c. 645, §1 (NEW).] [PL 1997, c. 645, §1 (AMD).]

2. Construction. To carry out these purposes, the provisions of this Part shall be liberally construed.
[PL 1977, c. 520, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §1 (AMD). PL 1979, c. 663, §113 (AMD). PL 1997, c. 645, §1 (AMD).

§3003. Definitions

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

As used in this Part, unless the context otherwise indicates, the following words and phrases shall have the following meanings. [PL 1977, c. 520, §1 (NEW).]

1. Adjudicatory hearing. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition under chapter 507 are supported by evidence that satisfies the standard of proof required.
[PL 2013, c. 234, §2 (AMD).]

1-A. (TEXT EFFECTIVE 1/01/22) Administration of juvenile justice. "Administration of juvenile justice" means activities related to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible juvenile crimes and the apprehension or summonsing, detention, conditional or unconditional release, informal adjustment, initial appearance, bind-over, adjudication, disposition, custody and supervision or rehabilitation of accused juveniles or adjudicated juvenile criminal offenders. "Administration of juvenile justice" includes the collection, storage and dissemination of juvenile case records and juvenile intelligence and investigative record information relating to the administration of juvenile justice.
[PL 2021, c. 365, §5 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Adult. "Adult" means a person 18 years of age or over.
[PL 1977, c. 520, §1 (NEW).]

2-A. Attendant; attendant care. "Attendant" means an agent of a county sheriff or of the Department of Corrections who is authorized to provide temporary supervision of a juvenile alleged to have committed a juvenile crime or of a juvenile adjudicated as having committed a juvenile crime when supervision is appropriate as an interim measure pending the completion of a procedure authorized by law to be taken in regard to such juvenile. Supervision must be exercised during that period beginning with receipt of the juvenile by the attendant and ending upon the release of the juvenile to the juvenile's legal custodian or other responsible adult. This supervision constitutes "attendant care." Attendant care may not be ordered by the juvenile court except with the consent of the county sheriff or the Department of Corrections.
[PL 2005, c. 328, §4 (AMD).]

3. Bind-over hearing. "Bind-over hearing" means a hearing at which the Juvenile Court determines whether to permit the State to proceed against a juvenile as if the juvenile were an adult.
[PL 2019, c. 525, §1 (AMD).]

4. Commit. "Commit" means to transfer legal custody.
[PL 1977, c. 520, §1 (NEW).]

4-A. Diagnostic evaluation. "Diagnostic evaluation" means an examination of a juvenile, to assess the risks the juvenile may pose and determine the needs the juvenile may have, which may include, but is not limited to, educational, vocational or psychosocial evaluations, psychometric testing and psychological, psychiatric or medical examinations, which may take place on either a residential or a nonresidential basis.
[PL 1989, c. 744, §1 (AMD).]

4-B. Detention. "Detention" means the holding of a person in a facility characterized by either physically restrictive construction or intensive staff supervision that is intended to prevent a person who is placed in or admitted to the facility from departing at will.
[RR 2009, c. 2, §33 (COR).]

4-C. Court-generated information. "Court-generated information" means records, information and documents created by the Juvenile Court to document activity in a case, including docket entries and other similar records.
[PL 2019, c. 525, §2 (NEW).]

4-D. Disclosure. "Disclosure" means the transmission of information contained in juvenile case records by any means, including orally, in writing or electronically, upon request.
[PL 2019, c. 525, §2 (NEW).]

5. Dispositional hearing. "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a juvenile who has been adjudicated as having committed a juvenile crime.
[PL 1977, c. 520, §1 (NEW).]

5-A. Dissemination. "Dissemination" means release of, transmission in any manner of and access to information contained in juvenile case records expressly authorized by statute, executive order, court rule, court decision or court order.
[PL 2019, c. 525, §2 (NEW).]

6. Emancipation. "Emancipation" means the release of a juvenile from the legal control of the juvenile's parents.
[PL 2019, c. 525, §3 (AMD).]

7. Facility. "Facility" means any physical structure.
[PL 1977, c. 520, §1 (NEW).]

8. Guardian. "Guardian" means a person lawfully invested with the power, and charged with the duty, of taking care of a person and managing the property and rights of the person, who, because of age, is considered incapable of administering the person's own affairs.
[PL 2019, c. 525, §4 (AMD).]

9. He.
[PL 2013, c. 234, §3 (RP).]

10. Informal adjustment. "Informal adjustment" means a voluntary arrangement between a juvenile community corrections officer and a juvenile referred to the officer that provides sufficient basis for a decision by the juvenile community corrections officer not to file a petition under chapter 507.
[PL 1999, c. 624, Pt. B, §1 (AMD).]

10-A. Inspection. "Inspection" means access to and review of juvenile case records in a manner prescribed by the Supreme Judicial Court. "Inspection" does not include disclosure or dissemination of juvenile case records.
[PL 2019, c. 525, §5 (NEW).]

11. Intake.
[PL 1977, c. 664, §3 (RP).]

12. Intake worker.
[PL 1985, c. 439, §3 (RP).]

13. Interim care. "Interim care" means the status of temporary physical control of a juvenile by a person authorized by section 3501.
[PL 1977, c. 520, §1 (NEW).]

14. Juvenile. "Juvenile" means a person who has not attained 18 years of age and a person 18 years of age or older during the period of a disposition that includes probation or commitment to a Department of Corrections juvenile facility who was adjudicated before 18 years of age. This definition does not apply to a person whose disposition includes probation or commitment to a Department of

Corrections juvenile correctional facility when that person engages in new criminal conduct and is 18 years of age or older at the time of the new criminal conduct.
[PL 2021, c. 326, §1 (AMD).]

14-A. Juvenile arrest. "Juvenile arrest" means the taking of an accused juvenile into custody in conformance with the law governing the arrest of persons believed to have committed a crime.
[PL 1985, c. 439, §4 (NEW).]

14-B. Juvenile community corrections officer. "Juvenile community corrections officer" means an agent of the Department of Corrections authorized:

A. To perform juvenile probation functions; [PL 1985, c. 439, §4 (NEW).]

B. To provide appropriate services to juveniles committed to a Department of Corrections juvenile correctional facility who are on leave or in the community on community reintegration; and [PL 2003, c. 688, Pt. A, §11 (RPR).]

C. To perform all community corrections officer functions established by this Part for a juvenile alleged to have committed a juvenile crime. [PL 1999, c. 624, Pt. B, §2 (AMD).]
[PL 2003, c. 688, Pt. A, §11 (AMD).]

14-C. Juvenile case records. "Juvenile case records" means all records, regardless of form or means of transmission, that comprise a juvenile court file of an individual case, including, but not limited to, court-generated information, information and documents filed by filers, transcripts of depositions, hearings, proceedings and interviews, documentary exhibits in the custody of the clerk of the court, electronic records, videotapes and records of other proceedings filed with the clerk of the court. "Juvenile case records" does not include administrative or operational records of the judicial branch.
[PL 2019, c. 525, §6 (NEW).]

15. Juvenile Court. "Juvenile Court" means the District Court exercising the jurisdiction conferred by section 3101.
[PL 1979, c. 681, §38 (AMD).]

16. Juvenile crime. "Juvenile crime" has the meaning set forth in section 3103.
[PL 1977, c. 520, §1 (NEW).]

17. Law enforcement officer.
[PL 2013, c. 588, Pt. A, §18 (RP).]

18. Legal custodian. "Legal custodian" means a person who has legal custody of a juvenile.
[PL 1977, c. 520, §1 (NEW).]

19. Legal custody. "Legal custody" means the right to the care, custody and control of a juvenile and the duty to provide food, clothing, shelter, ordinary medical care, education and discipline for a juvenile, and, in an emergency, to authorize surgery or other extraordinary care.
[PL 1977, c. 520, §1 (NEW).]

19-A. Mental disease or defect. "Mental disease or defect" has the same meaning as in Title 17-A, section 39, subsection 2 except that "mental disease or defect" does not include, in and of itself, the fact that a juvenile has not attained the level of mental or emotional development normally associated with persons 18 years of age or older.
[PL 2013, c. 234, §5 (NEW).]

19-B. Officer of the court. "Officer of the court" means a judicial officer, including a judge, an attorney or an employee of the court including a clerk or a marshal.
[PL 2019, c. 525, §7 (NEW).]

19-C. (TEXT EFFECTIVE 1/01/22) Order of adjudication. "Order of adjudication" means any document, including but not limited to a judgment and commitment order including conditions of juvenile probation if imposed, any dismissal form or any written order that constitutes the final disposition of a juvenile petition.
[PL 2021, c. 365, §6 (NEW); PL 2021, c. 365, §37 (AFF).]

20. Organization.
[PL 2013, c. 234, §6 (RP).]

21. Parent. "Parent" means either a natural parent or the adoptive parent of a juvenile.
[PL 1977, c. 520, §1 (NEW).]

22. Person.
[PL 2013, c. 234, §7 (RP).]

23. Probation. "Probation" means a legal status created by court order in cases involving a juvenile adjudicated as having committed a juvenile crime that permits the juvenile to remain in the juvenile's own home or other placement designated by the Juvenile Court subject to revocation for violation of any condition imposed by the court.
[PL 2019, c. 525, §8 (AMD).]

24. Probation officer; juvenile probation officer.
[PL 1985, c. 439, §5 (RP).]

24-A. Secure detention facility. "Secure detention facility" means a facility characterized by physically restrictive construction that is intended to prevent a person who is placed in or admitted to the facility from departing at will.
[PL 1991, c. 493, §2 (AMD).]

25. Shelter. "Shelter" means the temporary care of a juvenile in physically unrestricting facilities.
[PL 1977, c. 520, §1 (NEW).]

26. Temporary holding resource. "Temporary holding resource" means an area not in a jail or other secure detention facility intended or primarily used for the detention of adults that may be used to provide secure supervision for a juvenile for a period not to exceed 72 hours, excluding Saturday, Sunday and legal holidays, pending the completion of a procedure authorized by law to be taken in regard to a juvenile. Security is provided by intense personal supervision rather than by the physical characteristics of the facility.
[PL 1991, c. 493, §3 (AMD).]

27. Temporary supervision. "Temporary supervision" means that supervision provided by an attendant delivering attendant care as defined in subsection 2-A.
[PL 1985, c. 439, §7 (NEW).]

28. (TEXT EFFECTIVE 1/01/22) Victim. "Victim" has the same meaning as in Title 17-A, section 2101, subsection 2.
[PL 2021, c. 365, §7 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§2-5 (AMD). PL 1979, c. 681, §§2,38 (AMD). PL 1981, c. 493, §2 (AMD). PL 1981, c. 619, §2 (AMD). PL 1985, c. 439, §§1-7 (AMD). PL 1987, c. 398, §1 (AMD). PL 1987, c. 698, §1 (AMD). PL 1989, c. 113, §1 (AMD). PL 1989, c. 744, §§1,2 (AMD). PL 1989, c. 925, §2 (AMD). PL 1991, c. 493, §§1-3 (AMD). PL 1999, c. 401, §J4 (AMD). PL 1999, c. 624, §§B1,2 (AMD). PL 2001, c. 439, §G6 (AMD). PL 2003, c. 180, §2 (AMD). PL 2003, c. 410, §4 (AMD). PL 2003, c. 688, §A11 (AMD). PL 2005, c. 328, §4 (AMD). RR 2009, c. 2, §33 (COR). PL 2013, c. 133, §4 (AMD). PL 2013, c. 234, §§2-7

(AMD). PL 2013, c. 588, Pt. A, §18 (AMD). PL 2019, c. 525, §§1-8 (AMD). PL 2021, c. 326, §1 (AMD). PL 2021, c. 365, §§5-7 (AMD). PL 2021, c. 365, §37 (AFF).

§3004. Severability

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 663, §114 (RP).

§3005. Forms, other than court forms, reporting formats, and other standardized written materials

All forms, reporting formats, and other standardized written materials necessary to fulfill the requirements of this Part must be uniform for all state and local agencies providing services according to the provisions of this Part; and those forms, reporting formats, and other standardized written materials must be developed and approved jointly by the Department of Corrections and the Department of Health and Human Services. [PL 1995, c. 502, Pt. F, §4 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1981, c. 493, §2 (AMD). PL 1995, c. 502, §F4 (AMD). PL 2003, c. 689, §B6 (REV).

§3006. Review of Maine Juvenile Code

(REPEALED)

SECTION HISTORY

PL 1989, c. 925, §3 (NEW). PL 1997, c. 752, §5 (RP).

§3007. Victims' rights

In addition to any rights given to victims of juvenile crimes in this Part, the victim of a juvenile crime has the rights that a victim has under Title 17-A, section 2106. [PL 2019, c. 113, Pt. C, §44 (AMD).]

SECTION HISTORY

PL 1999, c. 280, §1 (NEW). PL 2019, c. 113, Pt. C, §44 (AMD).

§3008. Dissemination of education records of preadjudicated juveniles

Pursuant to Title 20-A, section 6001, schools may distribute education records of preadjudicated juveniles to criminal justice agencies or agencies that by court order or agreement of the juvenile are responsible for the health or welfare of the juvenile if the education records are relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation. [PL 1999, c. 595, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 595, §1 (NEW).

§3009. Information related to reintegration of juvenile into school

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Notification to superintendent. When a juvenile in the custody of the Department of Corrections seeks admission to a public school or a private school approved for tuition purposes, the Department of Corrections shall provide notice to the superintendent of the school to which the student is seeking admission or to the superintendent's designee of the availability of information pertaining to the juvenile for use by a reintegration team under Title 20-A, section 1055, subsection 12.

[PL 2001, c. 452, §1 (NEW).]

2. (TEXT EFFECTIVE UNTIL 1/01/22) Release of information. Upon the request of the superintendent or the superintendent's designee under subsection 1, the Department of Corrections shall release information as authorized under section 3308, subsection 7, paragraph B-1, subparagraph (3) and Title 34-A, section 1216, subsection 1, paragraph F to be used by the reintegration team. Information received pursuant to this subsection is confidential and may not be further disseminated, except as otherwise provided by law.
[PL 2003, c. 205, §3 (AMD).]

2. (TEXT EFFECTIVE 1/01/22) Release of information. Upon the request of the superintendent or the superintendent's designee under subsection 1, the Department of Corrections shall release information as authorized under section 3308-C, subsection 4, paragraph C, subparagraph (3) and Title 34-A, section 1216, subsection 1, paragraph F to be used by the reintegration team. Information received pursuant to this subsection is confidential and may not be further disseminated, except as otherwise provided by law.
[PL 2021, c. 365, §8 (AMD); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2001, c. 452, §1 (NEW). PL 2003, c. 205, §3 (AMD). PL 2021, c. 365, §8 (AMD). PL 2021, c. 365, §37 (AFF).

§3010. Dissemination of juvenile history record information by a Maine criminal justice agency

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/01/22)

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Confidential juvenile history record information" means all juvenile history record information except public juvenile history record information. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

B. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

C. "Dissemination" has the same meaning as in Title 16, section 703, subsection 6. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

D. "Executive order" has the same meaning as in Title 16, section 703, subsection 7. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

E. "Juvenile history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency that connects a specific, identifiable juvenile with formal involvement in the juvenile justice system either as a person accused of or adjudicated as having committed a juvenile crime. "Juvenile history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; petitions charging a juvenile with a juvenile crime or any disposition stemming from such charges; post-plea or post-adjudication disposition; execution of and completion of any disposition alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals; collateral attacks; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Juvenile history record information" does not include information of record of civil proceedings, including traffic infractions and other civil violations or juvenile intelligence and investigative record information as defined in section 3308-A, subsection 1, paragraph E. As used in this paragraph, "formal involvement in the juvenile justice system either as a person accused of or adjudicated as having

committed a juvenile crime" means being within the jurisdiction of the juvenile justice system commencing with arrest, summons, referral to a juvenile community corrections officer, preliminary investigation or filing of a juvenile petition with the Juvenile Court and concluding with the completion of any informal adjustment agreement or the completion of any disposition entered by the Juvenile Court. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

F. "Public juvenile history record information" means information indicating that a juvenile has been adjudicated as having committed a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile adjudicated were an adult and any resulting disposition imposed. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Juvenile history record information confidential. Except as provided in subsection 3, juvenile history record information is confidential and not open to public inspection, and does not constitute public records as defined in Title 1, section 402, subsection 3.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

3. Juvenile history record information pertaining to adjudications. Notwithstanding subsection 2, if a juvenile has been adjudicated as having committed a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile adjudicated were an adult, then that adjudication and any resulting disposition imposed, but no other related juvenile history record information, may be disclosed publicly.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

4. Dissemination of juvenile history record information by Maine criminal justice agency. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential juvenile history record information only to:

A. Another criminal justice agency for the purpose of the administration of juvenile justice, the administration of criminal justice or criminal justice agency employment; [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Any person for any purpose when expressly authorized by a statute, court rule, court decision or court order containing language specifically referring to confidential juvenile history record information or one or more of the types of confidential juvenile history record information; or [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

C. A public entity for purposes of international travel, such as issuing visas and granting of citizenship. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

5. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential juvenile history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. For purposes of this subsection, "noncriminal justice purpose" means a purpose other than for the administration of juvenile justice, the administration of criminal justice or criminal justice agency employment.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

6. Unlawful dissemination of confidential juvenile history record information. Any person who intentionally disseminates confidential juvenile history record information knowing it to be in violation of any provision of this chapter commits a civil violation for which a fine of not more than $1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2021, c. 365, §9 (NEW). PL 2021, c. 365, §37 (AFF).

CHAPTER 503

JURISDICTION

§3101. Jurisdiction

1. District Court as Juvenile Court. The District Court shall exercise the jurisdiction conferred by this Part and, when exercising such jurisdiction, shall be known and referred to as the Juvenile Court. [PL 1979, c. 681, §38 (AMD).]

2. Juvenile Court jurisdiction.

A. The Juvenile Court shall have exclusive original jurisdiction, subject to waiver of jurisdiction as provided in subsection 4, of proceedings in which a juvenile is alleged to have committed a juvenile crime, as defined in section 3103. [PL 1979, c. 681, §38 (AMD).]

B. [PL 1977, c. 664, §7 (RP).]

C. Juvenile Courts have jurisdiction over all petitions brought under Title 34-A, chapter 9, subchapter 7 pertaining to juveniles who have been adjudicated as having committed juvenile crimes in other states, but who are found within the territorial jurisdiction of the State. [PL 2017, c. 127, §1 (AMD).]

D. Juvenile Courts have exclusive original jurisdiction over proceedings in which an adult is alleged to have committed a juvenile crime before attaining 18 years of age. For purposes of a proceeding under this paragraph, the adult is considered a juvenile. [PL 2019, c. 525, §9 (AMD).]

E. Juvenile Courts shall have jurisdiction concurrent with the District Courts over petitions for emancipation brought under section 3506-A. [PL 1981, c. 619, §3 (NEW).]

[PL 2019, c. 525, §9 (AMD).]

3. Juveniles mistakenly tried as adults.

A. If, during the pendency of any prosecution for a violation of law, in any court in the State against any person charged as an adult, it is ascertained that the person is a juvenile, or was a juvenile at the time the crime was committed, the court shall forthwith dismiss the case. [PL 1977, c. 520, §1 (NEW).]

B. When a dismissal is ordered pursuant to paragraph A, a petition under chapter 507, alleging the same violation of law for which the juvenile was charged as an adult may be filed in Juvenile Court. [PL 1979, c. 681, §38 (AMD).]

[PL 1979, c. 681, §38 (AMD).]

4. Bind-over.

A. When a petition alleges that a juvenile has committed an act that would be murder or a Class A, B or C crime if committed by an adult, the court shall, upon request of the prosecuting attorney, continue the case for further investigation and for a bind-over hearing to determine whether the jurisdiction of the Juvenile Court over the juvenile should be waived. If a continuance is granted under this paragraph, the court shall advise the juvenile and the juvenile's parent or parents, guardian or legal custodian of the possible consequences of a bind-over hearing, the right to be represented by counsel, and other relevant constitutional and legal rights . [PL 2019, c. 525, §10 (AMD).]

B. Every bind-over hearing shall precede and shall be conducted separately from any adjudicatory hearing.

The Maine Rules of Evidence shall apply only to the probable cause portion of the bind-over hearing.

For the purpose of making the findings required by paragraph E, subparagraph (2), written reports and other material may be received by the court along with other evidence, but the court, if so requested by the juvenile, the juvenile's parent or guardian or other party, shall require that the person or persons who wrote the report or prepared the material appear as witness and be subject to examination, and the court may require that the persons whose statements appear in the report appear as witnesses and be subject to examination. [PL 1989, c. 502, Pt. B, §16 (AMD).]

C. A verbatim record shall be kept in all bind-over proceedings. [PL 1977, c. 520, §1 (NEW).]

C-1. With respect to the finding of probable cause required by paragraph E, subparagraph (1), the State has the burden of proof. [PL 1997, c. 645, §2 (NEW).]

C-2. With respect to the finding of appropriateness required by paragraph E, subparagraph (2), the State has the burden of proof, except that in a case involving a juvenile who is charged with one or more juvenile crimes that, if the juvenile were an adult, would constitute murder, aggravated attempted murder, attempted murder, felony murder, Class A manslaughter other than the reckless or criminally negligent operation of a motor vehicle, elevated aggravated assault on a pregnant person, elevated aggravated assault, arson that recklessly endangers any person, causing a catastrophe, Class A robbery or Class A gross sexual assault in which the victim submits as a result of compulsion, the juvenile has the burden of proof. [PL 2007, c. 475, §6 (AMD).]

D. The Juvenile Court shall consider the following factors in deciding whether to bind a juvenile over for prosecution as an adult:

(1) Seriousness of the crime: the nature and seriousness of the offense with greater weight being given to offenses against the person than against property; whether the offense was committed in an aggressive, violent, premeditated or intentional manner;

(2) Characteristics of the juvenile: the record and previous history of the juvenile; the age of the juvenile; the juvenile's emotional attitude and pattern of living;

(3) Public safety: whether the protection of the community requires commitment of the juvenile for a period longer than the greatest commitment authorized; whether the protection of the community requires commitment of the juvenile to a facility that is more secure than any dispositional alternative under section 3314; and

(4) Dispositional alternatives: whether future criminal conduct by the juvenile will be deterred by the dispositional alternatives available; whether the dispositional alternatives would diminish the gravity of the offense. [PL 2015, c. 409, §1 (AMD).]

E. The Juvenile Court shall bind a juvenile over for prosecution as an adult if it finds:

(1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it; and

(2) After a consideration of the seriousness of the crime, the characteristics of the juvenile, the public safety and the dispositional alternatives in paragraph D, that:

(a) If the State has the burden of proof, the State has established by a preponderance of the evidence that it is appropriate to prosecute the juvenile as if the juvenile were an adult; or

(b) If the juvenile has the burden of proof, the juvenile has failed to establish by a preponderance of the evidence that it is not appropriate to prosecute the juvenile as if the juvenile were an adult. [PL 2015, c. 409, §2 (AMD).]

E-1. [PL 2013, c. 28, §1 (RP).]

E-2. If the Juvenile Court binds a juvenile over for prosecution as an adult and has directed the detention of the juvenile, if the juvenile attains 18 years of age and is being detained, the juvenile must be detained in an adult section of a jail. [PL 2015, c. 409, §3 (AMD).]

F. The Juvenile Court shall bind over a child by entering an order finding probable cause, waiving jurisdiction and certifying the case for proceedings before the grand jury. The Juvenile Court shall enter written findings supporting its order finding probable cause and waiving jurisdiction. Proceedings concerning a juvenile who has been bound over for prosecution as an adult must be conducted in the same manner and with the same powers and duties as if the juvenile were an adult. [PL 2015, c. 409, §4 (AMD).]

G. In all prosecutions for subsequent crimes, any person bound over and convicted as an adult must be proceeded against as if the juvenile were an adult. [PL 2019, c. 525, §11 (AMD).]

[PL 2019, c. 525, §§10, 11 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§6-10 (AMD). PL 1979, c. 512, §2 (AMD). PL 1979, c. 663, §115 (AMD). PL 1979, c. 681, §§3-5,38 (AMD). PL 1981, c. 470, §A33 (AMD). PL 1981, c. 619, §3 (AMD). PL 1987, c. 398, §2 (AMD). PL 1989, c. 502, §B16 (AMD). PL 1997, c. 645, §§2-5 (AMD). PL 2003, c. 706, §A1 (AMD). PL 2007, c. 475, §6 (AMD). PL 2013, c. 28, §§1, 2 (AMD). PL 2015, c. 409, §§1-4 (AMD). PL 2017, c. 127, §1 (AMD). PL 2019, c. 525, §§9-10 (AMD).

§3102. Venue

Proceedings in cases brought under the provisions of section 3101 must be commenced in accordance with Rule 21 of the Maine Rules of Unified Criminal Procedure. [PL 2015, c. 431, §27 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1989, c. 741, §1 (AMD). PL 2015, c. 431, §27 (AMD).

§3103. Juvenile crimes

1. Definition. The term "juvenile crime," as used in this Part, means the following offenses:

A. Conduct that, if committed by an adult, would be defined as criminal by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code, including any rule or regulation under a statute, except for those provisions of Titles 12 and 29-A not specifically included in paragraphs E and F; [PL 1995, c. 65, Pt. A, §45 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

B. Offenses involving illegal drugs or drug paraphernalia as follows:

(1) The possession of a useable amount of marijuana, as provided in Title 22, section 2383, subsection 1-A, unless the juvenile is authorized to possess marijuana for medical use pursuant to Title 22, chapter 558-C;

(2) The use or possession of drug paraphernalia as provided in Title 17-A, section 1111-A, subsection 4-B; and

(3) Illegal transportation of drugs by a minor as provided in Title 22, section 2389, subsection 2; [PL 2017, c. 1, §19 (AMD).]

C. Offenses involving intoxicating liquor, as provided in Title 28-A, sections 2051 and 2052 and offenses involving refusal to provide proper identification as provided in Title 28-A, section 2087; [PL 2003, c. 305, §2 (AMD).]

C-1. [PL 1995, c. 470, §2 (RP).]

D. [PL 2009, c. 93, §2 (RP).]

E. Offenses involving hunting or the operation or attempted operation of a watercraft, ATV or snowmobile while under the influence of intoxicating liquor or drugs, as defined in Title 12, section 10701, subsection 1-A, and offenses involving failing to aid an injured person or to report a hunting accident as defined in Title 12, section 11223; [PL 2015, c. 409, §5 (AMD).]

F. The criminal violation of operating a motor vehicle under the influence of intoxicating liquor or drugs or with an excessive alcohol level, as defined in Title 29-A, section 2411, and offenses defined in Title 29-A as Class B or C crimes; [PL 2009, c. 447, §16 (AMD).]

G. A violation of section 393, subsection 1, paragraph C or section 393, subsection 1-A; and [PL 2003, c. 688, Pt. A, §12 (RPR).]

H. If a juvenile has been convicted of a crime for a violation of a provision of Title 12 or 29-A not specifically included in paragraph E or F, willful refusal to pay a resulting fine or willful violation of the terms of a resulting administrative release or willful failure to comply with the terms of any other resulting court order. [PL 2005, c. 328, §5 (AMD).]

[PL 2017, c. 1, §19 (AMD).]

2. Dispositional powers. All of the dispositional powers of the Juvenile Court provided in section 3314 apply to a juvenile who is adjudicated to have committed a juvenile crime, except that no commitment to a Department of Corrections juvenile correctional facility or period of confinement may be imposed for conduct described in subsection 1, paragraphs B and C.

[PL 2007, c. 96, §1 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §11 (AMD). PL 1979, c. 663, §116 (AMD). PL 1979, c. 681, §§6,38 (AMD). PL 1981, c. 679, §§2-5 (AMD). PL 1983, c. 818, §2 (AMD). PL 1985, c. 214, §§1,2 (AMD). PL 1987, c. 45, §B3 (AMD). PL 1989, c. 445, §§1,2 (AMD). PL 1989, c. 599, §6 (AMD). PL 1989, c. 741, §2 (AMD). PL 1991, c. 516, §3 (AMD). PL 1995, c. 65, §§A45,46 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 470, §§2-4 (AMD). PL 1995, c. 679, §15 (AMD). PL 1997, c. 462, §§2-4 (AMD). PL 1997, c. 752, §6 (AMD). IB 1999, c. 1, §1 (AMD). PL 1999, c. 413, §1 (AMD). PL 2003, c. 305, §§1-3 (AMD). PL 2003, c. 410, §§5-7 (AMD). PL 2003, c. 414, §B29 (AMD). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 688, §A12 (AMD). PL 2005, c. 328, §5 (AMD). PL 2007, c. 96, §1 (AMD). RR 2009, c. 2, §34 (COR). PL 2009, c. 93, §2 (AMD). PL 2009, c. 447, §16 (AMD). PL 2011, c. 464, §3 (AMD). PL 2015, c. 409, §5 (AMD). PL 2017, c. 1, §19 (AMD).

§3103-A. Provisions of Title 17-A, Part 1 made applicable

The following provisions of Title 17-A, Part 1 are applicable to juvenile crimes: [PL 2013, c. 234, §8 (NEW).]

1. Chapter 1. Chapter 1, except section 1; section 2, subsections 3-C and 5-B; and sections 6, 8, 9 and 17;

[PL 2013, c. 234, §8 (NEW).]

2. Chapter 2. Chapter 2, except section 40;

[PL 2013, c. 234, §8 (NEW).]

3. Chapter 3. Chapter 3, except section 60; and

[PL 2013, c. 234, §8 (NEW).]

4. Chapter 5. Chapter 5.

[PL 2013, c. 234, §8 (NEW).]

SECTION HISTORY

PL 2013, c. 234, §8 (NEW).

§3104. Jurisdiction conferred by general law

Nothing in this chapter shall be deemed to take away from the juvenile court any jurisdiction or duties conferred upon the court by general law, nor to take away from the District Court jurisdiction over offenses conferred on that court and not removed by this Part. [PL 1977, c. 520, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW).

§3105. Statute of limitations

(REPEALED)

SECTION HISTORY

PL 1977, c. 664, §12 (NEW). PL 1987, c. 222, §1 (RP). PL 1987, c. 277, §1 (AMD). PL 1987, c. 769, §A53 (AMD).

§3105-A. Statute of limitations

1. Expiration of limitation; defense. It is a defense that prosecution was commenced after the expiration of the applicable period of limitations provided in this section, except that a prosecution for the juvenile crime of murder or criminal homicide in the first or 2nd degree may be commenced at any time. It is a defense that prosecution was commenced after the expiration of the applicable period of limitations provided in this section, except that if the victim had not attained 16 years of age at the time of the crime and the juvenile had attained 16 years of age, a prosecution for the juvenile crime of unlawful sexual contact under Title 17-A, former section 255 or section 255-A or gross sexual assault under Title 17-A, section 253 may be commenced at any time if the attorney for the State first presents evidence based on DNA, as defined in section 2136, to the court in a closed hearing that implicates the defendant in the crime by a preponderance of the evidence.
[PL 2005, c. 87, §1 (AMD).]

2. Limitations. Prosecution for juvenile crimes other than murder or criminal homicide in the first or 2nd degree are subject to the following periods of limitations.

A. A prosecution for conduct which, if committed by an adult, is a Class A, Class B or Class C crime, shall be commenced within 6 years after it is committed. [PL 1987, c. 222, §2 (NEW).]

B. A prosecution for conduct which, if committed by an adult, is a Class D or Class E crime shall be commenced within 3 years after it is committed. [PL 1987, c. 222, §2 (NEW).]

C. A prosecution for conduct specified in section 3103, subsection 1, paragraph B, C, E, F or H must be commenced within one year after it is committed. [PL 2009, c. 93, §3 (AMD).]
[PL 2009, c. 93, §3 (AMD).]

3. Limitations not to run. The periods of limitations shall not run:

A. During any time when the accused is absent from the State, but in no event shall this provision extend the period of limitation otherwise applicable by more than 5 years; [PL 1987, c. 222, §2 (NEW).]

B. During any time when a prosecution against the accused for the same juvenile crime based on the same conduct is pending in the Juvenile Court of this State; or [PL 1987, c. 222, §2 (NEW).]

C. During any time when, notwithstanding that the court lacks jurisdiction for a reason stated in Title 17-A, section 10-A, subsection 1, an adult prosecution against the accused for the adult offense based on the same conduct is pending in the District Court or the Superior Court. [PL 1987, c. 222, §2 (NEW).]
[PL 1987, c. 222, §2 (NEW).]

4. Commencement after dismissal. If a timely juvenile petition is dismissed for any error, defect, insufficiency or irregularity, a new prosecution for the same juvenile crime based on the same conduct may be commenced within 3 months after the dismissal, even though the period of limitation has expired at the time of the dismissal or will expire within the period of time.
[PL 1987, c. 222, §2 (NEW).]

5. Elements; commencement of prosecution. For purposes of this section:

A. A juvenile crime is committed when every element of the crime has occurred, or if the juvenile crime consists of a continuing course of conduct, at the time when the course of conduct or the defendant's complicity in the conduct is terminated; and [PL 1987, c. 222, §2 (NEW).]

B. A prosecution is commenced when a juvenile petition is filed. [PL 1987, c. 222, §2 (NEW).]
[PL 1987, c. 222, §2 (NEW).]

6. Lesser included juvenile crime; effect. The defense established by this section does not bar an adjudication of a juvenile crime included in the juvenile crime charged, notwithstanding that the period of limitation has expired for the included juvenile crime, if, as to the juvenile crime charged, the period of limitation has not expired or there is no such period, and there is evidence that sustains an adjudication for the juvenile crime charged.
[PL 2015, c. 409, §6 (AMD).]

SECTION HISTORY

PL 1987, c. 222, §2 (NEW). PL 1987, c. 769, §A54 (AMD). PL 1989, c. 445, §3 (AMD). PL 1995, c. 470, §5 (AMD). PL 2005, c. 87, §§1,2 (AMD). PL 2009, c. 93, §3 (AMD). PL 2015, c. 409, §6 (AMD).

CHAPTER 505

ARREST AND DETENTION

§3201. Warrantless arrests

1. Warrantless arrests. Arrests without warrants of juveniles for juvenile crimes defined by section 3103, subsection 1, paragraphs A, E, F, G and H by law enforcement officers or private persons must be made pursuant to the provisions of Title 17-A, sections 15 and 16. For purposes of this section, a juvenile crime defined under section 3103, subsection 1, paragraph H is deemed a Class D or Class E crime. A law enforcement officer or private person may not arrest a juvenile for a juvenile crime defined by section 3103, subsection 1, paragraph B or C.
[PL 2009, c. 93, §4 (AMD).]

2. Contact police or sheriff. Any private person who makes an arrest without a warrant pursuant to this section shall immediately contact the police or sheriff's department whose responsibility it shall be to immediately take charge of the juvenile.
[PL 1977, c. 520, §1 (NEW).]

3. Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime, as defined by section 3103, subsection 1, paragraph B or C has been committed may request that the juvenile provide the officer with reasonably credible evidence of the juvenile's name, address and date of birth. The evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer with evidence of the juvenile's name, address and date of birth and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period the verification is being attempted, the officer may require the juvenile to remain present for a period not to exceed 2 hours. The officer may not arrest the juvenile for the juvenile crime defined by section 3103, subsection 1, paragraph B or C.

After informing the juvenile of the provisions of this subsection, the officer may arrest the juvenile for conduct that, if committed by an adult, would be considered criminal as described in Title 17-A, section 17, subsection 2 if the juvenile intentionally refuses to furnish any evidence of the juvenile's correct name, address or date of birth, or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of the juvenile's name, address or date of birth.
[PL 2005, c. 328, §7 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 681, §§7,8 (AMD). PL 1987, c. 277, §2 (AMD). PL 1989, c. 445, §4 (AMD). PL 1995, c. 470, §6 (AMD). PL 2003, c. 305, §4 (AMD). PL 2005, c. 328, §§6,7 (AMD). PL 2009, c. 93, §4 (AMD).

§3202. Arrest warrants for juveniles

An arrest warrant for a juvenile must be issued in the manner provided by Rule 4 of the Maine Rules of Unified Criminal Procedure, except that affidavits alone must be presented and a petition is not necessary. Following arrest, the juvenile is subject to the procedures specified in sections 3203-A and 3301. [PL 2015, c. 431, §28 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 681, §9 (RPR). PL 2001, c. 4, §1 (AMD). PL 2005, c. 328, §8 (AMD). PL 2015, c. 431, §28 (AMD).

§3203. Arrested juveniles, release or detention, notification

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§13-19 (AMD). PL 1979, c. 127, §118 (AMD). PL 1979, c. 373, §1 (AMD). PL 1979, c. 512, §3 (AMD). PL 1979, c. 681, §§10-13 (AMD). PL 1981, c. 392, §§2,3 (AMD). PL 1983, c. 581, §1 (AMD). PL 1985, c. 439, §8 (RP).

§3203-A. Arrested juveniles; release; detention; notification

1. Notification of a juvenile community corrections officer. A juvenile community corrections officer receives notification under the following circumstances.

A. When, in the judgment of a law enforcement officer, Juvenile Court proceedings should be commenced against a juvenile, but detention is not necessary, the law enforcement officer shall notify a juvenile community corrections officer as soon as possible after such a determination is made; but if the juvenile has been arrested, the law enforcement officer shall notify the juvenile community corrections officer within 12 hours following the arrest. [PL 1999, c. 624, Pt. B, §3 (AMD).]

A-1. If the law enforcement officer determines that detention is not necessary but the officer is unable to immediately return the juvenile to the custody of the juvenile's legal custodian or another suitable person, the officer, with the juvenile's consent, may deliver the juvenile to any public or private agency that provides nonsecure services to juveniles, including an agency that provides attendant care. [PL 1999, c. 624, Pt. B, §3 (AMD).]

B. When, in the judgment of a law enforcement officer, a juvenile should be detained prior to the juvenile's initial appearance in juvenile court, the law enforcement officer shall immediately notify a juvenile community corrections officer.

(1) Detention under this section must be requested by the law enforcement officer within 2 hours after the juvenile's arrest or the juvenile must be released.

(2) After the law enforcement officer notifies the juvenile community corrections officer and requests detention, the juvenile community corrections officer shall order the conditional or unconditional release or shall effect a detention placement within 12 hours following the juvenile's arrest. [PL 1999, c. 624, Pt. B, §3 (AMD).]

B-1. If, in the judgment of a law enforcement officer, immediate secure detention is required to prevent a juvenile from imminently inflicting bodily harm on others or the juvenile, the officer may refer the juvenile for temporary, emergency detention in a jail or other secure facility intended or primarily used for the detention of adults approved pursuant to subsection 7, paragraph A or a facility approved pursuant to subsection 7, paragraph B, prior to notifying a juvenile community corrections officer. Such a facility may detain the juvenile for up to 2 hours on an emergency basis, as long as the law enforcement officer immediately notifies the juvenile community corrections officer and requests authorization to detain the juvenile beyond the term of the temporary, emergency detention pursuant to paragraph B. The juvenile community corrections officer may, if continued emergency detention is required to prevent the juvenile from imminently inflicting bodily harm on others or the juvenile, authorize temporary emergency detention in that facility for an additional 4 hours. Following any temporary emergency detention, the juvenile community corrections officer shall order the conditional or unconditional release of a juvenile or shall effect a detention placement. Except as otherwise provided by law, any detention beyond 6 hours must be in a placement other than a facility intended or primarily used for the detention of adults and must be authorized by a juvenile community corrections officer. It is the responsibility of the law enforcement officer to remain at the facility until the juvenile community corrections officer has released the juvenile or has authorized detention. [PL 1999, c. 624, Pt. B, §3 (AMD).]

C. In cases under Title 5, section 200-A, the law enforcement officer shall immediately notify the juvenile community corrections officer and the Department of the Attorney General. In all other cases the law enforcement officer shall immediately notify the juvenile community corrections officer if the law enforcement officer believes that immediate secure detention is required. If the juvenile community corrections officer determines not to order the detention or continued detention of the juvenile, the community corrections officer shall inform the law enforcement officer and the attorney for the State prior to the juvenile's release. The attorney for the State, with or without a request from a law enforcement officer, shall consider the facts of the case, consult with the juvenile community corrections officer who made the initial determination, consider standards for detention under subsection 4, paragraph C and subsection 4, paragraph D, subparagraphs (1) to (6) and may order detention or continued detention of the juvenile under the same or any authorized conditions pending the juvenile's initial appearance before the court. If detention or continued detention is ordered, the detention placement must be made by the juvenile community corrections officer within 12 hours following the juvenile's arrest. [PL 1999, c. 624, Pt. B, §3 (AMD).]

[PL 1999, c. 624, Pt. B, §3 (AMD).]

2. Notification of legal custodian. A legal custodian shall receive notification under the following circumstances.

A. When a juvenile is arrested, the law enforcement officer or the juvenile community corrections officer shall notify the legal custodian of the juvenile without unnecessary delay and inform the legal custodian of the juvenile's whereabouts, the name and telephone number of the juvenile community corrections officer who has been contacted and, if a juvenile has been placed in a secure juvenile detention facility, that a detention hearing will be held within 48 hours following this placement, excluding Saturday, Sunday and legal holidays. Notwithstanding this provision, if a juvenile has been placed in a secure detention facility pursuant to subsection 7, paragraph B-5, the law enforcement officer or the juvenile community corrections officer shall notify the legal custodian that a detention hearing will be held within 24 hours following this placement, excluding Saturday, Sunday and legal holidays. [PL 1999, c. 624, Pt. A, §1 (AMD).]

B. Notification required by paragraph A may be made to a person of sufficient maturity with whom the juvenile is residing if the juvenile's legal custodian cannot be located. [PL 1985, c. 439, §9 (NEW).]

[PL 1999, c. 624, Pt. A, §1 (AMD).]

2-A. Questioning. When a juvenile is arrested, no law enforcement officer may question that juvenile until:

A. A legal custodian of the juvenile is notified of the arrest and is present during the questioning; [PL 1987, c. 367 (NEW).]

B. A legal custodian of the juvenile is notified of the arrest and gives consent for the questioning to proceed without the custodian's presence; or [PL 1987, c. 367 (NEW).]

C. The law enforcement officer has made a reasonable effort to contact the legal custodian of the juvenile, cannot contact the custodian and seeks to question the juvenile about continuing or imminent criminal activity. [PL 1987, c. 367 (NEW).]

[PL 1987, c. 367 (NEW).]

3. Law enforcement officer's report. An officer who notifies a juvenile community corrections officer pursuant to subsection 1, paragraph A or B shall file a brief written report with the juvenile community corrections officer, stating the juvenile's name, date of birth and address; the name and address of the juvenile's legal custodian; and the facts that led to the notification, including the offense that the juvenile is alleged to have committed. The report must contain sufficient information to establish the jurisdiction of the Juvenile Court.

A report of a notification pursuant to subsection 1 must be filed within 24 hours of the notification, excluding nonjudicial days. If a juvenile community corrections officer orders the conditional release of a juvenile and a report of the notification is not filed with the juvenile community corrections officer within 15 days, excluding nonjudicial days, the juvenile community corrections officer shall review the conditions imposed at the time of the release. Following the review, the juvenile community corrections officer may lessen or eliminate the conditions.

The date on which the report is received by the juvenile community corrections officer is the date of referral to the juvenile community corrections officer for an intake assessment.

[PL 1999, c. 624, Pt. B, §4 (AMD).]

4. Release or detention ordered by juvenile community corrections officer. The release or detention of a juvenile may be ordered by a juvenile community corrections officer as follows.

A. Upon notification from a law enforcement officer, a juvenile community corrections officer shall direct the release or detention of a juvenile pending that juvenile's initial appearance before the court. If a juvenile is released unconditionally, whether by a law enforcement officer without notification to a juvenile community corrections officer or by a juvenile community corrections officer, and the law enforcement officer subsequently acquires information that makes detention or conditional release necessary, the law enforcement officer may apply to the court for a warrant of arrest. Following the arrest of the juvenile, the law enforcement officer immediately shall notify the juvenile community corrections officer. The juvenile community corrections officer shall direct the unconditional or conditional release of the juvenile or order the juvenile detained in accordance with paragraphs C and D. [PL 1999, c. 624, Pt. B, §5 (AMD).]

B. Release may be unconditional or conditioned upon the juvenile's promise to appear for subsequent official proceedings or, if a juvenile can not appropriately be released on one of these 2 bases, upon the least onerous of the following conditions, or combination of conditions, necessary to ensure the juvenile's appearance or to ensure the protection of the community or any member of the community, including the juvenile:

(1) Upon the written promise of the juvenile's legal custodian to produce the juvenile for subsequent official proceedings or at any place or time when so ordered by the juvenile community corrections officer or the Juvenile Court;

(2) Upon the juvenile's voluntary agreement to placement in the care of a responsible person or organization, including one providing attendant care;

(3) Upon prescribed conditions, reasonably related to securing the juvenile's presence at subsequent official proceedings or at any place or time when so ordered by the juvenile community corrections officer or the court, restricting the juvenile's activities, associations, residence or travel;

(4) Upon such other prescribed conditions as may be reasonably related to securing the juvenile's presence at subsequent official proceedings or at any place or time when so ordered by the juvenile community corrections officer or the court; or

(5) Upon prescribed conditions, reasonably related to ensuring the protection of the community or any member of the community, including the juvenile.

Upon imposition of any condition of release described in subparagraph (2), (3), (4) or (5), the juvenile community corrections officer shall provide the juvenile with a copy of the condition imposed, inform the juvenile of the consequences applicable to violation of the condition and inform the juvenile of the right to have the condition reviewed by the Juvenile Court pursuant to subsection 10. [PL 1999, c. 624, Pt. B, §5 (AMD).]

C. Detention, if ordered, must be in the least restrictive residential setting that will serve the purposes of the Maine Juvenile Code as provided in section 3002 and one of the following purposes of detention:

(1) To ensure the presence of the juvenile at subsequent court proceedings;

(3) To prevent the juvenile from harming or intimidating any witness or otherwise threatening the orderly progress of the court proceedings;

(4) To prevent the juvenile from inflicting bodily harm on others; or

(5) To protect the juvenile from an immediate threat of bodily harm. [PL 2021, c. 398, Pt. KKKK, §1 (AMD).]

D. Detention of a juvenile in a detention facility may be ordered by the Juvenile Court or a juvenile community corrections officer when there is probable cause to believe the juvenile:

(1) Has committed an act that would be murder or a Class A, Class B or Class C crime if committed by an adult;

(2) Has refused to participate voluntarily in a conditional release placement or is incapacitated to the extent of being incapable of participating in a conditional release placement;

(3) Has intentionally or knowingly violated a condition imposed as part of conditional release on a pending offense or has committed an offense subsequent to that release that would be a crime if committed by an adult;

(4) Has committed the juvenile crime that would be escape if the juvenile was an adult;

(5) Has escaped from a facility to which the juvenile had been committed pursuant to an order of adjudication or is absent without authorization from a prior placement by a juvenile community corrections officer or the Juvenile Court; or

(6) Has a prior record of failure to appear in court when so ordered or summonsed by a law enforcement officer, juvenile community corrections officer or the court or has stated the intent not to appear.

If, in the judgment of the juvenile community corrections officer, based on an assessment of risk, or in the judgment of the Juvenile Court, it is not necessary or appropriate to detain a juvenile who satisfies the criteria for detention, the juvenile community corrections officer or the Juvenile Court may order the placement of the juvenile in the juvenile's home or in an alternative facility or service, such as a group home, emergency shelter, foster placement or attendant care, subject to specific conditions, including supervision by a juvenile community corrections officer or a designated supervisor. Such a placement is considered a conditional release.

Detention may not be ordered when either unconditional or conditional release is appropriate. [PL 1999, c. 624, Pt. B, §5 (AMD).]

E. If a juvenile community corrections officer or an attorney for the State orders a juvenile detained, the juvenile community corrections officer who ordered the detention or the attorney for the State who ordered the detention shall petition the Juvenile Court for a review of the detention in time for the detention hearing to take place within the time required by subsection 5, unless the juvenile community corrections officer who ordered the detention or the attorney for the State who ordered the detention has ordered the release of the juvenile. The juvenile community corrections officer who ordered the detention or the attorney for the State who ordered the detention may order the release of the juvenile anytime prior to the detention hearing. If the juvenile is so released, a detention hearing may not be held. [PL 2001, c. 471, Pt. A, §21 (RPR).]

F. Conditional release or detention may not be ordered for a juvenile for conduct described in section 3103, subsection 1, paragraph B or C. [PL 2005, c. 328, §9 (NEW).]

G. Notwithstanding any provision of law to the contrary, a juvenile who has not attained 12 years of age may not be detained at a secure detention facility for more than 7 days except by agreement of the parties. [PL 2021, c. 326, §2 (NEW).]

[PL 2021, c. 326, §2 (AMD); PL 2021, c. 398, Pt. KKKK, §1 (AMD).]

4-A. Probable cause determination. Except in a bona fide emergency or other extraordinary circumstance, when a juvenile arrested without a warrant for a juvenile crime or a violation of conditional release is not released from custody or does not receive a detention hearing within 48 hours after arrest, including Saturdays, Sundays and legal holidays, a Juvenile Court Judge or justice of the peace shall determine, within that time period, whether there is probable cause to believe that the juvenile has committed a juvenile crime unless it has already been determined by a Juvenile Court Judge or justice of the peace that there is probable cause to believe that the juvenile has committed a juvenile crime. Evidence presented to establish such probable cause may include affidavits and other reliable hearsay evidence as permitted by the Juvenile Court Judge or justice of the peace. If the evidence does not establish such probable cause, the Juvenile Court Judge or justice of the peace shall order the juvenile's discharge from detention.

[PL 2005, c. 328, §10 (AMD).]

5. Detention hearing. Upon petition by a juvenile community corrections officer who ordered the detention or an attorney for the State who ordered the detention, the Juvenile Court shall review the decision to detain a juvenile within 48 hours following the detention, excluding Saturday, Sunday and legal holidays, except that if a juvenile is detained pursuant to subsection 7, paragraph B-5, the Juvenile Court shall review the decision to detain the juvenile within 24 hours following the detention, excluding Saturday, Sunday and legal holidays. When a petition to review detention is filed, the Juvenile Court shall assign counsel to represent the juvenile. The assignment must be reviewed at the juvenile's first appearance before the Juvenile Court. If a juvenile petition with charges based on the conduct at issue in the detention hearing is filed, the assignment continues with respect to the petition to review detention but must be reviewed at the juvenile's first appearance on the juvenile petition.

A. A detention hearing must precede and must be separate from a bind-over or adjudicatory hearing. Evidence presented at a detention hearing may include testimony, affidavits and other

reliable hearsay evidence as permitted by the Juvenile Court and may be considered in making any determination in that hearing. [PL 2021, c. 326, §3 (AMD).]

B. Following a detention hearing, the Juvenile Court shall order a juvenile's release, in accordance with subsection 4, unless it finds, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention provided in that subsection. The Juvenile Court shall ensure, by appropriate order, that any such continued detention is otherwise in accordance with the requirements of subsection 4. The Juvenile Court may order that detention be continued pending further appearances before the Juvenile Court or pending conditional release to a setting satisfactory to the juvenile community corrections officer. [PL 2021, c. 326, §3 (AMD).]

C. Continued detention or conditional release may not be ordered unless a Juvenile Court Judge or justice of the peace has determined pursuant to subsection 4-A or the Juvenile Court determines at the detention hearing that there is probable cause to believe that the juvenile has committed a juvenile crime. [PL 2003, c. 706, Pt. A, §3 (AMD).]

D. When the Juvenile Court orders detention or a conditional release that authorizes, even temporarily, the juvenile's removal from the juvenile's home, the Juvenile Court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the Juvenile Court orders detention or a conditional release, which continues to be governed by the other provisions of this section. [PL 2021, c. 326, §3 (AMD).]

[PL 2021, c. 326, §3 (AMD).]

6. Availability of judges. The Chief Judge of the District Court shall provide that a Juvenile Court Judge is available to preside at the detention hearing, described in subsection 5, on all days except Saturdays, Sundays and legal holidays.

[PL 1993, c. 675, Pt. B, §13 (AMD).]

7. Restriction on place of detention. The following restrictions are placed on the facilities in which a juvenile may be detained.

A. A juvenile may be detained in a jail or other secure detention facility intended for use or primarily used for the detention of adults only when the serving facility:

(1) Contains an area where juveniles are under direct staff observation at all times, in a separate section for juveniles that complies with mandatory sight and sound separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208;

(2) Provides for no regular contact between the juveniles with the adult detainees or inmates; and

(3) Has an adequate staff to provide direct observation and supervise the juvenile's activities at all times during emergency detention.

Juveniles detained in adult-serving facilities may be placed only in the separate juvenile sections that comply with mandatory separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208, unless the juvenile is held in an adult section of a facility under section 3205, subsection 2 or is bound over as an adult and held in an adult section of a facility pursuant to section 3101, subsection 4, paragraph E-2. [PL 2013, c. 28, §3 (AMD).]

B. A juvenile may be held in custody or detention in any detention facility approved or operated by the Department of Corrections exclusively for juveniles or a temporary holding resource that

provides secure supervision approved by the Department of Corrections, pending the juvenile's release or hearing in the Juvenile Court. [PL 1991, c. 493, §11 (AMD).]

B-1. [PL 1997, c. 752, §10 (RP).]

B-2. [PL 1997, c. 752, §11 (RP).]

B-3. [PL 1995, c. 155, §3 (RP).]

B-4. The State is responsible for all physically restrictive juvenile detention statewide, except that the detention for up to 6 hours provided under subsection 1 remains the responsibility of the counties. At the discretion of the sheriff, if the requirements of paragraph B-5 are met, a county may assume responsibility for the detention of a juvenile for up to 48 hours, excluding Saturdays, Sundays and legal holidays. Upon mutual agreement of the Commissioner of Corrections and the sheriff and upon terms mutually agreeable to them, a juvenile may be detained by a county for a longer period of time in an approved detention facility or temporary holding resource complying with paragraph B. Any detention of a juvenile by a county must be in a section of a jail or other secure detention facility in compliance with paragraph A or in an approved detention facility or temporary holding resource in compliance with paragraph B. This paragraph does not apply to a juvenile who is held in an adult section of a jail pursuant to section 3101, subsection 4, paragraph E-2 or section 3205, subsection 2. [PL 2013, c. 28, §4 (AMD).]

B-5. If the juvenile community corrections officer who ordered the detention or the attorney for the State who ordered the detention determines there is no reasonable alternative, a juvenile may be detained in a jail or other secure detention facility intended or primarily used for the detention of adults for up to 48 hours, excluding Saturday, Sunday and legal holidays, if:

(1) The facility meets the requirements of paragraph A;

(2) The facility is not located in a standard metropolitan statistical area and meets the statutory criteria contained in the federal Juvenile Justice and Delinquency Prevention Act of 1974, 42 United States Code, Section 5601; and

(3) The juvenile is detained only to await a detention hearing pursuant to subsection 5 or section 3314, subsection 2. [PL 2009, c. 93, §7 (AMD).]

C. [PL 2013, c. 28, §5 (RP).]

D. [PL 2013, c. 28, §6 (RP).]

[PL 2013, c. 28, §§3-6 (AMD).]

7-A. Nonsecure custody in secure detention facility. Notwithstanding other provisions of this Part, a juvenile may be held for up to 12 hours in nonsecure custody in a building housing a jail or other secure detention facility intended or primarily used for the detention of adults if the following criteria are met:

A. The area where the juvenile is held is an unlocked, multipurpose area not designed or intended for use as a residential area, such as a lobby, office or interrogation room which is not designated, set aside or used as a secure detention area or is not a part of such an area, or if a secure area, is used only for processing purposes; [PL 1989, c. 925, §8 (NEW).]

B. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility; [PL 1989, c. 925, §8 (NEW).]

C. Use of the area is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court; and [PL 1989, c. 925, §8 (NEW).]

D. The juvenile is under continuous visual supervision by a law enforcement officer or facility staff person. [PL 1989, c. 925, §8 (NEW).]

[PL 1989, c. 925, §8 (NEW).]

7-B. Separate nonsecure custody; detention. When a juvenile who is being held in nonsecure custody or is being detained pursuant to this section is transported to or from court or to or from a juvenile facility or is being held in a court holding area awaiting court proceedings, the juvenile must be separated by sight and sound from any adult detainee.
[PL 2007, c. 96, §2 (NEW).]

8. Detention. In the event that the court orders detention, after detention hearing in accordance with subsection 5, paragraph B, a petition shall be filed within 10 days from the date of detention, unless the time is extended by the court by further order for good cause shown. In the event a petition is not so filed, then detention shall be terminated and the juvenile discharged from detention.
[PL 1989, c. 744, §4 (AMD).]

9. Violation of conditions of release. Upon notification that a juvenile has intentionally or knowingly violated a condition of release, whether imposed by a court or a juvenile community corrections officer, a juvenile community corrections officer or a law enforcement officer may apply to the Juvenile Court for a warrant of arrest.

A law enforcement officer or juvenile community corrections officer having probable cause to believe that a juvenile has violated a condition of release may arrest the juvenile without a warrant.

Following the arrest of a juvenile by a law enforcement officer for violation of a condition of release, the law enforcement officer shall immediately notify the juvenile community corrections officer. The juvenile community corrections officer shall either direct the release of the juvenile with or without imposing different or additional conditions for release of the juvenile or shall revoke release and order the juvenile detained in accordance with subsection 4, paragraphs C and D.

If different or additional conditions of release are imposed, the juvenile may request the Juvenile Court to review the conditions pursuant to subsection 10. The review of additional or different conditions must include a hearing to determine if the preponderance of the evidence indicates that the juvenile intentionally or knowingly violated a condition of release.

If detention is ordered, the provisions of subsections 4-A and 5 apply.
[PL 2003, c. 180, §5 (AMD).]

10. Juvenile Court to review for abuse of discretion. Upon the request of a juvenile or legal custodian, the Juvenile Court shall, at the juvenile's first appearance or within 7 days, review for abuse of discretion, any condition of release imposed pursuant to subsection 4, paragraph B, subparagraph (2), (3), (4) or (5).
[PL 1989, c. 741, §9 (AMD).]

11. Review of order. Upon petition by a juvenile community corrections officer, an attorney for the State or a juvenile and after notice and upon a showing of changed circumstances or upon the discovery of new and significant information, the Juvenile Court may review an order for detention, conditional release or unconditional release and may enter a new order in accordance with this section.
[PL 2005, c. 488, §1 (AMD).]

SECTION HISTORY

PL 1985, c. 439, §9 (NEW). PL 1985, c. 737, §A37 (AMD). PL 1987, c. 367 (AMD). PL 1987, c. 398, §§3-8 (AMD). PL 1987, c. 698, §§2,3 (AMD). PL 1989, c. 231, §1 (AMD). PL 1989, c. 318 (AMD). PL 1989, c. 741, §§3-9 (AMD). PL 1989, c. 744, §§3,4 (AMD). PL 1989, c. 925, §§4-8 (AMD). PL 1991, c. 39 (AMD). PL 1991, c. 493, §§4-16 (AMD). PL 1991, c. 824, §A24 (AMD). PL 1993, c. 162, §1 (AMD). PL 1993, c. 238, §1 (AMD). PL 1993, c. 354, §§1-5 (AMD). PL 1993, c. 675, §B13 (AMD). PL 1995, c. 155, §§1-3 (AMD). PL 1995, c. 647, §§1,2 (AMD). PL 1997, c. 24, §§RR1-3 (AMD). PL 1997, c. 393, §B6 (AMD). PL 1997, c. 393, §B7 (AFF).

PL 1997, c. 645, §6 (AMD). PL 1997, c. 645, §§6-8 (AMD). PL 1997, c. 645, §7 (AMD). PL 1997, c. 645, §8 (AMD). PL 1997, c. 752, §§7-13 (AMD). PL 1999, c. 127, §A32 (AMD). PL 1999, c. 260, §§A1-5 (AMD). PL 1999, c. 531, §J1 (AMD). PL 1999, c. 624, §§A1-5,B3-6 (AMD). PL 2001, c. 471, §A21 (AMD). PL 2001, c. 696, §1 (AMD). PL 2003, c. 180, §§3-6 (AMD). PL 2003, c. 706, §§A2,3 (AMD). PL 2005, c. 328, §§9-11 (AMD). PL 2005, c. 488, §1 (AMD). PL 2005, c. 507, §5 (AMD). PL 2007, c. 96, §2 (AMD). PL 2009, c. 93, §§5-7 (AMD). PL 2013, c. 28, §§3-6 (AMD). PL 2021, c. 326, §§2, 3 (AMD). PL 2021, c. 398, Pt. KKKK, §1 (AMD).

§3204. Statements not admissible in evidence

Statements of a juvenile or of a juvenile's parents, guardian or legal custodian made to a juvenile community corrections officer during the course of a preliminary investigation are not admissible in evidence at an adjudicatory hearing against that juvenile if a petition based on the same facts is later filed. [PL 2019, c. 220, §1 (AMD).]

Statements of a juvenile or of a juvenile's parents, guardian or legal custodian made during the course of screening and assessment for participation in a juvenile drug treatment court program if made to a juvenile community corrections officer or to another person reporting on or supervising the juvenile in connection with the program are not admissible in evidence at an adjudicatory or probation violation hearing against that juvenile if a petition or motion to revoke probation based on the same facts is the subject of the hearing. [PL 1999, c. 624, Pt. B, §7 (NEW).]

Statements of a juvenile or of a juvenile's parents, guardian or legal custodian made to a juvenile community corrections officer during an informal adjustment or during a restorative justice program or made to a clinical provider during substance use disorder, sexual behavior or mental health assessment or treatment attended by the juvenile are not admissible in evidence during the State's case in chief at an adjudicatory hearing against that juvenile on a petition based on the same facts that caused the referral for informal adjustment, restorative justice, assessment or treatment. [PL 2019, c. 220, §2 (NEW).]

Statements of a juvenile or of a juvenile's parents, guardian or legal custodian made during school disciplinary proceedings, including but not limited to manifestation determinations, special education meetings, suspension meetings or expulsion hearings, are not admissible in evidence during the State's case in chief at an adjudicatory hearing against the juvenile on a petition based on the same facts that caused the need for the school disciplinary proceedings. [PL 2019, c. 220, §2 (NEW).]

As used in this section, "restorative justice program" means a program in which offenders take responsibility for causing harm and engage in a facilitated process with victims, family members, community members or advocates and others impacted by the harm that focuses on repairing the harm, addressing needs and preventing future harm. [PL 2019, c. 220, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §20 (RPR). PL 1979, c. 681, §14 (AMD). PL 1985, c. 439, §10 (AMD). PL 1989, c. 741, §10 (AMD). PL 1997, c. 421, §A1 (AMD). PL 1999, c. 624, §B7 (AMD). PL 2019, c. 220, §§1, 2 (AMD).

§3205. Juvenile in adult-serving jail

1. Generally. A juvenile may not be committed to or detained or confined in a jail or other secure detention facility intended or primarily used for the detention of adults, except when bound over as an adult and as provided in section 3101, subsection 4, paragraph E-2, or as provided in section 3203-A, subsection 1, paragraph B-1 or section 3203-A, subsection 7. A juvenile who is detained in a jail or other secure detention facility intended or primarily used for the detention of adults may be detained only in a section of a facility that meets the requirements of section 3203-A, subsection 7, paragraph

A, unless bound over as an adult and held in an adult section of a facility pursuant to section 3101, subsection 4, paragraph E-2.
[PL 2013, c. 28, §7 (AMD).]

2. Exception. Subsection 1 applies to any person who has not attained 18 years of age or is considered a juvenile by virtue of section 3101, subsection 2, paragraph D except that:

A. If the person has attained 18 years of age, or has been convicted as an adult in another jurisdiction, any detention pursuant to section 3203-A and any confinement pursuant to section 3314, subsection 1, paragraph H or section 3314, subsection 7 may be, upon the order of a court, in an adult section of a jail or other secure detention facility intended or primarily used for the detention of adults and may extend beyond the time limits set out in section 3203-A; and [PL 2009, c. 93, §8 (NEW).]

B. If the person has attained 21 years of age or has been convicted as an adult in another jurisdiction and has attained 18 years of age, any detention pursuant to section 3203-A and any confinement pursuant to section 3314, subsection 1, paragraph H or section 3314, subsection 7 must be in an adult section of a jail or other secure detention facility intended or primarily used for the detention of adults and may extend beyond the time limits set out in section 3203-A. [PL 2013, c. 28, §8 (AMD).]

[PL 2013, c. 28, §8 (AMD).]

SECTION HISTORY

PL 1989, c. 571, §A2 (NEW). PL 1989, c. 925, §9 (AMD). PL 1991, c. 493, §17 (RPR). PL 1997, c. 24, §RR4 (AMD). PL 1997, c. 752, §14 (AMD). PL 1999, c. 624, §A6 (AMD). PL 2005, c. 507, §§6, 7 (AMD). PL 2007, c. 196, §1 (AMD). PL 2009, c. 93, §8 (AMD). PL 2013, c. 28, §§7, 8 (AMD).

§3206. Detention of juveniles

A person under 18 years of age who is arrested for a crime defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section 3103 is not subject to chapter 105-A and may not be detained unless a juvenile community corrections officer has been notified within 2 hours after the person's arrest and the juvenile community corrections officer or attorney for the State has approved the detention. Section 3203-A, subsection 7, paragraphs A and B governing the facilities in which juveniles may be detained apply to any detention of such a juvenile following arrest, and section 3203-A, subsection 4, paragraph C applies to the decision whether to release or further detain the juvenile. [PL 2013, c. 424, Pt. B, §4 (AMD).]

SECTION HISTORY

PL 2003, c. 180, §7 (NEW). PL 2005, c. 507, §8 (AMD). PL 2011, c. 336, §2 (AMD). PL 2013, c. 424, Pt. B, §4 (AMD).

CHAPTER 507

PETITION, ADJUDICATION AND DISPOSITION

§3301. Preliminary investigation, informal adjustment and petition initiation

1. Preliminary investigation. When a juvenile accused of having committed a juvenile crime is referred to a juvenile community corrections officer, the juvenile community corrections officer shall, except in cases in which an investigation is conducted pursuant to Title 5, section 200-A, conduct a preliminary investigation to determine whether the interests of the juvenile or of the community require that further action be taken.

On the basis of the preliminary investigation, the juvenile community corrections officer shall:

A. Decide that action requiring ongoing supervision is not required either in the interests of the public or of the juvenile; [PL 1999, c. 260, Pt. A, §6 (AMD).]

B. Make whatever informal adjustment is practicable without a petition; or [PL 1981, c. 679, §6 (AMD).]

C. Request a petition to be filed. [PL 1977, c. 520, §1 (NEW).]
[PL 1999, c. 624, Pt. B, §8 (AMD).]

2. No further action.
[PL 1977, c. 664, §21 (RP).]

3. Informal adjustment.
[PL 1977, c. 664, §21 (RP).]

4. Request for filing of petition.
[PL 1977, c. 664, §21 (RP).]

5. Juvenile community corrections officer alternatives. On the basis of the preliminary investigation, the juvenile community corrections officer shall choose one of the following alternatives:

A. Decide that action requiring ongoing supervision is not required either in the interests of the public or of the juvenile. If the juvenile community corrections officer determines that the facts in the report prepared for the community corrections officer by the referring officer pursuant to section 3203-A, subsection 3 are sufficient to file a petition, but in the community corrections officer's judgment the interest of the juvenile and the public will be served best by providing the juvenile with services voluntarily accepted by the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated, the juvenile community corrections officer may refer the juvenile for that care and treatment and not request that a petition be filed; [PL 1999, c. 624, Pt. B, §9 (AMD).]

B. Make whatever informal adjustment is practicable without a petition. The juvenile community corrections officer may effect whatever informal adjustment is agreed to by the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated, including a restitution contract with the victim of the crime and the performance of community service. Informal adjustments may extend no longer than 6 months and may not be commenced unless:

(1) The juvenile community corrections officer determines that the juvenile and the juvenile's parents, guardian or legal custodian, if the juvenile is not emancipated, were advised of their constitutional rights, including the right to an adjudicatory hearing, the right to be represented by counsel and the right to have counsel appointed by the court if indigent;

(2) The facts establish prima facie jurisdiction, except that any admission made in connection with this informal adjustment may not be used in evidence against the juvenile if a petition based on the same facts is later filed; and

(3) Written consent to the informal adjustment is obtained from the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated; [PL 1999, c. 624, Pt. B, §9 (AMD).]

C. If the juvenile community corrections officer determines that the facts are sufficient for the filing of a petition, the juvenile community corrections officer shall request the prosecuting attorney to file a petition; or [PL 1999, c. 624, Pt. B, §9 (AMD).]

D. If the juvenile community corrections officer makes a determination pursuant to paragraph A or B, the community corrections officer shall notify the juvenile and the juvenile's parents, guardian

or legal custodian at least 2 weeks prior to the date for which they are summonsed. [PL 1999, c. 624, Pt. B, §9 (AMD).]

[PL 1999, c. 624, Pt. B, §9 (AMD).]

5-A. Community resolution teams.

[PL 2007, c. 96, §3 (RP).]

6. Review by attorney for the State. If the juvenile community corrections officer decides not to request the attorney for the State to file a petition, the juvenile community corrections officer shall inform the attorney for the State, the complainant, the law enforcement officer and the victim of the decision and of the reasons for the decision as soon as practicable. The juvenile community corrections officer shall advise the complainant, the law enforcement officer and the victim that they may submit their complaint to the attorney for the State for review.

If the juvenile community corrections officer makes a determination pursuant to subsection 5, paragraph A or B and decides not to request the attorney for the State to file a petition for a violation of Title 22, section 2389, subsection 2 or Title 28-A, section 2052, the juvenile community corrections officer shall inform the Secretary of State of the violation. The Secretary of State shall suspend for a period of 30 days that juvenile's license or permit to operate a motor vehicle, right to operate a motor vehicle and right to apply for and obtain a license. After the suspension is terminated, any record of the suspension is confidential and may be released only to a law enforcement officer or the courts for prosecution of violations of Title 29-A, section 2412-A.

The attorney for the State on that attorney's own motion or upon receiving a request for review by the law enforcement officer, the complainant or the victim, shall consider the facts of the case, consult with the juvenile community corrections officer who made the initial decision and then make a final decision as to whether to file the petition. The attorney for the State shall notify the juvenile community corrections officer of the final decision within 30 days of being informed by the juvenile community corrections officer of the initial decision. If a juvenile community corrections officer has not yet made an initial decision, the attorney for the State may file a petition at any time more than 30 days after the juvenile community corrections officer has been given notice pursuant to section 3203-A.

If the attorney for the State files a petition, the court, upon the motion of the attorney for the State, the motion of the juvenile or the court's own motion, may assign counsel for the juvenile. The assignment must be reviewed at the juvenile's first appearance before the court.

[PL 2021, c. 326, §4 (AMD).]

6-A. Records confidential.

[PL 2019, c. 525, §12 (RP).]

7. Nonapplication of section. The provisions of this section do not apply to a juvenile charged with either of the juvenile crimes defined in section 3103, subsection 1, paragraph E or F, and a petition may be filed without recommendation by a juvenile community corrections officer. The provisions of section 3203-A apply in the case of a juvenile charged with either of the juvenile crimes defined in section 3103, subsection 1, paragraph E or F.

[PL 2019, c. 525, §13 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§21,22 (AMD). PL 1979, c. 127, §119 (AMD). PL 1979, c. 681, §15 (AMD). PL 1981, c. 204, §1 (AMD). PL 1981, c. 392, §§4,5 (AMD). PL 1981, c. 679, §§6,7 (AMD). PL 1985, c. 439, §11 (AMD). PL 1985, c. 737, §A38 (AMD). PL 1989, c. 502, §A41 (AMD). PL 1989, c. 599, §7 (AMD). PL 1997, c. 350, §1 (AMD). PL 1997, c. 421, §§A2,3 (AMD). PL 1997, c. 645, §9 (AMD). PL 1999, c. 167, §1 (AMD). PL 1999, c. 260, §§A6-8 (AMD). PL 1999, c. 266, §§1-3 (AMD). PL 1999, c. 624, §§B8-12 (AMD). PL 1999, c. 790, §A54 (AFF). PL 2003, c. 305, §5 (AMD). PL 2005, c. 487, §1 (AMD). PL 2005,

c. 507, §9 (AMD). PL 2007, c. 96, §3 (AMD). PL 2007, c. 196, §2 (AMD). PL 2011, c. 580, §1 (AMD). PL 2019, c. 525, §§12, 13 (AMD). PL 2021, c. 326, §4 (AMD).

§3301-A. School safety

1. Sharing information. Nothing in this Part precludes a law enforcement officer or criminal justice agency from sharing information with a school superintendent or principal, whether or not the information is contained in records, pertaining to a juvenile when the information is credible and indicates an imminent danger to the safety of students or school personnel on school grounds or at a school function. The superintendent or principal may disseminate this information only to the extent necessary to protect students and school personnel and as governed by subsection 2.
[PL 2003, c. 190, §1 (NEW).]

2. Process for further dissemination. Any information received by a superintendent or principal pursuant to subsection 1 may only be further distributed through a notification team as described in Title 20-A, section 1055, subsection 11.
[PL 2003, c. 190, §1 (NEW).]

3. Information prohibited from inclusion in student's education record. The superintendent or principal shall ensure that information provided pursuant to this section may not become part of the student's education record.
[PL 2003, c. 190, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 190, §1 (NEW).

§3302. Petition, form and contents

The form and content of a petition in any proceeding brought under chapter 503 must be substantially the same as the form and content of a complaint under Rule 3 of the Maine Rules of Unified Criminal Procedure. [PL 2015, c. 431, §29 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1989, c. 741, §11 (AMD). PL 2015, c. 431, §29 (AMD).

§3303. Dismissal of petition with prejudice

On motion made by or on behalf of a juvenile, or by the court itself, a petition must be dismissed with prejudice if it was not filed within 9 months from the date the juvenile was referred to the juvenile community corrections officer for an intake assessment, unless the prosecuting attorney either before or after the expiration of the 9-month period files a motion for an extension of time for the filing of a petition, accompanied by the reasons for this extension. The court may for good cause extend the time for bringing a petition for any period of time that is less than the limitation established in section 3105-A. [PL 1999, c. 624, Pt. B, §13 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §23 (AMD). PL 1983, c. 176, §A6 (AMD). PL 1985, c. 439, §12 (AMD). PL 1995, c. 133, §1 (AMD). PL 1999, c. 624, §B13 (AMD).

§3304. Summons

1. Issuance and contents. The summons issued by the law enforcement officer must include the signature of the law enforcement officer, a brief description of the alleged juvenile crime, the time and place of the alleged juvenile crime and the time and place the juvenile is to appear in court. The summons must also include a statement of the constitutional rights of the juvenile, including the right to have an attorney present at the hearing on the petition and to have an attorney appointed, if indigent.

The summons must also include a notice that the case may be informally adjusted by a juvenile community corrections officer.
[PL 1999, c. 624, Pt. B, §14 (AMD).]

2. Voluntary appearance; waiver of service. No summons need issue to any person who appears voluntarily, or who waives service, but any such person shall be provided with a copy of the petition and summons upon appearance or request.
[PL 1977, c. 520, §1 (NEW).]

3. Service. The summons must be directed to and served upon the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated. The summons must be served in hand or by leaving it at the juvenile's and parents', guardian's or legal custodian's dwelling house or usual place of abode with a person of suitable age and discretion residing in that house or by mailing it to the last known address of the juvenile. A copy of the summons must be mailed to the juvenile community corrections officer and the attorney for the State.

A. [PL 1999, c. 266, §5 (RP).]

B. [PL 1999, c. 266, §5 (RP).]
[PL 1999, c. 624, Pt. B, §15 (AMD).]

4. Service at least 48 hours before appearance demanded. The summons must require the person on whom it is served to appear for a hearing at the time and place specified. The time may not be less than 48 hours after service of the summons. If the juvenile is not detained by an order of the court, the summons must require the custodian to produce the juvenile at that time and place.
[PL 1997, c. 350, §4 (AMD).]

5. Service on parents of juvenile. The following applies to service of the summons under subsection 3.

A. If the person or persons to whom a summons is served are the parents of the juvenile and if the juvenile principally resides with only one parent, then service on that parent is sufficient. [PL 1989, c. 741, §13 (NEW).]

B. If the person or persons to whom a summons is served are not the parents or guardian of the juvenile, the summons must also be issued to the parents or guardian or both, notifying them of the pendency of the cause and of the time and place for hearing. The court may waive this requirement if the court finds that the service of the summons is not possible and explains this finding in writing, except as required by section 3314, subsection 1, paragraph C-1 or C-2. [PL 1989, c. 741, §13 (NEW).]
[PL 1989, c. 741, §13 (RPR).]

6. Summons of necessary parties. The court on its own motion or on the motion of any party may require the appearance of any person the court determines necessary to the action and authorize the issuance of a summons directed to that person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on the party's behalf or on the behalf of the juvenile.
[PL 2019, c. 525, §14 (AMD).]

6-A. Attendance of parent, guardian or legal custodian; contempt. The parent, guardian or legal custodian shall appear in response to the summons served pursuant to subsection 5 and shall attend all proceedings concerning the juvenile. The failure of a parent, guardian or legal custodian to appear in response to the summons or for a later hearing, or the inability to serve such a party, may not prevent the court from continuing with the proceedings against a juvenile who is before the court, except as required in section 3314, subsection 1, paragraphs C-1 and C-2.

A. The court may excuse the attendance of a parent, guardian or legal custodian at a particular proceeding or all proceedings for good cause or if appearing in court will result in undue hardship to the parent, guardian or legal custodian. [PL 2003, c. 142, §1 (NEW); PL 2003, c. 142, §3 (AFF).]

B. If the parent, guardian or legal custodian fails to appear with the juvenile and the court has not found good cause for not appearing, the court, after notice and hearing on the issue of contempt, may find the parent, guardian or legal custodian in contempt of court in accordance with the Maine Rules of Civil Procedure, Rule 66(d). [PL 2007, c. 475, §7 (AMD).]

C. This subsection does not create a right for the juvenile to have the juvenile's parent, guardian or legal custodian present at any proceeding or court-ordered program that the juvenile attends or is required to attend. [PL 2003, c. 142, §1 (NEW); PL 2003, c. 142, §3 (AFF).]

[PL 2007, c. 475, §7 (AMD).]

7. Witness fees and travel expenses. The court may authorize the payment of necessary witness fees and travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the District Court.

[PL 1977, c. 520, §1 (NEW).]

8. Authority of juvenile community corrections officer to issue and serve summons. The Commissioner of Corrections, at the commissioner's discretion, may authorize a juvenile community corrections officer to issue and serve a summons, subject to conditions the commissioner may impose as to when and under what circumstances such authority may be exercised.

[PL 2003, c. 16, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §24 (AMD). PL 1979, c. 681, §§16,17 (AMD). PL 1985, c. 439, §13 (AMD). PL 1987, c. 720, §§1,2 (AMD). PL 1989, c. 741, §§12,13 (AMD). PL 1997, c. 350, §§2-4 (AMD). PL 1999, c. 266, §§4,5 (AMD). PL 1999, c. 624, §§B14,15 (AMD). PL 1999, c. 624, §B15 (AMD). PL 2003, c. 16, §1 (AMD). PL 2003, c. 142, §1 (AMD). PL 2003, c. 142, §3 (AFF). PL 2007, c. 475, §7 (AMD). PL 2019, c. 525, §14 (AMD).

§3305. Answer

A juvenile must personally appear, and the juvenile or the juvenile's counsel may enter an answer asserting the absence of criminal responsibility by reason of insanity or denying, admitting or not contesting the allegations of the petition, in accordance with Rules 11 and 11A of the Maine Rules of Unified Criminal Procedure, except that, if the case has been continued for investigation and for a bind-over hearing pursuant to section 3101, subsection 4, paragraph A, the court may not accept an answer to the petition other than a denial or assertion of the absence of criminal responsibility by reason of insanity until the court has conducted a bind-over hearing and has decided to retain jurisdiction of the juvenile in the Juvenile Court or until the prosecuting attorney has withdrawn the request to have the juvenile tried as an adult. An answer may be both a denial and an assertion of the absence of criminal responsibility by reason of insanity. If the juvenile or the juvenile's counsel declines to enter an answer, the court shall enter an answer of denial. [PL 2015, c. 431, §30 (AMD).]

If the court accepts an answer admitting or not contesting the allegations of the petition, a dispositional hearing must be set at the earliest practicable time that will allow for the completion of a predisposition study conducted pursuant to section 3311 and for service of notice as required by section 3314, subsection 1, paragraph C-1 or C-2. If the answer entered is a denial or an assertion of the absence of criminal responsibility by reason of insanity, or both, or if the court declines to accept an answer admitting or not contesting the allegations of the petition, the matter must be set for further proceedings.

[PL 2013, c. 234, §9 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1987, c. 720, §3 (AMD). PL 1989, c. 741, §14 (AMD). PL 2011, c. 336, §3 (AMD). PL 2013, c. 234, §9 (AMD). PL 2015, c. 431, §30 (AMD).

§3306. Right to counsel

1. Notice and appointment. The provisions of this subsection address a juvenile's right to counsel.

A. At a juvenile's first appearance before the court, the juvenile and the juvenile's parent or parents, guardian or legal custodian must be fully advised by the court of their constitutional and legal rights, including the juvenile's right to be represented by counsel at every stage of the proceedings. At every subsequent appearance before the court, the juvenile must be advised of the juvenile's right to be represented by counsel. [PL 2019, c. 525, §15 (AMD).]

B. If the juvenile requests an attorney and if the juvenile and the juvenile's parent or parents, guardian or legal custodian are found to be without sufficient financial means, counsel must be appointed by the court. [PL 2019, c. 525, §15 (AMD).]

C. The court may appoint counsel without a request under paragraph B if the court determines representation by counsel necessary to protect the interests of the juvenile. [PL 2019, c. 525, §15 (AMD).]

D. The court shall appoint counsel to represent the juvenile upon the entry of a dispositional order that includes commitment to a Department of Corrections juvenile correctional facility. A juvenile's right to counsel under this paragraph continues until the juvenile is discharged from the disposition. Counsel appointed under this paragraph may be in addition to any other counsel representing the juvenile. [PL 2021, c. 326, §5 (NEW).]

This subsection does not limit the court's authority to appoint counsel for a juvenile at any time beginning with the detention of the juvenile under this Part.
[PL 2021, c. 326, §5 (AMD).]

2. State's attorney. The district attorney or the attorney general shall represent the State in all proceedings under this chapter.
[PL 1977, c. 520, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §25 (AMD). PL 2019, c. 525, §15 (AMD). PL 2021, c. 326, §5 (AMD).

§3306-A. Release or detention at first appearance

At the juvenile's first appearance or at a subsequent appearance before the court, the court may order the juvenile's unconditional release, conditional release or detention in accordance with section 3203-A. Unless the court orders otherwise, a juvenile put on conditional release by a juvenile community corrections officer remains on conditional release until the juvenile commences an informal adjustment pursuant to section 3301, subsection 5, paragraph B, the attorney for the State determines that no petition will be filed or the juvenile court enters a final dispositional order pursuant to section 3314. [PL 2007, c. 196, §3 (AMD).]

Conditional release or detention may not be ordered at any appearance unless it has been determined by a Juvenile Court Judge or a justice of the peace that there is probable cause to believe that the juvenile has committed a juvenile crime. [PL 2003, c. 706, Pt. A, §4 (NEW).]

When a court orders detention or a conditional release that authorizes even temporarily the juvenile's removal from the juvenile's home or when a court allows a conditional release ordered by a juvenile community corrections officer that authorizes, even temporarily, the juvenile's removal from the juvenile's home to remain in effect, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no

reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders detention or a conditional release or allows a conditional release to remain in effect. [PL 2003, c. 706, Pt. A, §4 (AMD).]

SECTION HISTORY

PL 1989, c. 741, §15 (NEW). PL 1991, c. 493, §18 (AMD). PL 1999, c. 624, §B16 (AMD). PL 2001, c. 696, §2 (AMD). PL 2003, c. 706, §A4 (AMD). PL 2007, c. 196, §3 (AMD).

§3307. Publicity and record

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 1/01/22)

1. Juvenile hearings conducted as they would be for adults.

[PL 1979, c. 681, §18 (RP).]

1-A. Disclosure of identity. A law enforcement officer, officer of the court, juvenile community corrections officer or other representative of the Department of Corrections may not disclose the identity of any juvenile until a petition is filed charging the juvenile with a juvenile crime described in subsection 2. This section does not preclude the disclosure of the identity of a juvenile to a complainant or victim if a juvenile community corrections officer decides not to file a petition in accordance with section 3301, subsection 5, paragraph A or B or if the juvenile community corrections officer requests the prosecuting attorney to file a petition in accordance with section 3301, subsection 5, paragraph C. [PL 2019, c. 525, §16 (AMD).]

2. Certain hearings public.

A. Once a petition is filed, the general public may not be excluded from a proceeding on a juvenile crime that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult; from a proceeding on a juvenile crime that would constitute a Class D crime if the juvenile involved were an adult and the juvenile has previously been adjudicated of committing a juvenile crime that would constitute a Class D or higher class crime not arising from the same underlying transaction; or from a subsequent dispositional hearing in such cases. [PL 2007, c. 196, §4 (AMD).]

B. The general public is excluded from all other juvenile hearings and proceedings, except that a juvenile charged with a juvenile crime that would constitute murder or a Class A, Class B or Class C offense and with a juvenile crime that would constitute a juvenile's first Class D offense or Class E offense or with conduct described in section 3103, subsection 1, paragraph B, C or E, arising from the same underlying transaction may elect to have all charges adjudicated in one hearing, and, when a juvenile does so elect, the general public is not excluded from that hearing. [PL 2009, c. 93, §9 (AMD).]

C. [PL 1979, c. 681, §19 (RP).]

[PL 2009, c. 93, §9 (AMD).]

3. Record. A verbatim record shall be made of all detention, bind over, adjudicatory and dispositional hearings.

[PL 1979, c. 512, §4 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§26-29 (AMD). PL 1979, c. 233, §1 (AMD). PL 1979, c. 373, §§2,3 (AMD). PL 1979, c. 512, §4 (AMD). PL 1979, c. 681, §§18,19 (AMD). PL 1981, c. 361 (AMD). PL 1989, c. 421 (AMD). PL 1989, c. 445, §5 (AMD). PL 1991, c. 493, §19

(AMD). PL 1991, c. 776, §1 (AMD). PL 1995, c. 470, §7 (AMD). PL 1999, c. 624, §B17 (AMD). PL 2003, c. 180, §8 (AMD). PL 2007, c. 196, §4 (AMD). PL 2009, c. 93, §9 (AMD). PL 2019, c. 525, §16 (AMD). PL 2021, c. 365, §10 (AMD). PL 2021, c. 365, §37 (AFF).

§3307. Disclosure of juvenile's identity

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/01/22)

1. Juvenile hearings conducted as they would be for adults.

[PL 1979, c. 681, §18 (RP).]

1-A. Disclosure of juvenile's identity. A law enforcement officer, officer of the court, juvenile community corrections officer or other representative of the Department of Corrections may not disclose the identity of any juvenile until a petition is open to public inspection pursuant to section 3308-C, subsection 2, paragraph A, B or C. This section does not preclude the disclosure of the identity of a juvenile to a complainant or victim, or, if the victim is a minor, to the victim's parent or parents, guardian or legal custodian, to a criminal justice agency for the administration of juvenile justice or to the Department of Health and Human Services if necessary to carry out the statutory functions of that department, regardless of whether a petition has been or will be filed.

This section does not preclude the disclosure of the identity of a juvenile on conditional release pursuant to section 3203-A or on informal adjustment pursuant to section 3301 to a criminal justice agency for the administration of juvenile justice, or to the Department of Health and Human Services if necessary to carry out the statutory functions of that department.
[PL 2021, c. 365, §10 (AMD); PL 2021, c. 365, §37 (AFF).]

1-B. Disclosure of juvenile's identity to victim. Upon request, the identity of a juvenile subject to Juvenile Court proceedings must be disclosed by the Juvenile Court to:

A. The victim; [PL 2021, c. 365, §10 (NEW); PL 2021, c. 365, §37 (AFF).]

B. If the victim is a minor, the parent or parents, guardian or legal custodian of the victim; or [PL 2021, c. 365, §10 (NEW); PL 2021, c. 365, §37 (AFF).]

C. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian or attorney representing the victim. [PL 2021, c. 365, §10 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §10 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Certain hearings public.

[PL 2021, c. 365, §10 (RP); PL 2021, c. 365, §37 (AFF).]

3. Record. A verbatim record must be made of all detention, bind over, adjudicatory and dispositional hearings.
[PL 2021, c. 365, §10 (AMD); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§26-29 (AMD). PL 1979, c. 233, §1 (AMD). PL 1979, c. 373, §§2,3 (AMD). PL 1979, c. 512, §4 (AMD). PL 1979, c. 681, §§18,19 (AMD). PL 1981, c. 361 (AMD). PL 1989, c. 421 (AMD). PL 1989, c. 445, §5 (AMD). PL 1991, c. 493, §19 (AMD). PL 1991, c. 776, §1 (AMD). PL 1995, c. 470, §7 (AMD). PL 1999, c. 624, §B17 (AMD). PL 2003, c. 180, §8 (AMD). PL 2007, c. 196, §4 (AMD). PL 2009, c. 93, §9 (AMD). PL 2019, c. 525, §16 (AMD). PL 2021, c. 365, §10 (AMD). PL 2021, c. 365, §37 (AFF).

§3308. Juvenile case records; inspection and sealing

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 1/01/22)

1. Inspection.
[PL 2019, c. 525, §17 (RP).]

1-A. Confidentiality. Juvenile case records are confidential and may not be disclosed, disseminated or inspected except as expressly authorized by this Part.
[PL 2019, c. 525, §17 (NEW).]

2. Hearings open to public. In the case of a hearing open to the general public under section 3307, the petition, the record of the hearing and the order of adjudication are open to public inspection, provided that any court subsequently sentencing the juvenile after the juvenile has become an adult may consider only murder and Class A, Class B and Class C offenses committed by the juvenile. The petition, the record of the hearing and the order of adjudication, regardless of whether the hearing is open to the general public under section 3307, are open to inspection by:

A. The victim; [PL 2019, c. 525, §17 (NEW).]

B. If the victim is a minor, a parent or parents, guardian or legal custodian of the victim; and [PL 2019, c. 525, §17 (NEW).]

C. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian of the victim or a licensed professional investigator under Title 32, chapter 89. [PL 2019, c. 525, §17 (NEW).]

[PL 2019, c. 525, §17 (AMD).]

3. Dissemination of juvenile case records. Juvenile case records must be open to inspection by and, upon request, be disseminated to the juvenile, the juvenile's parent or parents, guardian or legal custodian, the juvenile's attorney, the prosecuting attorney and to any agency to which legal custody of the juvenile was transferred as a result of adjudication. Juvenile case records may also be open to inspection by and, upon request, be disseminated to the Department of Health and Human Services prior to adjudication if commitment to the Department of Health and Human Services is a proposed disposition.
[PL 2019, c. 525, §17 (AMD).]

3-A. Disclosure of juvenile's identity to victims. Upon request, the identity of a juvenile subject to Juvenile Court proceedings must be disclosed by the Juvenile Court to:

A. The victim; [PL 2019, c. 525, §17 (NEW).]

B. If the victim is a minor, a parent or parents, guardian or legal custodian of the victim; or [PL 2019, c. 525, §17 (NEW).]

C. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian of the victim or a licensed professional investigator under Title 32, chapter 89. [PL 2019, c. 525, §17 (NEW).]

[PL 2019, c. 525, §17 (AMD).]

4. Access to juvenile case records by other persons. With the consent of the court and subject to reasonable limitations to protect the identity, privacy and safety of 3rd parties, including, but not limited to, victims and other accused or adjudicated juveniles, and the interests of justice, juvenile case records, excluding the names of the juvenile and the juvenile's parent or parents, guardian or legal custodian, the juvenile's attorney or any other parties, may be inspected by or disseminated to persons having a legitimate interest in the proceedings or by persons conducting pertinent research studies.
[PL 2019, c. 525, §17 (AMD).]

5. Access to other records. Except as otherwise authorized under section 3307 or this section, juvenile intelligence and investigative record information as defined in section 3308-A, subsection 1, paragraph E, juvenile community corrections officers' records and all other reports of social and clinical studies contained in juvenile case records may not be open to inspection or disclosed or disseminated except with consent of the court or except to the extent that such records, reports and studies were made a part of the record of a hearing that was open to the general public under section 3307. The names and identifying information regarding any alleged victim and minors contained in the juvenile case records must be redacted prior to disclosure, dissemination or inspection.

The court may not order the disclosure, dissemination or inspection of juvenile case records unless the juvenile, the juvenile's attorney or, if the juvenile does not have an attorney, the juvenile's attorney of record and the prosecuting attorney are given notice of the request and an opportunity to be heard regarding the request. In deciding whether to allow the disclosure, dissemination or inspection of any portion of juvenile case records under this subsection, the court shall consider the purposes of this Part and the reasons for which the request is being made and may restrict the disclosure, dissemination or inspection of the juvenile case records in any manner the court determines necessary or appropriate. The names and identifying information regarding any alleged victims and minors contained in the juvenile case records must be redacted prior to disclosure, dissemination or inspection.
[PL 2019, c. 525, §17 (AMD).]

6. Records to Secretary of State. Whenever a juvenile has been adjudicated as having committed a juvenile crime involving the operation of a motor vehicle, the court shall transmit to the Secretary of State an abstract, duly certified, setting forth the name of the juvenile, the offense, the date of the offense, the date of the adjudicatory hearing and any other pertinent facts. These juvenile case records are admissible in evidence in hearings conducted by the Secretary of State or any of the Secretary of State's deputies and are open to public inspection.

Nothing in this Part may be construed to limit the authority of the Secretary of State, pursuant to Title 29-A, to suspend a person's license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a license.
[PL 2019, c. 525, §17 (AMD).]

7. Dissemination of information. The following provisions apply to the dissemination of information contained in juvenile case records.

A. For purposes of this subsection the following terms have the following meanings.

(1) "Administration of criminal justice" has the same meaning as found in Title 16, section 703, subsection 1.

(2) "Administration of juvenile criminal justice" means activities related to the apprehension or summonsing, detention, conditional or unconditional release, informal adjustment, initial appearance, bind over, adjudication, disposition, custody and supervision or rehabilitation of accused juveniles or adjudicated juvenile criminal offenders. It includes the collection, storage and dissemination of juvenile case records.

(3) "Criminal justice agency" has the same meaning as found in Title 16, section 703, subsection 4. [PL 2019, c. 525, §17 (AMD).]

B. Nothing in this section precludes sharing of any information contained in juvenile case records by one criminal justice agency with another criminal justice agency for the administration of criminal justice or juvenile criminal justice or for criminal justice agency employment. [PL 2019, c. 525, §17 (AMD).]

B-1. Nothing in this section precludes dissemination of any information contained in juvenile case records if:

(1) The juvenile has been adjudicated as having committed a juvenile crime;

(2) The information is disseminated by and to persons who directly supervise or report on the health, behavior or progress of the juvenile, the superintendent of the juvenile's school and the superintendent's designees, criminal justice agencies or agencies that are or might become responsible for the health or welfare of the juvenile as a result of a court order or by agreement with the Department of Corrections or the Department of Health and Human Services; and

(3) The information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into a school.

Any information received under this paragraph is confidential and may not be further disseminated, except as otherwise provided by law. [PL 2019, c. 525, §17 (AMD).]

C. Nothing in this section precludes dissemination of any information in the juvenile case records in the possession of the Department of Corrections if the person concerning whom the juvenile case records are sought, the person's legal guardian, if any, and, if the person is a minor, the person's parent or parents, guardian or legal custodian has given informed written consent to the dissemination of the juvenile case records. [PL 2019, c. 525, §17 (AMD).]

D. When a juvenile who is adjudicated of a juvenile crime that if committed by an adult would be gross sexual assault under Title 17-A, section 253, subsection 1 is committed to a Department of Corrections juvenile correctional facility or placed on probation, the Department of Corrections shall provide, while the juvenile is committed or on probation, a copy of the juvenile's judgment and commitment to the Department of Health and Human Services, to all law enforcement agencies that have jurisdiction in those areas where the juvenile may reside, work or attend school and to the superintendent of any school system in which the juvenile attends school during the period of commitment or probation. The Department of Corrections shall provide a copy of the juvenile's judgment and commitment to all licensed and registered day-care facility operators located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. Upon request, the Department of Corrections shall also provide a copy of the juvenile's judgment and commitment to other entities that are involved in the care of children and are located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. The Department of Corrections may provide a copy of the juvenile's judgment and commitment to any other agency or person whom the Department of Corrections determines is appropriate to ensure public safety. Neither the failure of the Department of Corrections to perform the requirements of this paragraph nor compliance with this paragraph subjects the Department of Corrections or its employees to liability in a civil action. [PL 1997, c. 752, §15 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

E. [PL 2019, c. 525, §17 (RP).]

[PL 2019, c. 525, §17 (AMD).]

8. Juvenile case records sealed. This subsection governs the sealing of juvenile case records of a person adjudicated to have committed a juvenile crime.

A. A person adjudicated to have committed a juvenile crime may petition the court to seal from public inspection all juvenile case records pertaining to the juvenile crime and its disposition, and to any prior juvenile case records and their dispositions if:

(1) At least 3 years have passed since the person's discharge from the disposition ordered for that juvenile crime;

(2) Since the date of disposition, the person has not been adjudicated to have committed a juvenile crime and has not been convicted of committing a crime; and

(3) There are no current adjudicatory proceedings pending for a juvenile or other crime. [PL 2019, c. 525, §17 (AMD).]

B. The court may grant the petition if it finds that the requirements of paragraph A are satisfied, unless it finds that the general public's right to information substantially outweighs the juvenile's interest in privacy. [PL 1989, c. 744, §5 (NEW).]

C. Notwithstanding subsections 3, 3-A, 4 and 5, the court order sealing the juvenile case records permits only the following persons to have access to the sealed records:

(1) The courts and criminal justice agencies as provided by this section; and

(2) The person whose juvenile case records are sealed or that person's designee. [PL 2019, c. 525, §17 (AMD).]

D. If the petition is granted, the person may respond to inquiries from other than the courts and criminal justice agencies about that person's juvenile crimes, the juvenile case records of which have been sealed, as if the juvenile crimes had never occurred, without being subject to any sanctions. [PL 2019, c. 525, §17 (AMD).]

[PL 2019, c. 525, §17 (AMD).]

8-A. Transmission of information about a committed juvenile. Information regarding a juvenile committed to the custody of the Department of Corrections or the custody of the Department of Health and Human Services must be provided as follows.

A. If a juvenile is committed to the custody of the Department of Corrections or the custody of the Department of Health and Human Services, the court shall transmit with the commitment order a copy of the petition, the order of adjudication, copies of any social studies, any clinical or educational reports and information pertinent to the care and treatment of the juvenile. [PL 2019, c. 525, §17 (NEW).]

B. The Department of Corrections or the Department of Health and Human Services shall provide the court with any information concerning a juvenile committed to either department's custody that the court at any time may request. [PL 2019, c. 525, §17 (NEW).]

[PL 2019, c. 525, §17 (NEW).]

9. Victims' Compensation Board. Notwithstanding any other provision of this section, juvenile case records must be open to inspection by or be disseminated to the Victims' Compensation Board if a juvenile is alleged to have committed an offense upon which an application to the board is based. [PL 2019, c. 525, §17 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §30 (AMD). PL 1979, c. 681, §§20,21 (AMD). PL 1981, c. 204, §2 (AMD). PL 1981, c. 679, §8 (AMD). PL 1983, c. 480, §B15 (AMD). PL 1985, c. 426 (AMD). PL 1985, c. 439, §14 (AMD). PL 1989, c. 744, §5 (AMD). PL 1991, c. 493, §20 (AMD). PL 1993, c. 354, §§6,7 (AMD). PL 1995, c. 65, §A47 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 690, §1 (AMD). PL 1997, c. 278, §§1,2 (AMD). PL 1997, c. 378, §13 (AMD). PL 1997, c. 421, §§A4-6 (AMD). PL 1997, c. 548, §A1 (AMD). PL 1997, c. 645, §10 (AMD). PL 1997, c. 752, §15 (AMD). PL 1999, c. 345, §1 (AMD). PL 1999, c. 624, §B18 (AMD). PL 2001, c. 452, §2 (AMD). PL 2003, c. 689, §B6 (REV). PL 2013, c. 267, Pt. B, §6 (AMD). PL 2019, c. 525, §17 (AMD). PL 2021, c. 365, §11 (RP). PL 2021, c. 365, §37 (AFF).

§3308. Juvenile case records; inspection and sealing

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT REPEALED 1/01/22 by PL 2021, c. 365, §11; §37)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §30 (AMD). PL 1979, c. 681, §§20,21 (AMD). PL 1981, c. 204, §2 (AMD). PL 1981, c. 679, §8 (AMD). PL 1983, c. 480, §B15 (AMD). PL 1985, c. 426 (AMD). PL 1985, c. 439, §14 (AMD). PL 1989, c. 744, §5 (AMD). PL 1991, c. 493, §20 (AMD). PL 1993, c. 354, §§6,7 (AMD). PL 1995, c. 65, §A47 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 690, §1 (AMD). PL 1997, c. 278, §§1,2 (AMD). PL 1997, c. 378, §13 (AMD). PL 1997, c. 421, §§A4-6 (AMD). PL 1997, c. 548, §A1 (AMD). PL 1997, c. 645, §10 (AMD). PL 1997, c. 752, §15 (AMD). PL 1999, c. 345, §1 (AMD). PL 1999, c. 624, §B18 (AMD). PL 2001, c. 452, §2 (AMD). PL 2003, c. 689, §B6 (REV). PL 2013, c. 267, Pt. B, §6 (AMD). PL 2019, c. 525, §17 (AMD). PL 2021, c. 365, §11 (RP). PL 2021, c. 365, §37 (AFF).

§3308-A. Dissemination of juvenile intelligence and investigative record information by a Maine criminal justice agency

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

The following provisions apply to the dissemination of juvenile intelligence and investigative record information collected by or at the direction of or kept in the custody of any Maine criminal justice agency. [PL 2013, c. 267, Pt. D, §1 (NEW).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. **(TEXT EFFECTIVE UNTIL 1/01/22)** "Administration of juvenile justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible juvenile crimes. "Administration of juvenile justice" includes the collection, storage and dissemination of juvenile intelligence and investigative record information relating to the administration of juvenile justice. [PL 2013, c. 267, Pt. D, §1 (NEW).]

A. **(TEXT REPEALED 1/01/22)** [PL 2021, c. 365, §12 (RP); PL 2021, c. 365, §37 (AFF).]

B. "Criminal justice agency" has the same meaning as in Title 16, section 803, subsection 4. [PL 2013, c. 267, Pt. D, §1 (NEW).]

C. [PL 2019, c. 525, §18 (RP).]

C-1. **(TEXT EFFECTIVE 1/01/22)** "Dissemination" has the same meaning as in Title 16, section 703, subsection 6. [PL 2021, c. 365, §13 (NEW); PL 2021, c. 365, §37 (AFF).]

D. "Executive order" has the same meaning as in Title 16, section 803, subsection 6. [PL 2013, c. 267, Pt. D, §1 (NEW).]

E. "Juvenile intelligence and investigative record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of juvenile justice. "Juvenile intelligence and investigative record information" includes information of record concerning investigative techniques and procedures and security plans and procedures prepared or collected by a criminal justice agency or another agency. "Juvenile intelligence and investigative record information" does not include criminal history record information as defined in Title 16, section 703, subsection 3 or intelligence and investigative record information as defined in Title 16, section 803, subsection 7. [PL 2013, c. 267, Pt. D, §1 (NEW).]

F. "State" has the same meaning as in Title 16, section 803, subsection 8. [PL 2013, c. 267, Pt. D, §1 (NEW).]

G. "Statute" has the same meaning as in Title 16, section 803, subsection 9. [PL 2013, c. 267, Pt. D, §1 (NEW).]

[PL 2019, c. 525, §18 (AMD); PL 2021, c. 365, §§12, 13 (AMD); PL 2021, c. 365, §37 (AFF).]

2. (TEXT EFFECTIVE UNTIL 1/01/22) Information part of juvenile case records. To the extent juvenile intelligence and investigative record information has been made part of the juvenile case records, dissemination of that juvenile intelligence and investigative record information by the court having actual custody of the juvenile case records must be as provided by section 3307 and section 3308.
[PL 2019, c. 525, §19 (AMD).]

2. (TEXT EFFECTIVE 1/01/22) Information part of juvenile case records. To the extent juvenile intelligence and investigative record information has been made part of the juvenile case records, dissemination of that juvenile intelligence and investigative record information by the court having actual custody of the juvenile case records must be as provided by section 3308-C, subsection 4.
[PL 2021, c. 365, §14 (AMD); PL 2021, c. 365, §37 (AFF).]

3. Limited dissemination. Except as otherwise provided in subsection 2, juvenile intelligence and investigative record information is confidential and may be disseminated by a Maine criminal justice agency only to:

A. Another criminal justice agency; [PL 2013, c. 267, Pt. D, §1 (NEW).]

B. A person or public or private entity as part of performing the administration of juvenile justice; [PL 2013, c. 267, Pt. D, §1 (NEW).]

B-1. A health care provider. "Health care provider" has the same meaning as in 45 Code of Federal Regulations, Section 160.103; [PL 2019, c. 525, §20 (NEW).]

B-2. **(TEXT EFFECTIVE 1/01/22)** A governmental agency or subunit of a governmental agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children or a governmental agency in this State or another state responsible for the licensing of child care facilities, family child care providers or children's camp programs or their employees; [PL 2021, c. 365, §15 (NEW); PL 2021, c. 365, §37 (AFF).]

C. A juvenile accused of a juvenile crime or that juvenile's agent or attorney for adjudicatory or dispositional purposes if authorized by:

(1) The responsible prosecutorial office or prosecutor; or

(2) A court rule or court order of this State or of the United States.

As used in this paragraph, "agent" means a licensed professional investigator, an expert witness or the juvenile's parents, guardian or legal custodian; [PL 2013, c. 267, Pt. D, §1 (NEW).]

D. A juvenile crime victim or that victim's agent or attorney if authorized by:

(1) Statute; or

(2) **(TEXT EFFECTIVE UNTIL 1/01/22)** A court order pursuant to section 3307 or 3308.

(2) **(TEXT EFFECTIVE 1/01/22)** A court order pursuant to section 3307 or 3308-C.

As used in this paragraph, "agent" means a licensed professional investigator or an immediate family member if, due to death, age, physical or mental disease, disorder or intellectual disability or autism, the victim cannot realistically act on the victim's own behalf; [PL 2021, c. 365, §16 (AMD); PL 2021, c. 365, §37 (AFF).]

E. A federal court, the District Court, including when it is exercising the jurisdiction conferred by section 3101, the Superior Court or the Supreme Judicial Court and an equivalent court in another state; and [PL 2013, c. 267, Pt. D, §1 (NEW).]

F. A person or public or private entity expressly authorized to receive the juvenile intelligence and investigative record information by statute, executive order, court rule, court decision or court order. "Express authorization" means language in the statute, executive order, court rule, court decision or court order that specifically speaks to intelligence or investigative record information or specifically refers to a type of intelligence or investigative record. [PL 2013, c. 267, Pt. D, §1 (NEW).]

[PL 2019, c. 525, §§20, 21 (AMD); PL 2021, c. 365, §§15, 16 (AMD); PL 2021, c. 365, §37 (AFF).]

4. (TEXT EFFECTIVE UNTIL 1/01/22) Dissemination of juvenile intelligence and investigative record information subject to reasonable limitations. The dissemination of juvenile intelligence and investigative record information by a criminal justice agency pursuant to subsection 3 is subject to limitations to reasonably ensure that dissemination of the information will not:

A. Interfere with law enforcement proceedings relating to crimes; [PL 2019, c. 525, §22 (NEW).]

B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury; [PL 2019, c. 525, §22 (NEW).]

C. Constitute an unwarranted invasion of personal privacy, including, but not limited to, the personal privacy of juveniles and victims; [PL 2019, c. 525, §22 (NEW).]

D. Disclose the identity of a confidential source; [PL 2019, c. 525, §22 (NEW).]

E. Disclose confidential information furnished only by a confidential source; [PL 2019, c. 525, §22 (NEW).]

F. Disclose investigative techniques and procedures or security plans and procedures not known by the general public; [PL 2019, c. 525, §22 (NEW).]

G. Endanger the life or physical safety of any individual, including law enforcement personnel; [PL 2019, c. 525, §22 (NEW).]

H. Disclose information designated confidential by statute; and [PL 2019, c. 525, §22 (NEW).]

I. Interfere with proceedings relating to civil violations, civil enforcement proceedings and other civil proceedings conducted by the Department of the Attorney General or by a district attorney's office. [PL 2019, c. 525, §22 (NEW).]

To comply with this subsection a criminal justice agency may deny access in whole or in part to records that contain or constitute juvenile intelligence and investigative record information. A criminal justice agency also may prepare and provide redacted copies of such records to a person or public or private entity authorized to receive the information under this section.

[PL 2019, c. 525, §22 (NEW).]

4. (TEXT EFFECTIVE 1/01/22) Dissemination of juvenile intelligence and investigative record information subject to reasonable limitations. The dissemination of juvenile intelligence and investigative record information by a criminal justice agency pursuant to subsection 3, paragraphs B, B-1, B-2 and D is subject to limitations to reasonably ensure that dissemination of the information will not:

A. Interfere with law enforcement proceedings relating to crimes; [PL 2019, c. 525, §22 (NEW).]

B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury; [PL 2019, c. 525, §22 (NEW).]

C. Constitute an unwarranted invasion of personal privacy, including, but not limited to, the personal privacy of juveniles and victims; [PL 2019, c. 525, §22 (NEW).]

D. Disclose the identity of a confidential source; [PL 2019, c. 525, §22 (NEW).]

E. Disclose confidential information furnished only by a confidential source; [PL 2019, c. 525, §22 (NEW).]

F. Disclose investigative techniques and procedures or security plans and procedures not known by the general public; [PL 2019, c. 525, §22 (NEW).]

G. Endanger the life or physical safety of any individual, including law enforcement personnel; [PL 2019, c. 525, §22 (NEW).]

H. Disclose information designated confidential by statute; and [PL 2019, c. 525, §22 (NEW).]

I. Interfere with proceedings relating to civil violations, civil enforcement proceedings and other civil proceedings conducted by the Department of the Attorney General or by a district attorney's office. [PL 2019, c. 525, §22 (NEW).]

To comply with this subsection a criminal justice agency may deny access in whole or in part to records that contain or constitute juvenile intelligence and investigative record information. A criminal justice agency also may prepare and provide redacted copies of such records to a person or public or private entity authorized to receive the information under this section.
[PL 2021, c. 365, §17 (AMD); PL 2021, c. 365, §37 (AFF).]

5. Secondary dissemination of confidential juvenile intelligence and investigative record information restricted. A person or public or private entity authorized to receive juvenile intelligence and investigative record information under this section may not further disseminate such information unless expressly authorized to do so by statute, court decision or court order. "Express authorization" means language in the statute, court decision or court order that specifically speaks of juvenile intelligence and investigative record information or specifically refers to a type of juvenile intelligence or investigative record.
[PL 2019, c. 525, §22 (NEW).]

6. Confirming existence or nonexistence of confidential juvenile intelligence and investigative record information prohibited. A criminal justice agency may not confirm the existence or nonexistence of juvenile intelligence and investigative record information that is confidential under this section to any person or public or private entity that is not eligible to know of or receive the information itself.
[PL 2019, c. 525, §22 (NEW).]

7. (TEXT EFFECTIVE 1/01/22) Unlawful dissemination of confidential juvenile intelligence and investigative record information. Any person who intentionally disseminates confidential juvenile intelligence and investigative record information knowing it to be in violation of any provision of this chapter commits a civil violation for which a fine of not more than $1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.
[PL 2021, c. 365, §18 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2013, c. 267, Pt. D, §1 (NEW). PL 2019, c. 525, §§18-22 (AMD). PL 2021, c. 365, §§12-18 (AMD). PL 2021, c. 365, §37 (AFF).

§3308-B. Mandatory notice to schools

1. Mandatory notice to school administrative unit. When a juvenile is charged in a juvenile petition that alleges the use or threatened use of physical force against a person or when a juvenile is adjudicated as having committed one or more juvenile crimes that involve the use or threatened use of

physical force against a person, the prosecuting attorney in the district where the charges were brought shall disseminate to the superintendent of the juvenile's school administrative unit or the superintendent's designee:

A. The name of the juvenile; [PL 2019, c. 525, §23 (NEW).]

B. The offense alleged or adjudicated; [PL 2019, c. 525, §23 (NEW).]

C. The date of the offense; [PL 2019, c. 525, §23 (NEW).]

D. The date of the petition; [PL 2019, c. 525, §23 (NEW).]

E. The date of the adjudication, if applicable; and [PL 2019, c. 525, §23 (NEW).]

F. The location of the court where the case was brought, if applicable. [PL 2019, c. 525, §23 (NEW).]

[PL 2019, c. 525, §23 (NEW).]

2. Confidentiality. Information provided under subsection 1 is confidential, may not be distributed except as provided in subsection 1 and in Title 20-A, section 1055, subsection 11 and may not be included in the juvenile's education record.

[PL 2019, c. 525, §23 (NEW).]

SECTION HISTORY

PL 2019, c. 525, §23 (NEW).

§3308-C. Confidentiality of juvenile case records

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/01/22)

1. Confidentiality. Juvenile case records are confidential and may not be disclosed, disseminated or inspected except as expressly authorized by this Part. Juvenile case records open to public inspection may be inspected only at the courthouse. The court may not disseminate any juvenile case records, including those open to public inspection, to the public in any manner, including by any paper or electronic means.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Juvenile petitions open to public inspection. Unless Juvenile Court proceedings are suspended pursuant to section 3318-A, subsection 5, the following juvenile petitions are open to public inspection:

A. Any juvenile petition alleging a violation of Title 17-A, section 201, 202 or 203 if the juvenile charged had attained 13 years of age at the time of the alleged juvenile crime, if the Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would be a violation of Title 17-A, section 201, 202 or 203 if the juvenile involved were an adult.

If the juvenile had not attained 13 years of age at the time of the alleged violation of Title 17-A, section 201, 202 or 203, the Juvenile Court may allow public inspection of the juvenile petition pursuant to paragraph C; [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Any juvenile petition alleging a juvenile crime that would constitute a Class A crime if committed by an adult if the juvenile charged had attained 13 years of age at the time of the alleged juvenile crime if the Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would be a Class A crime if the juvenile involved were an adult.

If the juvenile had not attained 13 years of age at the time of the juvenile crime that would constitute a Class A crime if committed by an adult, the Juvenile Court may allow public inspection of the juvenile petition pursuant to paragraph C.

A petition open to public inspection under this paragraph may be made confidential and not open to public inspection if, upon written request by a person to the Juvenile Court, and after notice to the juvenile and the juvenile's parent or parents, guardian or legal custodian, the attorney for the juvenile and the office of the prosecuting attorney, and after a hearing in which the Juvenile Court considers the purposes of this Part, the juvenile's interest in privacy, the alleged victim's interest in privacy, the nature of the juvenile crime alleged and the characteristics of the juvenile and public safety concerns as outlined in section 3101, subsection 4, paragraph D, the court determines that the general public's right to information does not substantially outweigh the juvenile's interest in privacy or the alleged victim's interest in privacy; and [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. Any petition alleging a juvenile crime that would constitute murder or a Class A crime if committed by an adult and the juvenile charged had not attained 13 years of age at the time of the alleged juvenile crime, or any petition alleging a juvenile of any age committed a juvenile crime that would constitute a Class B or C crime if committed by an adult, if:

(1) A written request is filed by any person with the Juvenile Court requesting that the juvenile petition be open to public inspection;

(2) The Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would constitute murder, a violation of Title 17-A, section 204 or a Class A, B or C crime if the juvenile involved were an adult; and

(3) After notice to the juvenile and the juvenile's parent or parents, guardian or legal custodian, the attorney for the juvenile, the office of the prosecuting attorney and the individual or entity requesting the juvenile petition be open to public inspection and a hearing in which the Juvenile Court considers the purposes of this Part, the juvenile's interest in privacy, the alleged victim's interest in privacy, the nature of the juvenile crime alleged and the characteristics of the juvenile and public safety concerns as outlined in section 3101, subsection 4, paragraph D, the court determines that the general public's right to information substantially outweighs the juvenile's interest in privacy and the alleged victim's interest in privacy. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. In a juvenile petition alleging multiple juvenile crimes, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether the petition is open to public inspection. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

The prosecuting attorney shall ensure that names and identifying information of any alleged victims are redacted before a petition is filed with the Juvenile Court.

If a request to allow public inspection of a petition under this subsection has been filed, the Juvenile Court shall advise the juvenile and the juvenile's parent or parents, guardian or legal custodian that the request has been made and shall advise them of the juvenile's right to be represented by counsel. The court may not allow the public to inspect a juvenile petition pursuant to paragraph C until authorized by court order.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

3. Orders of adjudication open to public inspection. Orders of adjudication for any juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult are open to public inspection. Orders of adjudication for all other juvenile crimes are confidential and not open to public inspection. When an order of adjudication reflects adjudications for both a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult and another juvenile crime or crimes not constituting murder or a Class A, B or C crime if the juvenile involved were an adult, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether the order of adjudication is open to public inspection.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

4. Dissemination of information contained in juvenile case records. The following provisions apply to the dissemination of information contained in juvenile case records.

A. For purposes of this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.

(2) "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.

(3) "Juvenile intelligence and investigative record information" has the same meaning as in section 3308-A, subsection 1, paragraph E. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Nothing in this section precludes sharing of any information contained in juvenile case records by one criminal justice agency with another criminal justice agency for the purpose of administration of criminal justice, administration of juvenile justice or criminal justice agency employment. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. Nothing in this section precludes dissemination of any information contained in juvenile case records if:

(1) The juvenile has been adjudicated as having committed a juvenile crime;

(2) The information is disseminated by and to persons who directly supervise or report on the health, behavior or progress of the juvenile, the superintendent of the juvenile's school and the superintendent's designees, criminal justice agencies or agencies that are or might become responsible for the health or welfare of the juvenile as a result of a court order or by agreement with the Department of Corrections or the Department of Health and Human Services; and

(3) The information is relevant to and disseminated only for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into a school.

Any information received under this paragraph is confidential and may not be further disclosed or disseminated, except as otherwise provided by law. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. Nothing in this section precludes dissemination of any information in the juvenile case records in the possession of the Department of Corrections if the person concerning whom the juvenile case records are sought, the juvenile, the person's legal guardian, if any, and, if the person is a minor, the person's parent or parents, guardian or legal custodian have given informed written consent to the dissemination of the juvenile case records. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

E. Except as expressly authorized by this section, juvenile intelligence and investigative record information, juvenile community corrections officers' records and all other reports of social and clinical studies contained in juvenile case records may not be open to inspection and may not be disclosed or disseminated except with the consent of the Juvenile Court. The names and identifying information regarding any alleged victims and minors contained in the juvenile case records must be redacted prior to disclosure, dissemination or inspection.

The Juvenile Court may not order the disclosure, dissemination or inspection of juvenile case records unless the juvenile, the juvenile's parent or parents, guardian or legal custodian and either the juvenile's attorney or, if the juvenile does not have an attorney, the juvenile's attorney of record and the prosecuting attorney are given notice of the request and an opportunity to be heard regarding the request. In deciding whether to allow the disclosure, dissemination or inspection of any portion of juvenile case records under this paragraph, the Juvenile Court shall consider the purposes of this

Part and the reasons for which the request is being made and may restrict the disclosure, dissemination or inspection of the juvenile case records in any manner the court determines necessary or appropriate. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

F. When a juvenile who is adjudicated as having committed a juvenile crime that if committed by an adult would be gross sexual assault under Title 17-A, section 253, subsection 1 is committed to a Department of Corrections juvenile correctional facility or placed on probation, the Department of Corrections shall provide, while the juvenile is committed or on probation, a copy of the juvenile's judgment and commitment to the Department of Health and Human Services, to all law enforcement agencies that have jurisdiction in those areas where the juvenile resides, works or attends school and to the superintendent of any school in which the juvenile attends school during the period of commitment or probation. The Department of Corrections shall provide a copy of the juvenile's judgment and commitment to all licensed day care facility operators located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. Upon request, the Department of Corrections shall also provide a copy of the juvenile's judgment and commitment to other entities that are involved in the care of children and are located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. The Department of Corrections may provide a copy of the juvenile's judgment and commitment to any other agency or person that the Department of Corrections determines is appropriate to ensure public safety. Neither the failure of the Department of Corrections to perform the requirements of this paragraph nor compliance with this paragraph subjects the Department of Corrections or its employees to liability in a civil action. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

G. Juvenile case records must be open to inspection by and, upon request, be disseminated to the juvenile, the juvenile's parent or parents, guardian or legal custodian, the juvenile's attorney, the prosecuting attorney and any agency to which legal custody of the juvenile was transferred as a result of an adjudication. Juvenile case records must also be open to inspection by and, upon request, be disseminated to the Department of Health and Human Services prior to adjudication if commitment to the Department of Health and Human Services is a proposed disposition. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

5. Victim access to juvenile case records. Notwithstanding confidentiality provisions of this section, the juvenile petition and order of adjudication may be inspected by:

A. The victim; [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. If the victim is a minor, the parent or parents, guardian or legal custodian of the victim; or [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian or attorney representing the victim. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

Notwithstanding any provision of this section to the contrary, juvenile case records must be open to inspection by or may be disseminated to the Victims' Compensation Board established in Title 5, section 12004-J, subsection 11 if a juvenile is alleged to have committed an offense upon which an application to the board is based.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

6. Access to juvenile case records by other persons. With the consent of the Juvenile Court and subject to reasonable limitations to protect the identity, privacy and safety of 3rd parties, including, but not limited to, victims and other accused or adjudicated juveniles, and the interests of justice, juvenile case records, excluding the names of the juvenile and the juvenile's parent or parents, guardian or legal

custodian, the juvenile's attorney or any other parties, may be inspected by or disseminated to persons having a legitimate interest in the proceedings or by persons conducting pertinent research studies.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

7. Order following determination that juvenile case records are open to public inspection, disclosure or dissemination. Following a determination that a juvenile petition, order of adjudication or other juvenile case records are open to public inspection, disclosure or dissemination under this section, the Juvenile Court shall enter an order specifying which juvenile case records may be inspected, disclosed or disseminated and identifying the individual or agency granted access to those juvenile case records. The Juvenile Court may restrict the further disclosure, dissemination or inspection of the juvenile case records in any manner the court determines necessary or appropriate.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

8. Records to Secretary of State. Whenever a juvenile has been adjudicated as having committed a juvenile crime involving the operation of a motor vehicle, or when the Juvenile Court has ordered a disposition pursuant to section 3314, subsection 3, 3-A, or 3-B that includes suspension of the juvenile's right to operate a motor vehicle, the court shall transmit to the Secretary of State an abstract, duly certified, setting forth the name of the juvenile, the offense, the date of the offense, the date of the adjudicatory hearing and any other pertinent facts. These juvenile case records are admissible in evidence in hearings conducted by the Secretary of State or any of the Secretary of State's deputies and are open to public inspection.

Nothing in this Part may be construed to limit the authority of the Secretary of State, pursuant to Title 29-A, to suspend a person's driver's license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a driver's license.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

9. Transmission of information about a committed juvenile. Information regarding a juvenile committed to the custody of the Department of Corrections or the custody of the Department of Health and Human Services must be provided as follows.

A. The Juvenile Court shall transmit with the commitment order a copy of the petition, the order of adjudication, copies of any social studies, any clinical or educational reports and information pertinent to the care and treatment of the juvenile. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. The Department of Corrections or the Department of Health and Human Services shall provide the Juvenile Court with any information concerning the juvenile committed to either department's custody that the court at any time may request. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

10. Juvenile case records sealed. This subsection governs the sealing of juvenile case records of a person adjudicated as having committed a juvenile crime.

A. A person adjudicated as having committed a juvenile crime that, if the juvenile were an adult, would constitute murder or a Class A, B or C crime or operating under the influence as defined in Title 29-A, section 2411 may petition the Juvenile Court to seal from public inspection all juvenile case records pertaining to the juvenile crime and its disposition and any prior juvenile case records and their dispositions if:

(1) At least 3 years have passed since the person's discharge from the disposition ordered for that juvenile crime;

(2) Since the date of disposition, the person has not been adjudicated as having committed a juvenile crime and has not been convicted of committing a crime; and

(3) There are no current adjudicatory proceedings pending for a juvenile or other crime. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. The Juvenile Court may grant the petition filed under paragraph A if the court finds that the requirements of paragraph A are satisfied, unless the court finds that the general public's right to information substantially outweighs the juvenile's interest in privacy. The juvenile has a right to appeal the court's denial of the juvenile's petition to seal as provided in chapter 509. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. At the time a person adjudicated to have committed a juvenile crime other than a crime listed in paragraph A is finally discharged from the disposition imposed for that juvenile crime, the court, upon receipt of appropriate notice of the discharge, shall within 5 business days enter an order sealing from public inspection all records pertaining to the juvenile crime and its disposition. Appropriate notice that the juvenile is discharged from the disposition:

(1) Must be provided to the court by the Department of Corrections if the juvenile's disposition involved either commitment to the custody of a Department of Corrections juvenile correctional facility, a period of confinement not to exceed 30 days or any suspended disposition with a period of probation;

(2) Must be provided to the court by the office of the prosecuting attorney if disposition included restitution, community service or a restorative justice event and the court ordered that proof of completion of the obligation be provided to the office of the prosecuting attorney; or

(3) May be provided to the court by the juvenile or the juvenile's attorney. If the notice is provided by the juvenile or the juvenile's attorney, the juvenile or the juvenile's attorney shall serve a copy of the notice on the office of the prosecuting attorney before the court may enter the order sealing the juvenile case records. In all juvenile cases adjudicated subsequent to January 1, 2000, but prior to January 1, 2022, the Juvenile Court may grant the request of the juvenile or the juvenile's attorney for automatic sealing of all juvenile case records pertaining to the juvenile crime and its disposition when notice is provided to the court and the prosecuting attorney pursuant to this subparagraph.

When an order of adjudication includes multiple juvenile crimes, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether a petition for sealing of juvenile records must be filed pursuant to paragraph A and a finding made pursuant to paragraph B before all juvenile case records pertaining to all of the juvenile crimes adjudicated may be ordered sealed.

When a juvenile petition alleges multiple juvenile crimes and the court holds separate hearings resulting in multiple orders of adjudication, the order of adjudication with the highest class of crime if the juvenile were an adult determines whether a petition for sealing of juvenile records must be filed pursuant to paragraph A and a finding made pursuant to paragraph B before all juvenile case records pertaining to all of the juvenile crimes adjudicated may be ordered sealed. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. Notwithstanding subsections 2 and 3, subsection 4, paragraphs C, D and F and subsections 5 and 6, a court order sealing juvenile case records pursuant to this subsection permits only the following persons to have access to the sealed juvenile case records:

(1) The courts and criminal justice agencies as provided by this section; and

(2) The person whose juvenile case records are sealed or that person's designee. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

E. A copy of the court's written order certifying its granting of the juvenile's petition to seal juvenile case records pursuant to paragraph B or its order of automatic sealing pursuant to paragraph C must

be provided to the Department of Public Safety, State Bureau of Identification if the adjudication is for a juvenile crime the criminal records of which are maintained by the State Bureau of Identification pursuant to Title 25, section 1541. The State Bureau of Identification or the appropriate agency upon receipt of the order shall promptly update its records relating to each of the juvenile adjudications included in the order. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

F. A person whose juvenile case records are sealed pursuant to this subsection may respond to inquiries from other than the courts and criminal justice agencies about that person's juvenile crimes, the juvenile case records of which have been sealed, as if the juvenile crimes had never occurred, without being subject to any sanctions. The sealing of a person's juvenile case records does not remove or otherwise affect the prohibition against that person's possessing a firearm pursuant to section 393. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

11. Unlawful dissemination of confidential juvenile case record information. Any person who intentionally disseminates information contained in confidential juvenile case records knowing it to be in violation of any provisions of this chapter commits a civil violation for which a fine of not more than $1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2021, c. 365, §19 (NEW). PL 2021, c. 365, §37 (AFF).

§3308-D. Confidentiality of Juvenile Court proceedings

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/01/22)

1. Record. A verbatim record must be made of all Juvenile Court proceedings.
[PL 2021, c. 365, §20 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Certain hearings public. Unless proceedings on a juvenile petition are suspended under section 3318-A, subsection 5, the general public may not be excluded from any Juvenile Court hearing for which the petition is open to public inspection under section 3308-C, subsection 2 or from any Juvenile Court hearing on a State's motion for bind-over under section 3101, subsection 4.
[PL 2021, c. 365, §20 (NEW); PL 2021, c. 365, §37 (AFF).]

3. Hearings on petitions alleging multiple juvenile crimes. When a juvenile petition open to public inspection under section 3308-C, subsection 2 alleges a juvenile crime that would constitute a Class D or Class E crime if the juvenile involved were an adult or a violation of section 3103, subsection 1, paragraph B or C arising from the same course of conduct, the Juvenile Court may order that charges alleging conduct that would be a Class D or Class E crime if the juvenile involved were an adult or a violation of section 3103, subsection 1, paragraph B or C be adjudicated in a separate hearing. When the Juvenile Court so orders, the general public must be excluded from the hearing on alleged conduct that would constitute a Class D or Class E crime if the juvenile were an adult or a violation of section 3103, subsection 1, paragraph B or C.
[PL 2021, c. 365, §20 (NEW); PL 2021, c. 365, §37 (AFF).]

4. Victim presence at hearings. Regardless of whether a Juvenile Court proceeding is open to the general public, the following persons may be present in court:

A. The victim; [PL 2021, c. 365, §20 (NEW); PL 2021, c. 365, §37 (AFF).]

B. If the victim is a minor, the victim's parent or parents, guardian or legal custodian; or [PL 2021, c. 365, §20 (NEW); PL 2021, c. 365, §37 (AFF).]

C. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian or attorney representing the victim. [PL 2021, c. 365, §20 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §20 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2021, c. 365, §20 (NEW). PL 2021, c. 365, §37 (AFF).

§3309. Procedure

To the extent not inconsistent with or inapplicable to Part 6, procedure in juvenile proceedings must be in accordance with the Maine Rules of Unified Criminal Procedure. The Supreme Judicial Court may promulgate rules for juvenile proceedings as provided under Title 4, section 8. [PL 2015, c. 431, §31 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 512, §5 (RPR). PL 1989, c. 741, §16 (AMD). PL 2015, c. 431, §31 (AMD).

§3309-A. Limitation on diagnostic evaluations

The court shall not order a juvenile to undergo a diagnostic evaluation, as defined in section 3003, subsection 4-A, except as follows: [PL 1985, c. 213 (RPR).]

1. Information to assist findings in bind-over. When the prosecutor has moved for a bind-over hearing pursuant to section 3101, subsection 4, or certifies in writing to the court that the results of such an evaluation are required in order to determine whether or not to so move;
[PL 1985, c. 213 (RPR).]

2. Information needed to make a disposition. Following an order of adjudication pursuant to section 3310, subsection 5, paragraph A, for the purposes of making a disposition;
[PL 1995, c. 690, §2 (AMD); PL 1995, c. 690, §7 (AFF).]

3. By consent of the parties. When the juvenile and the prosecuting attorney consent and the court finds that such an evaluation may be of assistance to it in carrying out the purposes of the Maine Juvenile Code; or
[PL 1995, c. 690, §3 (AMD); PL 1995, c. 690, §7 (AFF).]

4. Juvenile adjudicated of gross sexual assault. After adjudication and before disposition when a juvenile is adjudicated of a juvenile crime that if committed by an adult would be gross sexual assault under Title 17-A, section 253, subsection 1, the court shall order the juvenile to undergo a diagnostic evaluation and may order the evaluation to take place at a detention facility described in section 3203-A, subsection 7, paragraph B.
[PL 1999, c. 65, §1 (AMD).]

Nothing in this section may be construed to limit court-ordered examinations pursuant to sections 3318-A and 3318-B. [PL 2011, c. 282, §1 (AMD).]

SECTION HISTORY

PL 1981, c. 619, §4 (NEW). PL 1983, c. 480, §A11 (AMD). PL 1985, c. 213 (RPR). PL 1995, c. 690, §§2-4 (AMD). PL 1995, c. 690, §7 (AFF). PL 1997, c. 752, §16 (AMD). PL 1999, c. 65, §1 (AMD). PL 2011, c. 282, §1 (AMD).

§3309-B. Limitations on diagnostic evaluations in a secure detention facility

Except as provided in section 3309-A, subsection 4, the court may not order a juvenile to undergo a diagnostic evaluation at a detention facility unless the juvenile meets the requirements of section

3203-A, subsection 4, paragraphs C and D, the facility is one in which the juvenile may otherwise be detained and the diagnostic evaluation is unable to take place outside the facility on either a residential or nonresidential basis. [PL 1999, c. 65, §2 (AMD).]

SECTION HISTORY

PL 1987, c. 369 (NEW). PL 1989, c. 502, §A42 (AMD). PL 1997, c. 24, §RR5 (AMD). PL 1997, c. 752, §17 (AMD). PL 1999, c. 65, §2 (AMD).

§3310. Adjudicatory hearing, findings, adjudication

1. Evidence and fact-finding. The Maine Rules of Evidence shall apply in the adjudicatory hearing. There shall be no jury.
[PL 1979, c. 681, §22 (RPR).]

2. Consideration of additional evidence.

A. When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence without amendment of the petition if all the parties consent. [PL 1979, c. 681, §23 (AMD).]

B. In the event all of the parties do not consent as provided in paragraph A, the court, on the motion of any party or on its own motion, shall:

(1) Order that the petition be amended to conform to the evidence;

(2) Order that hearing be continued if the amendment results in substantial surprise or prejudice to the juvenile; or

(3) Request a separate petition alleging the additional facts be filed. [PL 1979, c. 681, §24 (AMD).]
[PL 1979, c. 681, §§23,24 (AMD).]

3. Evidence of mental illness or incapacity.
[PL 2011, c. 282, §2 (RP).]

4. Standard of proof. If the court finds that the elements of the juvenile crime as defined in section 3103, subsection 1, paragraph A, E, F, G or H are not supported by evidence beyond a reasonable doubt or that the elements of a juvenile crime as defined in section 3103, subsection 1, paragraph B or C are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the juvenile discharged from any detention or restriction previously ordered. The juvenile's parents, guardian or other legal custodian must also be discharged from any restriction or other temporary order.
[PL 2009, c. 93, §10 (AMD).]

5. Adjudication.

A. If the court finds that the allegations of the petition alleging a juvenile crime as defined in section 3103, subsection 1, paragraph A, E, F, G or H are supported by evidence beyond a reasonable doubt or that the allegations of a petition alleging a juvenile crime as defined in section 3103, subsection 1, paragraph B or C are supported by a preponderance of the evidence, the court shall adjudge that the juvenile committed a juvenile crime and shall, in all such adjudications, issue an order of adjudication. [PL 2009, c. 93, §11 (AMD).]

B. Following the issuance of the order of adjudication, a dispositional hearing must be commenced. Upon motion of any interested party or on the court's own motion, the time for the commencement of the dispositional hearing may be increased to 2 weeks or, upon cause shown, for a longer period. Once commenced, the dispositional hearing may be continued one or more times for any of the

reasons specified in section 3312, subsection 3 or, upon cause shown, for any other reason. [PL 1995, c. 253, §1 (RPR).]

[PL 2009, c. 93, §11 (AMD).]

6. Adjudication not deemed conviction. An adjudication of the commission of a juvenile crime shall not be deemed a conviction of a crime.

[PL 1977, c. 520, §1 (NEW).]

7. Default judgment on certain juvenile crimes. If a juvenile fails to appear in response to a juvenile summons served pursuant to section 3304 for a juvenile crime described in section 3103, subsection 1, paragraph B or C, the judge may enter the juvenile's default, adjudicate that the juvenile has committed the juvenile crime alleged and impose a fine pursuant to section 3314, subsection 1, paragraph G. For good cause shown, the court may set aside the default and adjudication.

[PL 2011, c. 336, §4 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§31,32 (AMD). PL 1979, c. 373, §4 (AMD). PL 1979, c. 663, §117 (AMD). PL 1979, c. 681, §§22-25 (AMD). PL 1995, c. 253, §1 (AMD). PL 2001, c. 471, §F2 (AMD). PL 2005, c. 87, §§3,4 (AMD). PL 2009, c. 93, §§10, 11 (AMD). PL 2011, c. 282, §2 (AMD). PL 2011, c. 336, §4 (AMD).

§3310-A. Attendant care

Whenever a juvenile who is adjudicated as having committed a juvenile crime is taken into custody as an interim measure pending the completion of a procedure authorized by law to be taken in regard to such juvenile, the juvenile may be placed into attendant care under the same circumstances and upon the same conditions as if the juvenile were one alleged to have committed a juvenile crime. [PL 1987, c. 698, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 698, §4 (NEW).

§3311. Social study and other reports

1. Reports as evidence. For the purpose of determining proper disposition of a juvenile who has been adjudicated as having committed a juvenile crime, written reports and other material relating to the juvenile's mental, physical and social history may be received by the court along with other evidence, but the court, if so requested by the juvenile, the juvenile's parent or parents, guardian or legal custodian or other party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to examination by the court and any party. In the absence of the request, the court may order the person who prepared the report or other material to testify if it finds that the interests of justice require it. The parent or parents, guardian or legal custodian of the juvenile must be informed that information for the report is being gathered.

[PL 2019, c. 525, §24 (AMD).]

2. Notice of right to inspect. The court shall inform the juvenile or the juvenile's parent or parents, guardian or legal custodian of the right to inspect any written report or other material specified in subsection 1.

[PL 2019, c. 525, §25 (AMD).]

3. Requirement for dispositional hearing. If ordered by the court, the Department of Corrections shall make a social study and prepare a written report on every juvenile adjudicated as having committed a juvenile crime and shall present that report to the juvenile court prior to that juvenile's dispositional hearing. The person who prepared the report may be ordered to appear, as provided in subsection 1.

[PL 1995, c. 253, §2 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §33 (AMD). PL 1979, c. 681, §§26,27 (AMD). PL 1983, c. 480, §B16 (AMD). PL 1995, c. 253, §2 (AMD). PL 2019, c. 525, §§24, 25 (AMD).

§3311-A. Eligibility for deferred disposition

A juvenile who has entered an admission to a juvenile crime that would be a Class C, Class D or Class E crime or a civil violation if committed by an adult and who consents in writing to a deferred disposition is eligible for a deferred disposition pursuant to section 3311-B. [PL 2011, c. 480, §1 (AMD).]

SECTION HISTORY

PL 2011, c. 384, §1 (NEW). PL 2011, c. 480, §1 (AMD).

§3311-B. Deferred disposition

1. Imposition. Following the acceptance of an admission of commission of a juvenile crime for which a juvenile is eligible for a deferred disposition under section 3311-A, the court may order disposition deferred to a date certain or determinable and impose requirements upon the juvenile to be in effect during the period of deferment that are considered by the court to be reasonable and appropriate to meet the purposes of the Maine Juvenile Code. The court-imposed deferment requirements must include a requirement that the juvenile refrain from conduct that would constitute a juvenile crime, crime or civil violation. Unless the juvenile crime is one under section 3103, subsection 1, paragraph B or C, the court-imposed deferment requirements may include that the juvenile abide by specific conditional release requirements under supervision by a juvenile community corrections officer. In exchange for the deferred disposition, the juvenile shall abide by the court-imposed deferment requirements. Unless the court orders otherwise, the deferment requirements are immediately in effect. [PL 2011, c. 480, §2 (AMD).]

2. Amendment of requirements. During the period of deferment and upon application by the juvenile granted deferred disposition pursuant to subsection 1 or by the attorney for the State or upon the court's own motion, the court may, after a hearing upon notice to the attorney for the State and the juvenile, modify the requirements imposed by the court, add further requirements or relieve the juvenile of any requirement imposed by the court that, in the court's opinion, imposes an unreasonable burden on the juvenile. If the requirements proposed for amendment are conditional release requirements, the juvenile community corrections officer must also receive notice of the hearing. In addition, the juvenile community corrections officer may make an application under this subsection for an amendment of conditional release requirements.
[PL 2011, c. 480, §3 (AMD).]

3. Motion. During the period of deferment, if the juvenile cannot meet a deferment requirement imposed by the court, the juvenile shall bring a motion pursuant to subsection 2.
[PL 2011, c. 384, §2 (NEW).]

4. Finally adjudicated. For purposes of a deferred disposition, a juvenile is deemed to have been finally adjudicated when the court imposes a disposition under section 3314.
[PL 2011, c. 384, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 384, §2 (NEW). PL 2011, c. 480, §§2, 3 (AMD).

§3311-C. Court hearing as to final disposition

1. Court hearing; final disposition. Unless a court hearing is sooner held under subsection 2, at the conclusion of the period of deferment, after notice, a juvenile who was granted deferred disposition pursuant to section 3311-B shall return to court for a hearing on final disposition under section 3314.

If the juvenile demonstrates by a preponderance of the evidence that the juvenile has complied with the court-imposed deferment requirements, the court shall impose a dispositional alternative authorized for the juvenile crime to which the juvenile has entered an admission and consented to in writing at the time disposition was deferred or as amended by agreement of the parties in writing prior to disposition, unless the attorney for the State, prior to disposition, moves the court to allow the juvenile to withdraw the admission. Except over the objection of the juvenile, the court shall grant the State's motion. Following the granting of the State's motion, the attorney for the State shall dismiss the pending petition with prejudice. If the court finds that the juvenile has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a dispositional alternative authorized for the juvenile crime to which the juvenile entered an admission.
[PL 2011, c. 384, §3 (NEW).]

2. Violation of deferment requirement. If during the period of deferment the attorney for the State has probable cause to believe that a juvenile who was granted deferred disposition pursuant to section 3311-B has violated a court-imposed deferment requirement, the attorney for the State may move the court to terminate the remainder of the period of deferment and impose disposition. Following notice and hearing, if the attorney for the State proves by a preponderance of the evidence that the juvenile has inexcusably failed to comply with a court-imposed deferment requirement, the court may continue the running of the period of deferment with the requirements unchanged, modify the requirements, add further requirements or terminate the running of the period of deferment and conduct a dispositional hearing and impose a disposition authorized for the juvenile crime to which the juvenile entered an admission. If the court finds that the juvenile has not inexcusably failed to comply with a court-imposed deferment requirement, the court may order that the running of the period of deferment continue or, after notice and hearing, take any other action permitted under this chapter. If the alleged violation is of a conditional release requirement, the juvenile community corrections officer must receive notice of the hearing.
[PL 2011, c. 480, §4 (AMD).]

3. Hearing. A hearing under this section or section 3311-B need not be conducted by the judge who originally ordered the deferred disposition.
[PL 2011, c. 384, §3 (NEW).]

4. Rights of juvenile at hearing. The juvenile at a hearing under this section or section 3311-B must be afforded the opportunity to confront and cross-examine witnesses against the juvenile, to present evidence on the juvenile's own behalf and to be represented by counsel. If the juvenile who was granted deferred disposition pursuant to section 3311-B cannot afford counsel, the court shall appoint counsel for the juvenile. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.
[PL 2015, c. 431, §32 (AMD).]

5. Summons; failure to appear. A summons, served in accordance with section 3304, may be used to order a juvenile who was granted deferred disposition pursuant to section 3311-B to appear for a hearing under this section. If the juvenile fails to appear after having been served with a summons, the court may issue a warrant for the arrest of the juvenile.
[PL 2011, c. 384, §3 (NEW).]

6. Warrant for arrest. If during the period of deferment the attorney for the State has probable cause to believe that a juvenile who was granted deferred disposition pursuant to section 3311-B has violated a court-imposed deferment requirement, the attorney for the State may apply for a warrant for the arrest of the juvenile. If the alleged violation is of a conditional release requirement, the juvenile community corrections officer must receive notice of the application. In addition, if the alleged violation is of a conditional release requirement, the provisions of section 3203-A, subsection 9 apply.
[PL 2011, c. 480, §4 (AMD).]

SECTION HISTORY

PL 2011, c. 384, §3 (NEW). PL 2011, c. 480, §4 (AMD). PL 2015, c. 431, §32 (AMD).

§3311-D. Limited review by appeal

A juvenile is precluded from seeking to attack the legality of a deferred disposition, including a final disposition, except that a juvenile who has been determined by a court to have inexcusably failed to comply with a court-imposed deferment requirement and thereafter has had imposed a dispositional alternative authorized for the juvenile crime may appeal to the Supreme Judicial Court, but not as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule. [PL 2015, c. 409, §7 (AMD).]

SECTION HISTORY

PL 2011, c. 384, §4 (NEW). PL 2015, c. 409, §7 (AMD).

§3312. Dispositional hearing

1. Evidence of proper disposition. After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interests of the juvenile and the public. Such evidence must include, but is not necessarily limited to, the social study and written report, if ordered prepared under section 3311, subsection 3, and other reports as provided in section 3311, subsection 1. Any person who would be entitled to address the court pursuant to Title 17-A, section 2104 if the conduct for which the juvenile has been adjudicated had been committed by an adult, as provided in that section, must be accorded notice of the dispositional hearing and the right to address the court. The Maine Rules of Evidence do not apply in dispositional hearings.
[PL 2019, c. 113, Pt. C, §45 (AMD).]

2. Examination of adjudicated juvenile. The court may have the juvenile examined by a physician or psychologist, and may place the juvenile in a hospital or other suitable facility or nonresidential program for this purpose. The cost of such examinations and placements shall be paid in whole or in part by the juvenile's parents. The court shall pay the costs if it finds that the parents are unable to pay or that it is not in the best interest of the juvenile to have the juvenile's parents pay.
[PL 1987, c. 400, §1 (AMD).]

3. Continuation of dispositional hearing. A dispositional hearing may be continued in the following circumstances.

A. The court may continue the dispositional hearing, either on its own motion or on the motion of any interested party:

(1) For a period not to exceed one month to receive reports or other evidence;

(2) For a period not to exceed 2 months to allow for service of notice as required in section 3314, subsection 1, paragraph C-1 or C-2;

(3) For a period not to exceed 12 months in order to place the juvenile in a supervised work or service program or a restitution program, or for such other purpose as the court in its discretion determines appropriate. If a supervised work or service program or restitution program has been ordered, the court shall on final disposition consider whether or not there has been compliance with the program so ordered; or

(4) For a period not to exceed 15 months in order to place the juvenile in a juvenile drug treatment court program. If a juvenile drug treatment court program has been ordered, the court shall on final disposition consider whether or not there has been compliance with the program so ordered. [PL 2001, c. 508, §1 (AMD).]

B. If the hearing is continued, the court shall make an appropriate order for detention of the juvenile or for the juvenile's release in the custody of the juvenile's parents, guardian, legal custodian or

other responsible person or agency under such conditions of supervision as the court may impose during the continuance. The court may order a juvenile into the temporary custody of the Department of Health and Human Services only if the following conditions are met:

(1) That service of notice of the dispositional hearing as required under section 3314, subsection 1, paragraph C-1, has not been made on parents who reside outside the State or whose whereabouts are unknown after a diligent search;

(2) That the Department of Health and Human Services has:

(a) Received written notice of the hearing on temporary custody at least 10 days before the hearing, provided that the department may waive this 10-day requirement in writing; and

(b) Had an opportunity to be heard before any order of temporary custody;

(3) That notice under section 3314, subsection 1, paragraph C-1, has been served on the juvenile's legal custodian at least 10 days before any order of temporary custody to the Department of Health and Human Services and that the legal custodian has had an opportunity to be heard before the issuance of a temporary order, provided that the juvenile's custodian may waive the 10-day notice requirement if the waiver is in writing and voluntarily and knowingly executed in court before a judge;

(4) That the court finds that either:

(a) The juvenile does not meet the criteria for detention; or

(b) It is not necessary or appropriate to detain the juvenile; and

(5) That the court finds by a preponderance of the evidence that:

(a) Reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home;

(b) Continuation in the juvenile's home during the period required for service of notice under section 3314, subsection 1, paragraph C-1, would be contrary to the welfare of the juvenile; and

(c) Temporary custody is necessary to provide for the care and support of the juvenile during this period.

Any order of temporary custody terminates upon an order of disposition under section 3314, or automatically 2 months after issuance, whichever occurs first. [PL 1987, c. 720, §4 (RPR); PL 2003, c. 689, Pt. B, §6 (REV).]

C. In scheduling investigations and hearings, the court shall give priority to proceedings concerning a juvenile who is in detention or who has otherwise been removed from the juvenile's home before an order of disposition has been made. [PL 1987, c. 720, §4 (RPR).]

D. If the court finds, after opportunity for hearing, that a juvenile released with a condition of participation in a juvenile drug treatment court program has intentionally or knowingly violated that condition, the court may impose a sanction of up to 7 days' confinement in a facility approved or operated by the Department of Corrections exclusively for juveniles. Nothing in this paragraph restricts the ability of the court to impose sanctions other than confinement for the violation of a condition of participation in a juvenile drug treatment court program or the ability of the court to enter any dispositional order allowed under section 3314 on final disposition. [PL 2007, c. 96, §4 (AMD).]

[PL 2007, c. 96, §4 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 373, §5 (AMD). PL 1979, c. 681, §28 (AMD). PL 1987, c. 400, §1 (AMD). PL 1987, c. 720, §4 (AMD). PL 1995, c. 253, §3 (AMD). PL 1999, c. 624, §§B19,20 (AMD). PL 2001, c. 508, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 96, §4 (AMD). PL 2019, c. 113, Pt. C, §45 (AMD).

§3313. Criteria for withholding an institutional disposition

1. Standard. The court shall enter an order of disposition for a juvenile who has been adjudicated as having committed a juvenile crime without imposing placement in a secure institution as disposition unless, having regard to the nature and circumstances of the crime and the history, character and condition of the juvenile, it finds that the confinement of the juvenile is necessary for protection of the public because:

A. There is undue risk that, during the period of a suspended sentence or probation, the juvenile will commit another crime; [PL 1979, c. 663, §118 (AMD).]

B. The juvenile is in need of correctional treatment that can be provided most effectively by the juvenile's commitment to an institution; or [PL 2019, c. 525, §26 (AMD).]

C. A lesser sentence will depreciate the seriousness of the juvenile's conduct. [PL 1977, c. 520, §1 (NEW).]

[PL 2019, c. 525, §26 (AMD).]

2. Additional consideration. The following grounds, while not controlling the discretion of the court, must be accorded weight against ordering placement in a secure institution:

A. The juvenile's conduct neither caused nor threatened serious harm; [PL 1977, c. 520, §1 (NEW).]

B. The juvenile did not contemplate that the juvenile's conduct would cause or threaten serious harm; [PL 2019, c. 525, §26 (AMD).]

C. The juvenile acted under a strong provocation; [PL 1977, c. 520, §1 (NEW).]

D. There were substantial grounds tending to excuse or justify the juvenile's conduct, though failing to establish a defense; [PL 1977, c. 520, §1 (NEW).]

E. The victim of the juvenile's conduct induced or facilitated the commission of the conduct; [PL 2019, c. 525, §26 (AMD).]

F. The juvenile has made or has agreed to pay restitution to the victim of the juvenile's conduct for the damage or injury that the victim sustained in an amount that the court has determined is within the juvenile's ability to pay pursuant to section 3314-C; [PL 2021, c. 326, §6 (RPR).]

G. The juvenile has not previously been adjudicated to have committed a juvenile crime or has led a law-abiding life for a substantial period of time prior to the conduct that formed the basis for the present adjudication; [PL 2019, c. 525, §26 (AMD).]

H. The juvenile's conduct was the result of circumstances unlikely to recur; [PL 1977, c. 520, §1 (NEW).]

I. The character and attitudes of the juvenile indicate that the juvenile is unlikely to commit another juvenile crime; [PL 2019, c. 525, §26 (AMD).]

J. The juvenile is particularly likely to respond affirmatively to probation; [PL 2021, c. 326, §7 (AMD).]

K. The confinement of the juvenile would entail excessive hardship to the juvenile or the juvenile's dependents; [PL 2021, c. 326, §8 (AMD).]

L. The juvenile had not attained 14 years of age at the time of the alleged conduct; and [PL 2021, c. 326, §9 (NEW).]

M. The juvenile crime would be considered a Class D or Class E crime if committed by an adult and, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying juvenile criminal episode giving rise to the adjudication did not generate probable cause to believe the juvenile had committed what would be considered a Class A, Class B or Class C crime if committed by an adult. [PL 2021, c. 326, §10 (NEW).]

[PL 2021, c. 326, §§6-10 (AMD).]

3. Statement of reasons accompanying disposition for juvenile adjudicated of murder or a Class A, Class B or Class C crime. In a disposition for a juvenile crime that if committed by an adult would be murder or a Class A, Class B or Class C crime, the court shall state on the record and in open court the court's reasons for ordering or not ordering placement of the juvenile in a secure institution. [PL 1995, c. 690, §5 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 663, §§118,119 (AMD). PL 1995, c. 690, §5 (AMD). PL 2019, c. 474, §1 (AMD). PL 2019, c. 525, §26 (AMD). PL 2021, c. 326, §§6-10 (AMD).

§3314. Disposition

1. Dispositional alternatives. When a juvenile has been adjudicated as having committed a juvenile crime, the court shall enter a dispositional order containing one or more of the following alternatives.

A. The court may allow the juvenile to remain in the legal custody of the juvenile's parent or parents, guardian or legal custodian under such conditions as the court may impose. Conditions may include participation by the juvenile or the juvenile's parent or parents, guardian or legal custodian in treatment services aimed at the rehabilitation of the juvenile and improvement of the home environment. [PL 2019, c. 525, §27 (AMD).]

B. The court may require a juvenile to participate in a supervised work or service program. Such a program may provide restitution to the victim by requiring the juvenile to work or provide a service for the victim, or to make monetary restitution to the victim from money earned from such a program. Such a supervised work or service program may be required as a condition of probation if:

(1) The juvenile is not deprived of the schooling that is appropriate to the juvenile's age, needs and specific rehabilitative goals;

(2) The supervised work program is of a constructive nature designed to promote rehabilitation and is appropriate to the age level and physical ability of the juvenile; and

(3) The supervised work program assignment is made for a period of time not exceeding 180 days.

A juvenile participating in a supervised work or service program, performing community service or providing restitution under this section or section 3301 may not be subject to Title 39-A, Part 1, the Maine Workers' Compensation Act of 1992. [PL 1997, c. 619, §2 (AMD).]

C. [PL 1991, c. 493, §21 (RP).]

C-1. The court may commit a juvenile to the custody of the Department of Health and Human Services when the court has determined that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and that continuation therein would be contrary to the welfare of the juvenile. The court may not enter an order under this paragraph unless the parents have had notice and an opportunity to be heard at the dispositional hearing.

Notwithstanding any other provision of law, the court may not commit a juvenile to the custody of the Department of Health and Human Services unless such notice has been served on the parents, custodians and the Department of Health and Human Services in accordance with District Court civil rules at least 10 days prior to the dispositional hearing. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge.

The Department of Health and Human Services shall provide for the care and placement of the juvenile as for other children in the department's custody pursuant to the Child and Family Services and Child Protection Act, Title 22, chapter 1071, subchapter VII.

The court may impose conditions that may include participation by the juvenile or the juvenile's parents or legal guardian in treatment services aimed at the rehabilitation of the juvenile, reunification of the family and improvement of the home environment. [PL 2001, c. 696, §3 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

C-2. The court may commit a juvenile to the custody of a relative or other person when the court determines that this is in the best interest of the juvenile. The court may not enter an order under this paragraph unless the parents have had notice and an opportunity to be heard at the dispositional hearing. [PL 1985, c. 439, §16 (NEW).]

D. [PL 1991, c. 493, §22 (RP).]

E. The court may require the juvenile to pay restitution pursuant to section 3314-C. [PL 2019, c. 474, §2 (AMD).]

F. The court may commit the juvenile to a Department of Corrections juvenile correctional facility, except that, beginning October 1, 2021, the juvenile must be at least 12 years of age at the time of commitment to be committed to such a facility. Whenever a juvenile is committed to a Department of Corrections juvenile correctional facility, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a commitment to a Department of Corrections juvenile correctional facility, which continues to be governed by section 3313. [PL 2021, c. 326, §11 (AMD).]

G. Except for a violation of section 3103, subsection 1, paragraph H, the court may impose a fine, subject to Title 17-A, sections 1701 to 1711, except that there is no mandatory minimum fine amount. For the purpose of this section, juvenile offenses defined in section 3103, subsection 1, paragraphs B and C are subject to a fine of up to $1,000. [PL 2019, c. 113, Pt. C, §47 (AMD).]

H. The court may order the juvenile to serve a period of confinement that may not exceed 30 days, with or without an underlying suspended disposition of commitment to a Department of Corrections juvenile correctional facility, which confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date but may be served intermittently as the court may order and must be ordered served in a facility approved or operated by the Department of Corrections exclusively for juveniles. The court may order such a disposition to be served as a part of and with a period of probation that is subject to such provisions of Title 17-A, section 1807 as the court may order and that must be administered pursuant to Title 34-A, chapter 5, subchapter 4. Revocation of probation is governed by the procedure contained in subsection 2. Any disposition under this paragraph is subject to Title 17-A, section 2305 except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but is not subject to Title 17-A, section 2305, subsection 4 or 4-A; section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; or section 2310, subsections 3, 6 and 7. For purposes of calculating the commencement of the period of confinement, credit is accorded only for the portion of the first day for which the juvenile is actually

confined; the juvenile may not be released until the juvenile has served the full term of hours or days imposed by the court. When a juvenile is committed for a period of confinement, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that reasonable efforts are not necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a period of confinement. [PL 2021, c. 330, §4 (AMD).]

I. The court may order the juvenile unconditionally discharged. [PL 1977, c. 520, §1 (NEW).] [PL 2021, c. 326, §11 (AMD); PL 2021, c. 330, §4 (AMD).]

2. Suspended disposition. The court may impose any of the dispositional alternatives provided in subsection 1 and may suspend its disposition and place the juvenile on a specified period of probation that is subject to such provisions of Title 17-A, section 1807 as the court may order and that is administered pursuant to the provisions of Title 34-A, chapter 5, subchapter 4, except that the court may not impose the condition set out in Title 17-A, section 1807, subsection 5. The court may impose as a condition of probation that a juvenile must reside outside the juvenile's home in a setting satisfactory to the juvenile community corrections officer if the court determines that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and that continuation in the juvenile's home would be contrary to the welfare of the juvenile. Imposition of such a condition does not affect the legal custody of the juvenile.

Modification of probation is governed by the procedures contained in Title 17-A, section 1804, subsections 7 and 8. Termination of probation is governed by the procedures contained in Title 17-A, section 1804, subsection 10. Revocation of probation is governed by the procedures contained in Title 17-A, sections 1809 to 1812, except that this subsection governs the court's determinations concerning probable cause and continued detention and those provisions of Title 17-A, section 1812, subsection 6 allowing a vacating of part of the suspension of execution apply only to a suspended fine under subsection 1, paragraph G or a suspended period of confinement under paragraph H. A suspended commitment under subsection 1, paragraph F may be modified to a disposition under subsection 1, paragraph H. When a revocation of probation results in the imposition of a disposition under subsection 1, paragraph F or a period of confinement under subsection 1, paragraph H, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a particular disposition upon a revocation of probation. If the juvenile is being detained for an alleged violation of probation, the court shall review within 48 hours following the detention, excluding Saturdays, Sundays and legal holidays, the decision to detain the juvenile. Following that review, the court shall order the juvenile's release unless the court finds that there is probable cause to believe that the juvenile has violated a condition of probation and finds, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention under section 3203-A, subsection 4, paragraph C. When a court orders continued detention, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders continued detention.
[PL 2019, c. 113, Pt. C, §49 (AMD).]

3. Disposition for violation of section 3103, subsection 1, paragraph E or F. When a juvenile has been adjudicated as having committed the juvenile crime under section 3103, subsection 1, paragraph E or F, the court may impose any of the dispositional alternatives contained in subsection 1. Any incarceration that is imposed may be part of a disposition pursuant to subsection 1, paragraph F or H. Any incarceration in a detention facility must be in a facility designated in subsection 1, paragraph H.

A. For an adjudication under section 3103, subsection 1, paragraph F, the juvenile's license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a license must be suspended by the court for a period of 180 days. The period of suspension may not be suspended by the court. The court shall give notice of the suspension and take physical custody of an operator's license or permit as provided in Title 29-A, section 2434. The court shall immediately transmit a certified abstract of the suspension to the Secretary of State. A further suspension may be imposed by the Secretary of State pursuant to Title 29-A, section 2451, subsection 3. [PL 1995, c. 65, Pt. A, §48 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

[PL 1995, c. 65, Pt. A, §48 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

3-A. Operator's license suspension for drug offenses. The court may suspend for a period of up to 6 months the license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license of any person who violates Title 17-A, chapter 45; Title 22, section 2383, unless the juvenile is authorized to possess marijuana for medical use pursuant to Title 22, chapter 558-C; Title 22, section 2389, subsection 2; or Title 28-A, section 2052 and is adjudicated pursuant to this chapter to have committed a juvenile crime.

The court shall give notice of suspension and take physical custody of an operator's license or permit as provided in Title 29-A, section 2434. The court shall immediately forward the operator's license and a certified abstract of suspension to the Secretary of State.

[RR 2009, c. 2, §36 (COR).]

3-B. Operator's license suspension for drug trafficking. If a juvenile uses a motor vehicle to facilitate the trafficking of a scheduled drug, the court may, in addition to other authorized penalties, suspend the juvenile's operator's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed one year. A suspension may not begin until after any period of incarceration is served. If the court suspends a juvenile's operator's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the juvenile's operator's license. The Secretary of State may not reinstate the juvenile's operator's license, permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the juvenile demonstrates that after having been released and discharged from any period of incarceration that may have been ordered, the juvenile has served the period of suspension ordered by the court.

[PL 2005, c. 328, §13 (NEW).]

4. Medical support. Whenever the court commits a juvenile to a Department of Corrections juvenile correctional facility or to the Department of Health and Human Services or for a period of detention or places a juvenile on a period of probation, it shall require the parent or legal guardian to provide medical insurance for or contract to pay the full cost of any medical treatment, mental health treatment, substance use disorder treatment and counseling that may be provided to the juvenile while the juvenile is committed, including while on aftercare status or on probation, unless it determines that such a requirement would create an excessive hardship on the parent or legal guardian, or other dependent of the parent or legal guardian, in which case it shall require the parent or legal guardian to pay a reasonable amount toward the cost, the amount to be determined by the court.

An order under this subsection is enforceable under Title 19-A, section 2603.
[PL 2017, c. 407, Pt. A, §54 (AMD).]

5. Support orders. Whenever the court commits a juvenile to the Department of Health and Human Services, to a Department of Corrections juvenile correctional facility or to a relative or other person, the court shall order either or both parents of the juvenile to pay child support in accordance with the child support guidelines under Title 19-A, section 2006. The order is enforceable under Title 19-A, section 2603.
[PL 2005, c. 352, §1 (AMD).]

6. Forfeiture of firearms. As part of every disposition in every proceeding under this code, every firearm that constitutes the basis for an adjudication for a juvenile crime that, if committed by an adult, would constitute a violation of section 393; Title 17-A, section 1105-A, subsection 1, paragraph C-1; Title 17-A, section 1105-B, subsection 1, paragraph C; Title 17-A, section 1105-C, subsection 1, paragraph C-1; Title 17-A, section 1105-D, subsection 1, paragraph B-1; or Title 17-A, section 1118-A, subsection 1, paragraph B and every firearm used by the juvenile or any accomplice during the course of conduct for which the juvenile has been adjudicated to have committed a juvenile crime that would have been forfeited pursuant to Title 17-A, section 1504 if the criminal conduct had been committed by an adult must be forfeited to the State and the juvenile court shall so order unless another person satisfies the court prior to the dispositional hearing and by a preponderance of the evidence that the other person had a right to possess the firearm, to the exclusion of the juvenile, at the time of the conduct that constitutes the juvenile crime. Rules adopted by the Attorney General that govern the disposition of firearms forfeited pursuant to Title 17-A, section 1504 govern forfeitures under this subsection.
[PL 2019, c. 113, Pt. C, §50 (AMD).]

7. Enforcement of a dispositional order or order to appear. After notice and hearing and in accordance with the Maine Rules of Civil Procedure, Rule 66, the court may exercise its inherent contempt power by way of a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, to enforce the disposition ordered following an adjudication for a juvenile crime or to enforce any order requiring the appearance of a juvenile before the court. The court may not order confinement as a contempt sanction for any juvenile who has not attained 14 years of age. Any confinement imposed as a punitive or remedial sanction upon a person who has not attained 18 years of age may not exceed 30 days and must be served in a facility approved or operated by the Department of Corrections exclusively for juveniles. Any confinement imposed as a punitive or remedial sanction upon a person who has attained 18 years of age, if to be served in a facility approved or operated by the Department of Corrections exclusively for juveniles, may not exceed 30 days. To enforce the disposition ordered following an adjudication for a juvenile crime defined in section 3103, subsection 1, paragraph B or C upon a person who has not attained 18 years of age, the court shall, at the time of the disposition, provide written notice to the juvenile of the court's authority to enforce the dispositional order through an exercise of its inherent contempt power and that a contempt order could include an order of confinement for up to 30 days as a punitive sanction and for up to 30 days as a remedial sanction. Except as explicitly set out in this subsection, nothing in this subsection affects the court's ability to exercise its contempt powers for persons who have attained 18 years of age.
[PL 2019, c. 474, §3 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§34-38 (AMD). PL 1979, c. 233, §§2,3 (AMD). PL 1979, c. 512, §6 (AMD). PL 1979, c. 681, §§29-32 (AMD). PL 1981, c. 379, §§1,2 (AMD). PL 1981, c. 493, §3 (AMD). PL 1981, c. 679, §9 (AMD). PL 1983, c. 480, §§B17-B19 (AMD). PL 1983, c. 581, §2 (AMD). PL 1985, c. 439, §§15,16 (AMD). PL 1985, c. 715, §1 (AMD). PL 1987, c. 297 (AMD). PL 1987, c. 400, §§2,3 (AMD). PL 1987, c. 720, §5 (AMD). PL 1989, c. 231, §2 (AMD). PL 1989, c. 445, §6 (AMD). PL 1989, c. 502, §§A43,A44 (AMD). PL 1989, c. 599, §8 (AMD). PL 1989, c. 850, §1 (AMD). PL 1989, c. 875, §§E21,22 (AMD). PL 1991, c.

493, §§21-24 (AMD). PL 1991, c. 493, §28 (AFF). PL 1991, c. 776, §§2,3 (AMD). PL 1991, c. 885, §E17 (AMD). PL 1991, c. 885, §E47 (AFF). PL 1993, c. 354, §§8,9 (AMD). PL 1993, c. 658, §2 (AMD). PL 1995, c. 65, §§A48,49 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 253, §4 (AMD). PL 1995, c. 470, §8 (AMD). PL 1995, c. 502, §§F5-7 (AMD). PL 1995, c. 647, §3 (AMD). PL 1995, c. 690, §6 (AMD). PL 1997, c. 24, §RR6 (AMD). PL 1997, c. 339, §1 (AMD). PL 1997, c. 591, §1 (AMD). PL 1997, c. 619, §2 (AMD). PL 1997, c. 752, §§18-23 (AMD). PL 1999, c. 260, §A9 (AMD). PL 1999, c. 367, §1 (AMD). PL 1999, c. 624, §§A7,8 (AMD). RR 2001, c. 2, §A24 (COR). RR 2001, c. 2, §A25 (AFF). PL 2001, c. 696, §§3-5 (AMD). PL 2003, c. 180, §9 (AMD). PL 2003, c. 239, §1 (AMD). PL 2003, c. 305, §6 (AMD). PL 2003, c. 503, §§1,2 (AMD). PL 2003, c. 657, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 328, §§12,13 (AMD). PL 2005, c. 352, §1 (AMD). PL 2005, c. 507, §§10-12 (AMD). PL 2007, c. 96, §§5, 6 (AMD). PL 2007, c. 196, §5 (AMD). PL 2007, c. 536, §3 (AMD). PL 2007, c. 695, Pt. A, §19 (AMD). RR 2009, c. 2, §§35, 36 (COR). PL 2009, c. 93, §12 (AMD). PL 2009, c. 608, §1, 2 (AMD). PL 2015, c. 485, §1 (AMD). PL 2017, c. 377, §2 (AMD). PL 2017, c. 407, Pt. A, §54 (AMD). PL 2019, c. 113, Pt. C, §§46-50 (AMD). PL 2019, c. 474, §§2, 3 (AMD). PL 2019, c. 525, §27 (AMD). PL 2021, c. 326, §11 (AMD). PL 2021, c. 330, §4 (AMD).

§3314-A. Period of probation; modification and discharge

The period of probation of a juvenile, its modification and discharge, is as provided by Title 17-A, section 1804, except that the period of probation of a juvenile convicted of a juvenile crime as defined by section 3103, subsection 1, paragraph B, C or E may not exceed one year. The period of probation may extend beyond the juvenile's 21st birthday. [PL 2019, c. 113, Pt. C, §51 (AMD).]

SECTION HISTORY

PL 1977, c. 664, §39 (NEW). PL 1993, c. 354, §10 (AMD). PL 2009, c. 93, §13 (AMD). PL 2019, c. 113, Pt. C, §51 (AMD).

§3314-B. Counseling, treatment, education or case management for juveniles and their parents, guardians and legal custodians

1. Counseling, treatment, education or case management. In conjunction with a disposition under section 3314, the court may require the juvenile and the juvenile's parent, guardian or legal custodian to participate in counseling, treatment, education or case management as determined by the court. The counseling, treatment, education or case management must be designed to create a favorable environment for sustained noncriminal behavior.
[PL 2003, c. 142, §2 (NEW); PL 2003, c. 142, §3 (AFF).]

2. Costs. The court may order a parent, guardian or legal custodian to pay or cause to be paid all or part of the reasonable costs of any counseling, treatment, education or case management ordered pursuant to this section.
[PL 2003, c. 142, §2 (NEW); PL 2003, c. 142, §3 (AFF).]

3. Enforcement. After notice and hearing and in accordance with the Maine Rules of Civil Procedure, Rule 66, the court may invoke its contempt powers to enforce its counseling, treatment, education, case management or other order that applies to the juvenile, the juvenile's parent, guardian or legal custodian or any other person before the court who is subject to an order to participate in counseling, treatment, education or case management. If the court invokes its contempt powers against the juvenile, section 3314, subsection 7 applies.
[PL 2007, c. 196, §6 (AMD).]

4. Probation. The court may not revoke a juvenile's probation because of a failure of the juvenile's parent, guardian or legal custodian to comply with an order under this section.
[PL 2003, c. 142, §2 (NEW); PL 2003, c. 142, §3 (AFF).]

SECTION HISTORY

PL 2003, c. 142, §2 (NEW). PL 2003, c. 142, §3 (AFF). PL 2007, c. 196, §6 (AMD).

§3314-C. Juvenile restitution

1. Definitions. Terms used in this section have the same meaning as in Title 17-A, section 2002, unless otherwise indicated.
[PL 2019, c. 474, §4 (NEW).]

2. Mandatory consideration of restitution. This subsection applies to the mandatory consideration of restitution.

A. The court shall, whenever practicable, inquire of a prosecutor, law enforcement officer or victim with respect to the extent of the victim's economic loss and shall order restitution when authorized and appropriate. [PL 2019, c. 474, §4 (NEW).]

B. The order for restitution must designate the amount of restitution to be paid, that the order may be subject to modification or termination pursuant to subsection 6 and the person or persons to whom restitution must be paid. [PL 2019, c. 474, §4 (NEW).]

C. In any case in which the court determines that restitution should not be imposed in accordance with the criteria set forth in subsection 3, the court shall state on the record or in writing the reasons for not imposing restitution. [PL 2019, c. 474, §4 (NEW).]
[PL 2019, c. 474, §4 (NEW).]

3. Criteria for juvenile restitution. The criteria for ordering restitution to be paid by a juvenile are as follows.

A. Restitution as part of a juvenile disposition may be authorized, in whole or in part, as compensation for economic loss. In determining the amount of restitution a court is authorized to order a juvenile to pay, the court shall consider the following:

(1) The contributory misconduct of the victim;

(2) Failure by the victim to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time period; and

(3) The present and future capacity of the juvenile to pay restitution. [PL 2019, c. 474, §4 (NEW).]

B. The court is not authorized to order that a juvenile pay restitution:

(1) To a victim without that victim's consent;

(2) To a victim who is an accomplice of the juvenile;

(3) To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of that collateral compensation may be authorized;

(4) On a joint and several basis; or

(5) When the amount and method of payment of monetary restitution places an excessive financial hardship on the juvenile or dependent of the juvenile. In making this determination, the court shall consider all relevant factors, including, but not limited to, the following:

(a) The impact a restitution order would have on a juvenile, the juvenile's dependents and the juvenile's family, with particular consideration given to whether or not the juvenile or the juvenile's parents or guardians have been determined to be indigent;

(b) The minimum living expenses of the juvenile and the juvenile's dependents, including any other persons who are actually dependent on the juvenile;

(c) The special needs of the juvenile and the juvenile's dependents, including necessary travel expenses to and from work;

(d) The juvenile's present income and potential future earning capacity;

(e) The juvenile's resources;

(f) The juvenile's age;

(g) The juvenile's educational obligations;

(h) The juvenile's participation in substance use disorder treatment or mental health treatment or both;

(i) The stability or transience of the juvenile's living situation;

(j) The juvenile's access to transportation;

(k) Work restrictions on juveniles as set forth in Title 26, chapter 7; and

(l) The confinement of the juvenile as part of the juvenile's disposition. [PL 2019, c. 474, §4 (NEW).]

[PL 2019, c. 474, §4 (NEW).]

4. Authorized claimants. A court's order directing a juvenile to pay restitution is authorized only for:

A. The victim or victims, who must be natural persons, or a dependent of a deceased victim. A juvenile's obligation to pay restitution is not affected by the death of the victim to whom the restitution is due. In the case of the death of a victim, the money collected as restitution must be forwarded to the estate of the victim; and [PL 2019, c. 474, §4 (NEW).]

B. Any person legally authorized to act on behalf of the victim. [PL 2019, c. 474, §4 (NEW).]

[PL 2019, c. 474, §4 (NEW).]

5. Burdens of proof. At a hearing on a juvenile's capacity to pay restitution, there exists a rebuttable presumption that a juvenile who has not attained 16 years of age lacks the capacity to pay restitution. The State has the burden to rebut that presumption by a preponderance of the evidence. At a hearing in which a juvenile who has attained 16 years of age asserts a present or future incapacity to pay restitution, the juvenile has the burden of proving the incapacity to pay restitution by a preponderance of the evidence. On appeal of a restitution order, as part of a juvenile disposition, the juvenile has the burden of demonstrating that the court abused its discretion in ordering an amount of restitution.

[PL 2019, c. 474, §4 (NEW).]

6. Modification of orders on juvenile restitution. This subsection governs the modification of juvenile restitution orders.

A. A juvenile who is not able to make restitution payments in the manner ordered by the court shall move the court for a modification of the time or method of payment. If the juvenile establishes by a preponderance of the evidence that the juvenile is unable to pay restitution in the time and manner ordered, the court may modify its prior order to reduce the amount of each installment or to allow additional time for payment. [PL 2019, c. 474, §4 (NEW).]

B. Upon motion of the juvenile, the juvenile's parent or parents or the juvenile's guardian, and upon notice to the State and providing an opportunity for the victim to comment on the motion, pursuant to Title 17-A, sections 2102, 2104 and 2105, the court may review the restitution order and may modify its dispositional order to reduce or eliminate the amount of restitution ordered when the court determines that the juvenile has established by a preponderance of the evidence that payment of the current restitution order would, based on a substantial change in the juvenile's circumstances,

constitute an excessive financial hardship on the juvenile or the juvenile's dependents. Additionally, if a court determines that a juvenile's failure to pay restitution was not willful and was excusable, the court may order that the juvenile complete court-approved community service to offset the juvenile's restitution obligations at an hourly rate set by the court that may be no less than the minimum wage established in Title 26, section 664. [PL 2019, c. 474, §4 (NEW).]

[PL 2019, c. 474, §4 (NEW).]

7. Enforcement of an order of juvenile restitution. Notwithstanding section 3314, subsection 7, to enforce an order of restitution upon a finding that the juvenile has inexcusably failed to comply with the order, the court may not order confinement as a remedial or punitive contempt sanction unless the juvenile has in fact attained 16 years of age. Upon a motion by the State to enforce the payment of restitution, the court may order, in addition to other remedial or punitive contempt sanctions for an inexcusable failure to pay restitution, that a juvenile complete court-approved community service at an hourly rate set by the court that may be no less than the minimum wage established in Title 26, section 664.

[PL 2019, c. 474, §4 (NEW).]

SECTION HISTORY

PL 2019, c. 474, §4 (NEW).

§3315. Right to periodic review

1. Right to review. Every disposition pursuant to section 3314 and 3318-B, other than unconditional discharge, must be reviewed not less than once in every 12 months until the juvenile is discharged. The review must be made by a representative of the Department of Corrections unless the juvenile has been committed to the custody of the Commissioner of Health and Human Services, in which case such review must be made by a representative of the Department of Health and Human Services. A report of the review must be made in writing to the juvenile's parents, guardian or legal custodian. A copy of the report must be forwarded to the program or programs that were reviewed, and the department whose personnel made the review shall retain a copy of the report in their files. The written report must be prepared in accordance with subsection 2. When a juvenile is placed in the custody of the Commissioner of Health and Human Services, reviews and permanency planning hearings must be conducted in accordance with Title 22, section 4038. Title 22, sections 4005, 4039 and 4041 also apply.

[PL 2013, c. 234, §10 (AMD).]

2. Contents of review. The written report of each periodic review shall contain the following information:

A. A brief description of the services provided to the juvenile during the period preceding the review and the results of those services; [PL 1977, c. 520, §1 (NEW).]

B. An individualized plan for the provision of services to the juvenile for the next period; [PL 1977, c. 520, §1 (NEW).]

C. A statement showing that the plan imposes the least restricting alternative consistent with adequate care of the juvenile and protection of the community; and [PL 1977, c. 520, §1 (NEW).]

D. A certification that the services recommended are available and will be afforded to the juvenile. [PL 1977, c. 520, §1 (NEW).]

[PL 1977, c. 520, §1 (NEW).]

3. Court review of determination. Whenever a court makes a determination pursuant to section 3314, subsection 1, paragraph F or section 3314, subsection 2 that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title

22, section 4002, subsection 1-B and that continuation in the juvenile's home would be contrary to the welfare of the juvenile, that determination must be reviewed by the court not less than once every 12 months until the juvenile is discharged or no longer residing outside the juvenile's home. This review does not affect a juvenile's commitment to a Department of Corrections juvenile correctional facility.

A. A juvenile who has not attained 21 years of age must be represented by counsel at this review. [PL 2021, c. 326, §12 (NEW).]

B. If an appropriate treatment or appropriate and less restrictive placement is not being provided or offered to the juvenile, the court may order the Department of Corrections or the Department of Health and Human Services, or both, to demonstrate the reasonableness of the current treatment or placement provided or offered. [PL 2021, c. 326, §12 (NEW).]

[PL 2021, c. 326, §12 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §40 (AMD). PL 1983, c. 480, §B20 (AMD). PL 1995, c. 502, §F8 (AMD). PL 1997, c. 464, §2 (AMD). PL 1997, c. 752, §24 (AMD). PL 1999, c. 260, §A10 (AMD). PL 2001, c. 696, §6 (AMD). PL 2003, c. 503, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2013, c. 234, §10 (AMD). PL 2021, c. 326, §12 (AMD).

§3315-A. Termination of parental rights

When a juvenile is in the custody of the Department of Health and Human Services, Title 22, chapter 1071, subchapter VI also applies. [PL 2001, c. 696, §7 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

PL 2001, c. 696, §7 (NEW). PL 2003, c. 689, §B6 (REV).

§3316. Commitment to the Department of Corrections or the Department of Health and Human Services

1. Sharing of information about a committed juvenile.

[PL 2019, c. 525, §28 (RP).]

2. Indeterminate disposition. The following provisions apply to indeterminate dispositions.

A. A commitment of a juvenile to a Department of Corrections juvenile correctional facility pursuant to section 3314 must be for an indeterminate period not to extend beyond the juvenile's 18th birthday unless the court expressly further limits or extends the indeterminate commitment, as long as the court does not extend the commitment beyond a juvenile's 21st birthday. Nothing in this Part may be construed to prohibit the provision to a juvenile following the expiration of the juvenile's term of commitment of services voluntarily accepted by the juvenile and the juvenile's parent or parents, guardian or legal custodian if the juvenile is not emancipated; except that these services may not be extended beyond the juvenile's 21st birthday. [PL 2021, c. 326, §13 (AMD).]

B. A commitment of a juvenile to the Department of Health and Human Services pursuant to section 3314 must be for an indeterminate period not to extend beyond the juvenile's 18th birthday unless the court expressly further limits the commitment. [PL 1999, c. 127, Pt. B, §6 (RPR); PL 2003, c. 689, Pt. B, §6 (REV).]

[PL 2021, c. 326, §13 (AMD).]

3. Provision of services. Nothing in this chapter may prevent juveniles who are receiving services from the Department of Corrections from receiving services from the Department of Health and Human Services.

[PL 1999, c. 127, Pt. B, §6 (RPR); PL 2003, c. 689, Pt. B, §6 (REV).]

4. Voluntary services. The following applies to voluntary services agreement provisions.

A. This chapter does not prevent a juvenile from receiving services from the Department of Corrections pursuant to a voluntary agreement with the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated. [PL 1999, c. 127, Pt. B, §6 (RPR).]

B. If a juvenile is placed in a residence outside the juvenile's home pursuant to a voluntary services agreement, the Commissioner of Corrections or the commissioner's designee may request the court to make a determination whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. If requested, the court shall make that determination prior to the expiration of 180 days from the start of the placement and shall review that determination not less than once every 12 months until the juvenile is no longer residing outside the juvenile's home. [PL 2001, c. 696, §8 (AMD).]

[PL 2001, c. 696, §8 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §41 (AMD). PL 1979, c. 318 (AMD). PL 1979, c. 512, §7 (AMD). PL 1981, c. 493, §3 (AMD). PL 1983, c. 480, §B21 (AMD). PL 1993, c. 354, §11 (AMD). PL 1995, c. 502, §F9 (AMD). PL 1997, c. 591, §2 (AMD). PL 1997, c. 752, §25 (AMD). PL 1999, c. 127, §B6 (RPR). PL 2001, c. 696, §8 (AMD). PL 2003, c. 689, §B6 (REV). PL 2019, c. 525, §28 (AMD). PL 2021, c. 326, §13 (AMD).

§3317. Disposition after return to Juvenile Court

In instances of commitment of a juvenile to the Department of Health and Human Services or a Department of Corrections juvenile correctional facility or when the juvenile is under a specified period of probation, the Commissioner of Health and Human Services or the commissioner's designee or the Commissioner of Corrections or the commissioner's designee, or the juvenile following the disposition may for good cause petition the Juvenile Court having original jurisdiction in the case for a judicial review of the disposition, including extension of the period of commitment or period of probation. For a petition initiated by the juvenile, the Department of Health and Human Services or the Department of Corrections shall provide information including, but not limited to, the information in reports required for periodic review pursuant to section 3315. In all cases in which the juvenile is returned to a Juvenile Court, the Juvenile Court may make any of the dispositions otherwise provided in section 3314 and Title 34-A, section 3805, subsection 2. When reviewing a commitment to the Department of Health and Human Services, the court shall consider efforts made by the Department of Corrections and the Department of Health and Human Services to reunify the juvenile with the juvenile's parents or custodians, shall make a finding regarding those efforts and shall return custody of the juvenile to a parent or legal custodian if the return of the juvenile is not contrary to the welfare of the juvenile. A petition for judicial review of a disposition committing the juvenile to the Department of Health and Human Services must be served on the parents at least 7 days prior to the hearing. Absent extraordinary circumstances, the juvenile may file a petition no more than once every 180 days. A juvenile who has not attained 21 years of age must be represented by counsel at this review. [PL 2021, c. 326, §14 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§41-A (AMD). PL 1981, c. 379, §3 (AMD). PL 1981, c. 493, §3 (AMD). PL 1983, c. 480, §B22 (AMD). PL 1985, c. 439, §17 (AMD). PL 1987, c. 400, §4 (AMD). PL 1991, c. 493, §25 (AMD). PL 1995, c. 502, §F10 (AMD). PL 1997, c. 752, §26 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2021, c. 326, §14 (AMD).

§3318. Mentally ill or incapacitated juveniles

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §§42,43 (AMD). PL 1987, c. 402, §§A113,A114 (AMD). PL 1989, c. 621, §8 (AMD). PL 2001, c. 471, §F3 (AMD). PL 2009, c. 268, §§6, 7 (AMD). PL 2011, c. 282, §3 (RP).

§3318-A. Determination of competency of a juvenile to proceed in a juvenile proceeding

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chronological immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation. [PL 2011, c. 282, §4 (NEW).]

B. "Mental illness" means any diagnosable mental impairment supported by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. [PL 2011, c. 282, §4 (NEW).]

C. "Mental retardation" means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills. [PL 2011, c. 282, §4 (NEW).]

[PL 2011, c. 282, §4 (NEW).]

2. Competency to proceed in a juvenile proceeding. A juvenile is competent to proceed in a juvenile proceeding if the juvenile has:

A. A rational as well as a factual understanding of the proceedings against the juvenile; and [PL 2011, c. 282, §4 (NEW).]

B. A sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding. [PL 2011, c. 282, §4 (NEW).]

[PL 2011, c. 282, §4 (NEW).]

3. Determination of competency. The issue as to a juvenile's competency to proceed may be raised by the juvenile, by the State or sua sponte by the Juvenile Court at any point in the juvenile proceeding after a finding of probable cause and prior to the imposition of a final order of disposition. A competency determination is necessary only when the Juvenile Court has a reasonable doubt as to a juvenile's competency to proceed.

[PL 2011, c. 282, §4 (NEW).]

4. Competency examination. If the Juvenile Court determines that a competency determination is necessary, it shall order that a juvenile be examined by the State Forensic Service to evaluate the juvenile's competency to proceed. The examination must take place within 21 days of the court's order.

[PL 2011, c. 282, §4 (NEW).]

5. (TEXT EFFECTIVE UNTIL 1/01/22) Suspension of juvenile proceedings. Pending a competency examination, the Juvenile Court shall suspend the proceeding on the petition. The suspension remains in effect pending the outcome of a competency determination hearing pursuant to subsection 7. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile pursuant to section 3203-A, subsection 5.

[PL 2011, c. 282, §4 (NEW).]

5. (TEXT EFFECTIVE 1/01/22) Suspension of juvenile proceedings. Pending a competency examination, the Juvenile Court shall suspend the proceeding on the petition. All juvenile case records, including a petition that is otherwise open to public inspection under section 3308-C, subsection 2, are confidential and are not subject to inspection, dissemination or release by the court. The suspension remains in effect pending the outcome of a competency determination hearing pursuant to subsection 7. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile pursuant to section 3203-A, subsection 5.
[PL 2021, c. 365, §21 (AMD); PL 2021, c. 365, §37 (AFF).]

6. Criteria for State Forensic Service examiner's report. The following provisions govern criteria for the State Forensic Service examiner's report.

A. To assist the court's determination of competency, the State Forensic Service examiner's report must address the juvenile's capacity and ability to:

(1) Appreciate the allegations of the petition;

(2) Appreciate the nature of the adversarial process including:

(a) Having a factual understanding of the participants in the juvenile's proceeding, including the judge, defense counsel, attorney for the State and mental health expert; and

(b) Having a rational understanding of the role of each participant in the juvenile's proceeding;

(3) Appreciate the range of possible dispositions that may be imposed in the proceedings against the juvenile and recognize how possible dispositions imposed in the proceedings will affect the juvenile;

(4) Appreciate the impact of the juvenile's actions on others;

(5) Disclose to counsel facts pertinent to the proceedings at issue including:

(a) Ability to articulate thoughts;

(b) Ability to articulate emotions; and

(c) Ability to accurately and reliably relate to a sequence of events;

(6) Display logical and autonomous decision making;

(7) Display appropriate courtroom behavior;

(8) Testify relevantly at proceedings; and

(9) Demonstrate any other capacity or ability either separately sought by the Juvenile Court or determined by the examiner to be relevant to the Juvenile Court's determination. [PL 2011, c. 282, §4 (NEW).]

B. In assessing the juvenile's competency, the State Forensic Service examiner shall compare the juvenile being examined to juvenile norms that are broadly defined as those skills typically possessed by the average juvenile defendant adjudicated in the juvenile justice system. [PL 2011, c. 282, §4 (NEW).]

C. The State Forensic Service examiner shall determine and report if the juvenile suffers from mental illness, mental retardation or chronological immaturity. [PL 2011, c. 282, §4 (NEW).]

D. If the juvenile suffers from mental illness, mental retardation or chronological immaturity, the State Forensic Service examiner shall report the severity of the impairment and its potential effect on the juvenile's competency to proceed. [PL 2011, c. 282, §4 (NEW).]

E. If the State Forensic Service examiner determines that the juvenile suffers from chronological immaturity, the examiner shall report a comparison of the juvenile to the average juvenile defendant. [PL 2011, c. 282, §4 (NEW).]

F. If the State Forensic Service examiner determines that the juvenile suffers from a mental illness, the examiner shall provide the following information:

(1) The prognosis of the mental illness; and

(2) Whether the juvenile is taking any medication and, if so, what medication. [PL 2011, c. 282, §4 (NEW).]

G. The State Forensic Service examiner's report must state an opinion whether there exists a substantial probability that the deficiencies related to competence identified in the report, if any, can be ameliorated in the foreseeable future. [PL 2011, c. 282, §4 (NEW).]

[PL 2011, c. 282, §4 (NEW).]

7. (TEXT EFFECTIVE UNTIL 1/01/22) Post-examination report and hearing. Following receipt of the competency examination report from the State Forensic Service examiner, the Juvenile Court shall provide copies of the report to the parties and hold a competency determination hearing. If the Juvenile Court finds that the juvenile is competent to proceed based upon the burden and standard of proof pursuant to subsection 8, the Juvenile Court shall set a time for the resumption of the proceedings. If the Juvenile Court is not satisfied that the juvenile is competent to proceed, the Juvenile Court shall determine how to proceed pursuant to section 3318-B.

The court may consider the report of the State Forensic Service examiner, together with all other evidence relevant to the issue of competency, in its determination whether the juvenile is competent to proceed. No single criterion set forth in subsection 6 may be binding on the court's determination.
[PL 2011, c. 282, §4 (NEW).]

7. (TEXT EFFECTIVE 1/01/22) Post-examination report and hearing. Following receipt of the competency examination report from the State Forensic Service examiner, the Juvenile Court shall provide copies of the report to the parties and hold a competency determination hearing. All hearings conducted pursuant to this subsection are confidential and not open to the general public or persons listed in section 3308-D, subsection 4. If the Juvenile Court finds that the juvenile is competent to proceed based upon the burden and standard of proof pursuant to subsection 8, the Juvenile Court shall set a time for the resumption of the proceedings. If the Juvenile Court is not satisfied that the juvenile is competent to proceed, the Juvenile Court shall determine how to proceed pursuant to section 3318-B.

The court may consider the report of the State Forensic Service examiner, together with all other evidence relevant to the issue of competency, in its determination whether the juvenile is competent to proceed. No single criterion set forth in subsection 6 may be binding on the court's determination.
[PL 2021, c. 365, §22 (AMD); PL 2021, c. 365, §37 (AFF).]

8. Allocation of the burden of proof; standard of proof. The burden of proof of competence is on the State if the juvenile is less than 14 years of age at the time the issue of competence is raised. If the juvenile is at least 14 years of age at the time the issue of competence is raised, the burden of proof is on the juvenile. In the event the State has the burden of proof, it must show by a preponderance of the evidence that the juvenile is competent to proceed. In the event the juvenile has the burden of proof, the juvenile must show by a preponderance of the evidence that the juvenile is not competent to proceed.
[PL 2011, c. 282, §4 (NEW).]

9. Statements made in the course of competency examination. Statements made by the juvenile in the course of a competency examination may not be admitted as evidence in the adjudicatory stage for the purpose of proving any juvenile crime alleged.
[PL 2011, c. 282, §4 (NEW).]

10. Competency to proceed after bind over. Notwithstanding a finding by the Juvenile Court that the juvenile is competent to proceed in a juvenile proceeding, if the juvenile is subsequently bound over for prosecution as an adult pursuant to section 3101, subsection 4, the issue of the juvenile's competency may be revisited.
[PL 2015, c. 409, §8 (AMD).]

SECTION HISTORY

PL 2011, c. 282, §4 (NEW). PL 2015, c. 409, §8 (AMD). PL 2021, c. 365, §§21, 22 (AMD). PL 2021, c. 365, §37 (AFF).

§3318-B. Disposition of a juvenile found incompetent to proceed

1. Substantial probability that juvenile will be competent in the foreseeable future. If, following the competency determination hearing pursuant to section 3318-A, subsection 7, the Juvenile Court finds that the juvenile is not competent to proceed but additionally finds that there exists a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall continue the suspension of the proceedings and refer the juvenile to the Commissioner of Health and Human Services for evaluation and treatment of the mental health and behavioral needs identified in the report of the State Forensic Service examiner under section 3318-A.

A. At the end of 60 days or sooner, at the end of 180 days and at the end of one year following referral, the State Forensic Service shall examine the juvenile and forward a report of the examination to the Juvenile Court relating to the juvenile's competency to proceed and its reasons. Upon receipt of the report the Juvenile Court shall forward the report to the parties and without delay set a date for a conference of counsel or, upon a motion of any party, set a hearing on the question of the juvenile's competency to proceed. If the Juvenile Court finds that the juvenile is not yet competent to proceed, but there exists a substantial probability that the juvenile will be competent to proceed in the foreseeable future, the proceedings must remain suspended pending further review or hearing. [PL 2011, c. 282, §5 (NEW).]

B. If more than one year has elapsed since the suspension of the proceedings, the Juvenile Court shall promptly hold a hearing to determine whether based on clear and convincing evidence there exists a substantial probability that the juvenile will be competent in the foreseeable future. Notwithstanding section 3318-A, subsection 8, the burden of proof is on the State in any hearing under this paragraph. If the Juvenile Court finds that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall further determine whether or not the court should:

(1) Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or

(2) Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition. [PL 2011, c. 282, §5 (NEW).]

C. If during the suspension of the proceedings the juvenile reaches 18 years of age, the Juvenile Court may evaluate the appropriateness of placing the juvenile in an appropriate institution for the care and treatment of adults with mental illness or mental retardation for observation, care and treatment. [PL 2011, c. 282, §5 (NEW).]

D. The Juvenile Court shall set a time for resumption of the proceedings if at any point it finds, based upon the burden and standard of proof pursuant to section 3318-A, subsection 8, that the juvenile is now competent to proceed. [PL 2011, c. 282, §5 (NEW).]

[PL 2011, c. 282, §5 (NEW).]

2. No substantial probability that juvenile will be competent in the foreseeable future. If, following the competency determination hearing provided in section 3318-A, subsection 7, the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall promptly hold a hearing to determine whether or not the Juvenile Court should:

A. Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or [PL 2011, c. 282, §5 (NEW).]

B. Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 for purposes of placement and treatment. [PL 2011, c. 282, §5 (NEW).]

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.

[PL 2013, c. 519, §4 (AMD).]

SECTION HISTORY

PL 2011, c. 282, §5 (NEW). PL 2013, c. 519, §4 (AMD).

§3318-C. Competency orders

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/01/22)

1. Contents of competency order. Competency orders issued by the court may include only the following information.

A. The order must include a finding of whether the juvenile is competent to proceed based on whether the juvenile has a rational, as well as factual, understanding of the proceedings and a sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding. [PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

B. If the court finds that the juvenile is competent to proceed, the order must specify the day on which the proceedings on the juvenile petition will resume. [PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

C. If the court finds that the juvenile is not competent but there is a substantial probability that the juvenile may be competent in the foreseeable future, the order must direct compliance with section 3318-B, subsection 1, paragraph A. [PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

D. If the court finds that the juvenile is not competent to proceed and there is no substantial probability that the juvenile will be competent in the foreseeable future, the order must set a date for a further hearing pursuant to section 3318-B, subsection 2. [PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

All findings of fact made by the court in association with the issuance of a competency order are confidential and may not be included in the order.

[PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Access to competency orders. Competency orders may be inspected by the following persons:

A. The victim of the juvenile crime or, if the victim is a minor, the victim's parent or parents, guardian or legal custodian; [PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

B. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian or attorney representing the victim; and [PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

C. The public, but only if the juvenile proceeding to which the order relates is publicly accessible pursuant to section 3308-C, subsection 2. [PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §23 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2021, c. 365, §23 (NEW). PL 2021, c. 365, §37 (AFF).

§3319. Designation of facility

Immediately after the court orders detention or confinement in or commitment to a juvenile facility, the court shall notify the Commissioner of Corrections or the commissioner's designee and shall inquire as to the juvenile facility to which the juvenile will be transported. The commissioner has complete discretion to make this determination. The commissioner or the commissioner's designee shall immediately inform the court of the location of the juvenile facility to which the juvenile will be transported. [PL 2005, c. 507, §13 (AMD).]

SECTION HISTORY

PL 1997, c. 752, §27 (NEW). PL 2005, c. 507, §13 (AMD).

CHAPTER 509

APPEALS

§3401. Appeals structure and goals

1. Structure. Except as otherwise provided, appeals from the juvenile court are to the Supreme Judicial Court.

[PL 2015, c. 100, §2 (AMD).]

2. Goals of juvenile appellate structure. The goals of the juvenile appellate structure are:

A. To correct errors in the application and interpretation of law; [PL 1979, c. 512, §8 (RPR).]

B. To insure substantial uniformity of treatment to persons in like situations; and [PL 1979, c. 512, §8 (RPR).]

C. To provide for review of juvenile court decisions so that the legislatively defined purposes of the juvenile justice system as a whole are realized. [PL 1979, c. 512, §8 (RPR).]

[PL 1979, c. 512, §8 (RPR).]

3. No right to jury trial.

[PL 1979, c. 512, §8 (RP).]

4. Rules.

[PL 1979, c. 512, §8 (RP).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §44 (AMD). PL 1979, c. 512, §8 (RPR). PL 2015, c. 100, §2 (AMD).

§3402. Appeals to Supreme Judicial Court

1. Matters for appeal. Appeals of the following matters may be taken from the Juvenile Court to the Supreme Judicial Court by a party specified in subsection 2:

A. An adjudication, as long as the appeal is taken after an order of disposition; [PL 2015, c. 100, §3 (AMD).]

B. An order of disposition, or of any subsequent order modifying disposition, for an abuse of discretion; [PL 2021, c. 23, §1 (AMD).]

C. [PL 1997, c. 645, §12 (RP).]

D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal to alter a detention order upon petition of the juvenile pursuant to section 3203-A, subsection 11, for abuse of discretion. The appeal must be handled expeditiously; [PL 2021, c. 326, §15 (AMD).]

E. [PL 1979, c. 512, §9 (RP).]

F. [PL 1979, c. 512, §9 (RP).]

G. [PL 1979, c. 512, §9 (RP).]

H. An order binding a juvenile over for prosecution as an adult, which may be taken following issuance of the bind-over order, or, at the election of the appellant, following a judgment of conviction as an adult, but not both; and [PL 2021, c. 326, §15 (AMD).]

I. A judicial review decision pursuant to section 3317. [PL 2021, c. 326, §15 (NEW).]
[PL 2021, c. 326, §15 (AMD).]

2. Who may appeal. An appeal may be taken by the following parties:

A. The juvenile; or [PL 1979, c. 512, §9 (RPR).]

B. The juvenile's parents, guardian or legal custodian on behalf of the juvenile, if the juvenile is not emancipated and the juvenile does not wish to appeal. [PL 1979, c. 512, §9 (RPR).]

C. [PL 1979, c. 512, §9 (RP).]
[PL 1979, c. 512, §9 (RPR).]

2-A. Appeal from a bind-over order of the juvenile court.
[PL 2021, c. 23, §4 (RP).]

3. Appeals by the State. The State may appeal from a decision or order of the juvenile court to the Supreme Judicial Court to the same extent and in the same manner as in criminal cases under section 2115-A. The State may appeal from the juvenile court to the Supreme Judicial Court for the failure of the juvenile court to order a bind-over.

A. [PL 1979, c. 512, §9 (RP).]

B. [PL 1979, c. 512, §9 (RP).]

C. [PL 1979, c. 512, §9 (RP).]

D. [PL 1979, c. 512, §9 (RP).]
[PL 2015, c. 100, §3 (AMD).]

4. Stays and releases. On an appeal pursuant to subsection 1, paragraphs A and B, the Supreme Judicial Court shall consider a stay of execution and release pending the appeal.
[PL 2015, c. 100, §3 (AMD).]

5. Time for appeals. An appeal from the juvenile court to the Supreme Judicial Court must be taken within 21 days after the entry of an order of disposition or other appealed order or such further time as the Supreme Judicial Court may provide pursuant to a rule of court.
[PL 2015, c. 100, §3 (AMD).]

6. Record on appeal.
[PL 1979, c. 512, §9 (RP).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §45 (AMD). PL 1979, c. 512, §9 (RPR). PL 1989, c. 502, §A45 (AMD). PL 1991, c. 202 (AMD). PL 1997, c. 645, §11 (AMD). PL 1997, c. 645, §§11-13 (AMD). PL 1997, c. 645, §12 (AMD). PL 1997, c. 645, §13 (AMD). PL 2005, c. 488, §2 (AMD). PL 2013, c. 234, §11 (AMD). PL 2015, c. 100, §3 (AMD). PL 2021, c. 23, §§1-4 (AMD). PL 2021, c. 326, §15 (AMD).

§3403. Rules for appeals

Procedure for appeals from the juvenile court to the Supreme Judicial Court, including provision for a record, subject to section 3405, is as provided by rule adopted by the Supreme Judicial Court. [PL 2015, c. 100, §4 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 512, §10 (RPR). PL 2015, c. 100, §4 (AMD).

§3404. Counsel on appeal

A juvenile or other party specified in section 3402, subsection 2, paragraph B, who is indigent shall be entitled to appointment of counsel. [PL 1979, c. 512, §11 (RPR).]

1.

[PL 1979, c. 512, §11 (RP).]

2.

[PL 1979, c. 512, §11 (RP).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 512, §11 (RPR).

§3405. Scope of review on appeal; record

1. Scope of review. Review on all appeals from juvenile court to the Supreme Judicial Court is for errors of law or abuses of discretion. The Supreme Judicial Court may affirm, reverse or modify any order of the juvenile court or remand for further proceedings. The Supreme Judicial Court may enter a new order of disposition if it finds that the juvenile court's disposition was an abuse of discretion.
[PL 2015, c. 100, §5 (AMD).]

2. Record on appeals. In appeals taken pursuant to section 3402, subsection 1, paragraphs A, B and H, review must be on the basis of the record of the proceedings in the Juvenile Court. In the interest of justice, the Supreme Judicial Court may order that the record consist of:

A. The untranscribed sound recording of the proceedings; or [PL 1979, c. 512, §12 (RPR).]

B. An agreed or settled statement of facts with the consent of the parties. [PL 1979, c. 512, §12 (RPR).]
[PL 2021, c. 326, §16 (AMD).]

3. Record on appeals of detention orders. In appeals taken pursuant to section 3402, subsection 1, paragraph D, the court shall order a review by the most expeditious of the following methods that is consistent with the interests of justice:

A. The untranscribed sound recording of the detention hearing; [PL 1979, c. 512, §12 (REEN).]

B. Evidence presented to the trial court, as long as the scope of review is as specified in subsection 1; [PL 2015, c. 100, §5 (AMD).]

C. A transcribed record; or [PL 1979, c. 512, §12 (REEN).]

D. A record consisting of a statement of facts as described in subsection 2, paragraph B. [PL 1979, c. 512, §12 (REEN).]

[PL 2015, c. 100, §5 (AMD).]

4. Expedited docket.

[PL 1979, c. 512, §12 (RP).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §46 (AMD). PL 1979, c. 512, §12 (RPR). PL 1979, c. 681, §33 (AMD). PL 1997, c. 645, §14 (AMD). PL 2015, c. 100, §5 (AMD). PL 2021, c. 326, §16 (AMD).

§3406. Disposition of appeals

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 512, §13 (RP).

§3407. Appeal to the Law Court

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 512, §14 (RPR). PL 1979, c. 681, §§34,35 (AMD). PL 1997, c. 645, §§15,16 (AMD). PL 2015, c. 100, §6 (RP).

CHAPTER 511

INTERIM CARE; RUNAWAYS

§3501. Interim care

1. Interim care. A juvenile may be taken into interim care by a law enforcement officer without order by the court when the officer has reasonable grounds to believe that:

A. The juvenile is abandoned, lost or seriously endangered in the juvenile's surroundings and that immediate removal is necessary for the juvenile's protection; or [PL 2019, c. 525, §29 (AMD).]

B. The juvenile has left the care of the juvenile's parent or parents, guardian or legal custodian without the consent of the parent or parents, guardian or legal custodian. [PL 2019, c. 525, §29 (AMD).]

[PL 2019, c. 525, §29 (AMD).]

2. Limit. Under no circumstances shall any juvenile taken into interim care be held involuntarily for more than 6 hours.

[PL 1977, c. 520, §1 (NEW).]

3. Interim care, police record. The taking of a juvenile into interim care pursuant to this section is not an arrest and shall not be designated in any police records as an arrest.
[PL 1977, c. 520, §1 (NEW).]

4. Notification of parents, guardian or custodian. When a juvenile is taken into interim care, the law enforcement officer or the Department of Health and Human Services shall, as soon as possible, notify the juvenile's parent, guardian or legal custodian of the juvenile's whereabouts. If a parent, guardian or legal custodian cannot be located, such notification shall be made to a person with whom the juvenile is residing.
[PL 1981, c. 619, §5 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

5. Interim care, placement.

A. When a law enforcement officer takes a juvenile into interim care, the officer shall contact the Department of Health and Human Services which shall designate a place where the juvenile will be held. [PL 1981, c. 619, §6 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

B. The law enforcement officer shall take the juvenile to the Department of Health and Human Services or to the location specified by the department without unnecessary delay. [PL 1981, c. 619, §7 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

C. [PL 1981, c. 619, §8 (RP).]
[PL 1981, c. 619, §§6-8 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

6. (omitted).

REVISOR'S NOTE: Subsection 6 omitted when section enacted by PL 1977, c. 520, §1

7. Interim care, restriction on placement and transportation.

A. A juvenile taken into interim care may not be placed in a jail or other secure detention or correctional facility intended or used to detain adults accused or convicted of crimes or juveniles accused or adjudicated of juvenile crimes. [PL 1997, c. 752, §28 (AMD).]

B. Notwithstanding paragraph A, a juvenile taken into interim care may be held, if no other appropriate placement is available, in the public sections of a facility described in section 3203-A, subsection 7, paragraph B if there is an adequate staff to supervise the juvenile's activities at all times or in accordance with section 3203-A, subsection 7-A. [PL 1997, c. 752, §29 (AMD).]

C. To the extent practicable, a juvenile taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest. [PL 1977, c. 520, §1 (NEW).]
[PL 1997, c. 752, §§28, 29 (AMD).]

8. Interim care; voluntary services. The Department of Health and Human Services shall inform the juvenile and the juvenile's parent or parents, guardian or legal custodian of social services and encourage them to voluntarily accept social services.
[PL 2019, c. 525, §30 (AMD).]

9. Interim care, identification of juvenile. No fingerprints of a juvenile taken into interim care pursuant to this section may be obtained from the juvenile. Solely for the purpose of restoring a juvenile to his residence, the juvenile's name, address, photograph and other reasonably necessary information may be obtained and transmitted to any appropriate person or agency.
[PL 1977, c. 664, §47 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §47 (AMD). PL 1981, c. 619, §§5-9 (AMD). PL 1985, c. 439, §18 (AMD). PL 1993, c. 354, §12 (AMD). PL 1997, c. 752, §§28,29 (AMD). PL 2003, c. 689, §B6 (REV). PL 2019, c. 525, §§29, 30 (AMD).

§3502. The Department of Corrections and the Department of Health and Human Services 24-hour referral services

1. Emergency placement decisions. Placement referral services shall be provided by the Department of Corrections and Department of Health and Human Services as follows.

A. The Department of Corrections shall provide for a placement referral service, staffed by juvenile community corrections officers for 24 hours a day. This referral service shall make emergency detention or conditional release decisions pursuant to chapter 505 for all juveniles referred to the department by law enforcement officers. [PL 2001, c. 667, Pt. A, §32 (AMD).]

B. The Department of Health and Human Services shall provide for a placement referral service, staffed by personnel 24 hours a day. This referral service shall make emergency placement decisions pursuant to this chapter for all juveniles referred to the department by law enforcement officers. [PL 1981, c. 619, §10 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

[PL 2001, c. 667, Pt. A, §32 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

2. Placement procedures. Emergency placements shall be arranged by juvenile caseworkers or the Department of Health and Human Services' personnel according to procedures and standards jointly adopted by the Department of Corrections and the Department of Health and Human Services. Placement may include voluntary care or short-term emergency services under Title 22, sections 4021 to 4023.

[PL 1985, c. 439, §20 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 733, §1 (AMD). PL 1981, c. 493, §3 (AMD). PL 1981, c. 619, §10 (RPR). PL 1985, c. 439, §§19,20 (AMD). PL 2001, c. 667, §A32 (AMD). PL 2003, c. 689, §B6 (REV).

§3503. Juveniles; voluntary return home

If a juvenile who has been taken into interim care under the provisions of section 3501 and the juvenile's parent or parents, guardian or legal custodian agree to the juvenile's return home, the parent or parents, guardian or legal custodian shall cause the juvenile to be transported home as soon as practicable. If the parent or parents, guardian or legal custodian fails to arrange for the transportation of the juvenile, the juvenile must be transported at the expense of the parent or parents, guardian or legal custodian. [PL 2019, c. 525, §31 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §48 (RPR). PL 2019, c. 525, §31 (AMD).

§3504. Runaway juveniles, shelter and family services needs assessment

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 733, §2 (RP).

§3505. Runaway juveniles, neglect petition

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 733, §2 (RP).

§3506. Runaway juveniles, emancipation

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 733, §§3,4 (AMD). PL 1981, c. 619, §11 (RP).

§3506-A. Emancipation

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Petition for emancipation. If a juvenile is 16 years of age or older and refuses to live in the home provided by the juvenile's parent or parents, guardian or legal custodian, the juvenile may request the District Court in the division in which the juvenile's parent or parents, guardian or legal custodian resides to appoint counsel for the juvenile to petition for emancipation.
[PL 2019, c. 525, §32 (AMD).]

2. Contents of petition. The petition shall state plainly:

A. The facts which bring the juvenile within the court's jurisdiction and which form the basis for the petition; [PL 1981, c. 619, §12 (NEW).]

B. The name, date of birth, sex and residence of the juvenile; and [PL 1981, c. 619, §12 (NEW).]

C. The name and residence of the juvenile's parent or parents, guardian or legal custodian. [PL 2019, c. 525, §33 (AMD).]
[PL 2019, c. 525, §33 (AMD).]

2-A. Mediation. Upon the filing of a petition and prior to a hearing under this section, the court may refer the parties to mediation. Any agreement reached by the parties through mediation on any issues shall be stated in writing, signed by the parties and presented to the court for approval as a court order.
[PL 1989, c. 126, §1 (NEW).]

3. Hearing. On the filing of a petition, the court shall schedule a hearing and shall notify the parent or parents, guardian or custodian of the date of the hearing, the legal consequences of an order of emancipation, the right to be represented by legal counsel and the right to present evidence at the hearing. Notice shall be given in the manner provided in the Maine Rules of Civil Procedure, Rule 4, for service of process.
[PL 1981, c. 619, §12 (NEW).]

4. Order of emancipation. The court shall order emancipation of the juvenile if it determines that:

A. The juvenile has made reasonable provision for the juvenile's room, board, health care and education, vocational training or employment; and [PL 2019, c. 525, §34 (AMD).]

B. The juvenile is sufficiently mature to assume responsibility for the juvenile's own care and it is in the juvenile's best interest to do so. [PL 2019, c. 525, §34 (AMD).]
[PL 2019, c. 525, §34 (AMD).]

5. Denial of petition. If the court determines that the criteria established in subsection 4 are not met, the court shall deny the petition and may recommend that the Department of Health and Human Services provide continuing services and counseling to the family.
[PL 1981, c. 619, §12 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

6. Appeal. Any person named in the petition who is aggrieved by the order of the court may appeal to the Superior Court.
[PL 1981, c. 619, §12 (NEW).]

7. (TEXT EFFECTIVE UNTIL 1/01/22) Public proceeding; exception. Notwithstanding section 3307, subsection 2, paragraph B, the court shall not exclude the public unless the minor or the minor's parent or parents, guardian or custodian, requests that the public be excluded and the minor or

the minor's parent or parents, guardian or custodian, does not object. If the public is excluded, only the parties, their attorneys, court officers and witnesses may be present.
[PL 1989, c. 126, §2 (NEW).]

7. (TEXT EFFECTIVE 1/01/22) Public proceeding; exception. The court may not exclude the public unless the minor or the minor's parent or parents, guardian or legal custodian requests that the public be excluded and the minor or the minor's parent or parents, guardian or legal custodian does not object. If the public is excluded, only the parties, their attorneys, court officers and witnesses may be present.
[PL 2021, c. 365, §24 (AMD); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 1981, c. 619, §12 (NEW). PL 1989, c. 126, §§1,2 (AMD). PL 2003, c. 689, §B6 (REV). PL 2019, c. 525, §§32-34 (AMD). PL 2021, c. 365, §24 (AMD). PL 2021, c. 365, §37 (AFF).

§3507. Runaway juveniles returned from another state

When a juvenile who has left the care of the juvenile's parents, guardian or legal custodian without that person's consent, is returned to Maine from another state, the juvenile must be referred immediately to a juvenile community corrections officer and must be processed according to the provisions of this chapter. [PL 1999, c. 624, Pt. B, §21 (AMD).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1985, c. 439, §21 (AMD). PL 1999, c. 624, §B21 (AMD).

§3508. Responsibility of the Department of Human Services

(REPEALED)

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1979, c. 733, §5 (RP).

CHAPTER 513

COMMITTEE TO MONITOR IMPLEMENTATION OF THE JUVENILE CODE

§3601. Appointment of committee

(REPEALED)

SECTION HISTORY

PL 1979, c. 370, §3 (NEW). PL 1981, c. 493, §2 (AMD). PL 1989, c. 700, §A41 (AMD). PL 1991, c. 377, §23 (AMD). MRSA T. 1 §2501, sub-§15, ¶A (RP).

§3602. Termination of chapter

(REPEALED)

SECTION HISTORY

PL 1979, c. 370, §3 (NEW). MRSA T. 1 §2501, sub-§15, ¶A (RP).

CHAPTER 514

CIVIL REMEDY FOR UNLAWFUL DISCLOSURE OF CONFIDENTIAL RECORDS, INFORMATION

(TEXT EFFECTIVE 1/01/22)

§3701. Civil actions by aggrieved persons authorized

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/01/22)

1. Authorization. A person about whom confidential records or information has been intentionally disclosed when the disclosure was made knowing it was in violation of section 3010, subsection 6, section 3308-A, subsection 7 or section 3308-C, subsection 11 or that person's parent or parents, guardian or legal custodian, may initiate and prosecute in that person's own name and on that person's own behalf a civil action for the relief described in this section.
[PL 2021, c. 365, §25 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Jurisdiction. An action under subsection 1 must be instituted in the District Court for the county where the alleged violator resides or has a principal place of business.
[PL 2021, c. 365, §25 (NEW); PL 2021, c. 365, §37 (AFF).]

3. Relief. A person who brings and prevails in a civil action pursuant to this section is entitled to injunctive relief, reimbursement of court costs and reasonable attorney's fees, an award of actual damages of up to $5,000 and award of punitive damages.
[PL 2021, c. 365, §25 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2021, c. 365, §25 (NEW). PL 2021, c. 365, §37 (AFF).

PART 7

ASSET FORFEITURE

CHAPTER 515

ASSET FORFEITURE

§5801. Definitions

(REPEALED)

SECTION HISTORY

PL 1985, c. 679 (NEW). PL 1987, c. 420, §1 (RP).

§5802. Forfeiture of all property which constitutes the proceeds of criminal enterprise

(REPEALED)

SECTION HISTORY

PL 1985, c. 679 (NEW). PL 1987, c. 420, §1 (RP).

§5803. Equitable distribution of forfeited assets

(REPEALED)

SECTION HISTORY

PL 1985, c. 679 (NEW). PL 1987, c. 420, §1 (RP).

CHAPTER 517

ASSET FORFEITURE

§5821. Subject property

Except as provided in section 5821-A or 5821-B, the following are subject to forfeiture to the State and no property right may exist in them if the owner of the following is convicted of a crime in which the following was involved: [PL 2021, c. 454, §1 (AMD).]

1. Scheduled drugs. All scheduled drugs that have been manufactured, made, created, grown, cultivated, sold, bartered, traded, furnished for consideration, furnished, distributed, dispensed, possessed or otherwise acquired in violation of any law of this State, any other state or of the United States;
[PL 2013, c. 194, §1 (AMD).]

2. Materials related to scheduled drugs. All raw materials, products and equipment of any kind that are used or intended for use in manufacturing, compounding, processing, delivering, cultivating, growing or otherwise creating any scheduled drug in violation of any law of this State, any other state or the United States;
[PL 2013, c. 194, §1 (AMD).]

3. Other property. All property which is used or intended for use as a container for property described in subsection 1 or 2, and all property which is used or intended for use to defend, protect, guard or secure any property or items described in subsection 1 or 2;
[PL 1989, c. 448, §1 (AMD).]

3-A. Firearms and other weapons. Law enforcement officers may seize all firearms and dangerous weapons that they may find in any lawful search for scheduled drugs in which scheduled drugs are found. Except for weapons declared by a court to be forfeited in accordance with section 5826, subsection 9, if the owner of a seized firearm or dangerous weapon is convicted of a crime in which the firearm or dangerous weapon was involved, after notice and opportunity for hearing the firearm or dangerous weapon must be forfeited to the State by the District Court 90 days after a list of the weapons and drugs seized is filed in the District Court in the district in which the weapons and drugs were seized. A weapon may not be forfeited unless the State satisfies the court, by a preponderance of evidence, that the owner of the firearm or dangerous weapon was convicted of a crime in which the firearm or dangerous weapon was involved.

A. [PL 2021, c. 454, §2 (RP).]

B. [PL 2021, c. 454, §2 (RP).]

C. [PL 2021, c. 454, §2 (RP).]

Post-hearing procedures are as provided in section 5822.

A confiscated or forfeited firearm that was confiscated or forfeited because it was used to commit a homicide must be destroyed by the State unless the firearm was stolen and the rightful owner was not the person who committed the homicide, in which case the firearm must be returned to the owner if ascertainable;
[PL 2021, c. 454, §2 (AMD).]

3-B. Forfeiture of firearms used in the commission of certain acts. In addition to the provisions of subsection 3-A and Title 17-A, section 1504, this subsection controls the forfeiture of firearms used in the commission of certain acts.

A. Except as provided in paragraph B, a firearm is subject to forfeiture to the State if the firearm is used by a person who is the owner of the firearm to commit a criminal act that in fact causes

serious bodily injury or death to another human being and, following that act, the person either commits suicide or attempts to commit suicide and the attempt results in the person's becoming incompetent to stand trial or the person is killed or rendered incompetent to stand trial as the result of a justifiable use of deadly force by a law enforcement officer. Except as provided in paragraph B, a property right does not exist in the firearm subject to forfeiture. [PL 2021, c. 454, §3 (AMD).]

B. A firearm that is used in the commission of a criminal act described in paragraph A is exempt from forfeiture under this subsection if the firearm belongs to another person who is the rightful owner from whom the firearm has been stolen and the other person is not a principal or accomplice in the criminal act. In that case, the firearm must be transferred to the other person unless that person is otherwise prohibited from possessing a firearm under applicable law. [PL 2013, c. 328, §2 (NEW).]

A firearm subject to forfeiture pursuant to this subsection that is declared by a court to be forfeited pursuant to section 5826, subsection 9 must be promptly destroyed, or caused to be promptly destroyed, by the law enforcement agency that has custody of the firearm;
[PL 2021, c. 454, §3 (AMD).]

4. Conveyances. All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport or in any manner to facilitate the transportation, sale, trafficking, furnishing, receipt, possession or concealment of property described in subsection 1 or 2, except that:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under this section, unless it appears that the owner or other person in charge of the conveyance was a consenting party or had knowledge of that violation of law; and [PL 1987, c. 420, §2 (NEW).]

B. No conveyance may be forfeited under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted by any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this State, any other state or of the United States; [PL 1987, c. 420, §2 (NEW).]
[PL 1987, c. 420, §2 (NEW).]

4-A. Conveyances used in violation of litter laws. All conveyances, including aircraft, watercraft, vehicles, vessels, containers or cranes that are used, or attempted to be used, to dump more than 500 pounds or more than 100 cubic feet of litter in violation of Title 17, section 2264-A;
[PL 2003, c. 452, Pt. I, §1 (AMD); PL 2003, c. 452, Pt. X, §2 (AFF).]

5. Records. All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of Title 17-A, chapter 45;
[PL 1987, c. 420, §2 (NEW).]

6. Money instruments. Except as provided in paragraph A, all money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45; all proceeds traceable to such an exchange; and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45.

A. No property may be forfeited under this subsection, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner; [PL 1989, c. 302, §1 (AMD).]
[PL 2013, c. 194, §3 (AMD).]

7. Real property. Except as provided in paragraph A, all real property, including any right, title or interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended for use, in any manner or part, to commit or to facilitate the commission of a violation of

Title 17-A, section 1103, 1105-A, 1105-B or 1105-C that is a Class A, Class B or Class C crime, with the exception of offenses involving marijuana.

A. Property may not be forfeited under this subsection, to the extent of an interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. When an owner of property that is that person's primary residence proves by a preponderance of the evidence that the owner is the spouse or minor child of the coowner of the primary residence who has used or intended to use the residence, in any manner or part, to commit or facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B or 1105-C, the State shall bear the burden of proving knowledge or consent of the spouse or minor child by a preponderance of the evidence; [PL 2013, c. 194, §4 (AMD).]

[PL 2013, c. 194, §4 (AMD).]

7-A. Computers. Computers, as defined in Title 17-A, section 431, subsection 2, and computer equipment, including, but not limited to, printers and scanners, that are used or are attempted to be used in violation of Title 17-A, section 259-A;

A. [PL 2021, c. 454, §4 (RP).]

[PL 2021, c. 454, §4 (AMD).]

8. Bona fide lienholders.

[PL 2007, c. 684, Pt. C, §1 (RP); PL 2007, c. 684, Pt. H, §1 (AFF).]

9. Assets in human trafficking offenses. All assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C;

[PL 2019, c. 97, §2 (AMD).]

10. Assets in sex trafficking offenses. All assets, including money instruments, personal property and real property, used or intended for use in or traceable to an aggravated sex trafficking offense as defined in Title 17-A, section 852 or a sex trafficking offense as defined in Title 17-A, section 853; and

[PL 2019, c. 97, §3 (NEW).]

11. Assets in criminal forced labor offenses. All assets, including money instruments, personal property and real property, used or intended for use in or traceable to a criminal forced labor offense as defined in Title 17-A, section 304 or an aggravated criminal forced labor offense as defined in Title 17-A, section 305.

[PL 2019, c. 97, §3 (NEW).]

A forfeiture under this section of property encumbered by a perfected bona fide security interest is subject to the interest of the secured party if the party neither had knowledge of nor consented to the act or omission upon which the right of forfeiture is based. [PL 2007, c. 684, Pt. C, §3 (NEW); PL 2007, c. 684, Pt. H, §1 (AFF).]

Unless seized property under this section includes United States currency in excess of $100,000, a law enforcement agency, prosecuting authority, state agency, county or municipality may not enter into an agreement to transfer or refer property seized under this section to a federal agency directly, indirectly, through adoption, through an intergovernmental joint task force or by other means that circumvent the provisions of this section. [PL 2021, c. 454, §5 (NEW).]

SECTION HISTORY

PL 1987, c. 420, §2 (NEW). PL 1989, c. 302, §§1-3 (AMD). PL 1989, c. 448, §§1,2 (AMD). PL 1989, c. 820, §1 (AMD). IB 1999, c. 1, §2 (AMD). PL 1999, c. 349, §§1,2 (AMD). PL 2001, c. 348, §2 (AMD). PL 2003, c. 452, §I1 (AMD). PL 2003, c. 452, §X2 (AFF). PL 2003, c. 688, §B2 (AMD). PL 2007, c. 684, Pt. C, §§1-3 (AMD). PL 2007, c. 684, Pt. H, §1 (AFF). PL 2011, c. 465, §§1-4 (AMD). PL 2011, c. 597, §1 (AMD). PL 2013, c. 194, §§1-4 (AMD). PL 2013, c.

328, §§1, 2 (AMD). PL 2013, c. 588, Pt. A, §19 (AMD). PL 2017, c. 409, Pt. B, §1 (AMD). PL 2019, c. 97, §§1-3 (AMD). PL 2019, c. 113, Pt. C, §52 (AMD). PL 2021, c. 454, §§1-5 (AMD).

§5821-A. Property not subject to forfeiture based on medical use of marijuana

Property is not subject to forfeiture under this chapter if the activity that subjects the person's property to forfeiture is medical use of marijuana and the person meets the requirements for medical use of marijuana under Title 22, chapter 558-C. [IB 2009, c. 1, §1 (AMD).]

SECTION HISTORY

IB 1999, c. 1, §3 (NEW). IB 2009, c. 1, §1 (AMD).

§5821-B. Property not subject to forfeiture based on adult use of marijuana

Property is not subject to forfeiture under this chapter if the activity that subjects the person's property to forfeiture is the adult use of marijuana pursuant to a license issued under Title 28-B, chapter 1 or relating to the personal adult use of marijuana pursuant to Title 28-B, chapter 3 and the person meets all applicable requirements for the adult use of marijuana pursuant to Title 28-B. [PL 2017, c. 409, Pt. B, §2 (NEW).]

SECTION HISTORY

PL 2017, c. 409, Pt. B, §2 (NEW).

§5822. Procedure

1. Filing of petition.

[PL 2021, c. 454, §6 (RP).]

2. Jurisdiction and venue.

[PL 2021, c. 454, §7 (RP).]

3. Type of action.

[PL 2021, c. 454, §8 (RP).]

4. Hearings.

[PL 2021, c. 454, §9 (RP).]

5. Default proceedings.

[PL 2021, c. 454, §10 (RP).]

6. Preliminary process. Any Justice of the Supreme Judicial Court or the Superior Court, Judge of the District Court or justice of the peace may issue, at the request of the attorney for the State, ex parte, any preliminary order or process as is necessary to seize or secure the property for which forfeiture is or will be sought and to provide for its custody. That order may include an order to a financial institution or to any fiduciary or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. Process for seizure of the property may issue only upon a showing of probable cause that the property is subject to forfeiture under section 5821. The application for process and the issuance, execution and return of process is subject to applicable state law. Any property subject to forfeiture under this section may be seized upon process, except that seizure without the process may be made when:

A. The seizure is incident to an arrest with probable cause, a search under a valid search warrant or an inspection under a valid administrative inspection warrant; [PL 1987, c. 420, §2 (NEW).]

B. The property subject to seizure has been the subject of a prior judgment in favor of the State in a forfeiture proceeding under this section or any other provision of the laws of this State, any other state or the United States; [PL 1987, c. 420, §2 (NEW).]

C. There is probable cause to believe that the property has been directly or indirectly dangerous to health or safety; or [PL 1987, c. 420, §2 (NEW).]

D. There is probable cause to believe that the property has been used or is intended to be used in violation of any criminal law of this State, any other state or the United States. [PL 1987, c. 420, §2 (NEW).]

[RR 1999, c. 2, §18 (COR); RR 1999, c. 2, §19 (AFF).]

7. Rules. After January 1, 1988, the prosecution of proceedings under this chapter shall be governed by rules adopted or amended by the Attorney General, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. These rules shall provide standards for prosecution, settlement, approval of settlement and equitable transfer of forfeited property.

[PL 1987, c. 420, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 420, §2 (NEW). PL 1987, c. 648 (AMD). PL 1987, c. 736, §26 (AMD). PL 1989, c. 302, §4 (AMD). PL 1991, c. 461, §§1,2 (AMD). RR 1999, c. 2, §18 (COR). RR 1999, c. 2, §19 (AFF). PL 1999, c. 408, §1 (AMD). PL 2021, c. 454, §§6-10 (AMD).

§5823. Perfecting titles to forfeited vehicles

1. Vehicle report. Any officer, department or agency seizing any vehicle subject to forfeiture under section 5821, shall file a report of seizure with the Attorney General or a district attorney having jurisdiction over the vehicle. This report must be filed at least 21 days from the date of seizure. The report shall be labeled "Vehicle Report" and shall include:

A. A description of the vehicle; [PL 1987, c. 420, §2 (NEW).]

B. The place and date of seizure; [PL 1987, c. 420, §2 (NEW).]

C. The name and address of the owner or operator of the vehicle at the time of seizure; and [PL 1987, c. 420, §2 (NEW).]

D. The name and address of any other person who appears to have an ownership interest in the vehicle. [PL 1987, c. 420, §2 (NEW).]

The seizing officer, department or agency must make a diligent search and inquiry as to ownership of the vehicle. The filing of a vehicle report is conclusive evidence that a diligent search and inquiry were completed.

[PL 1987, c. 420, §2 (NEW).]

2. Procedure.

[PL 2021, c. 454, §11 (RP).]

3. Defaced or missing identification numbers. Any vehicle disposed of under this section that does not have a vehicle identification number or the number is illegible must be issued a special number by the Secretary of State under Title 29-A, section 407.

[PL 1995, c. 65, Pt. A, §50 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

4. Subsequent actions. Neither replevin or any other action to recover any interest in any vehicle disposed of under this section may be maintained in any court of this State.

[PL 1987, c. 420, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 420, §2 (NEW). PL 1991, c. 461, §3 (AMD). PL 1995, c. 65, §A50 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 2021, c. 454, §11 (AMD).

§5824. Equitable transfer of forfeited assets

In the case of any asset decreed forfeit under this chapter or under Title 25, to any entity other than the General Fund, transfer of title to the asset shall not occur until the transfer is approved by: [PL 1987, c. 420, §2 (NEW).]

1. State; agency or department. In the case of an agency or department of the State, the Governor or the Attorney General;
[PL 1999, c. 408, §2 (AMD).]

2. County; agency or department. In the case of an agency or department of a county, a majority of the commissioners of the county; and
[PL 1987, c. 420, §2 (NEW).]

3. Municipality; agency or department. In the case of an agency or department of a municipality, the municipal officers of the municipality.
[PL 1999, c. 408, §2 (AMD).]

SECTION HISTORY

PL 1987, c. 420, §2 (NEW). PL 1999, c. 408, §2 (AMD).

§5825. Records; reports

1. Records of forfeited property. Any officer to whom or department or agency to which property subject to forfeiture under section 5821 has been ordered forfeited shall maintain records showing:

A. The name of the court that ordered each item of property to be forfeited to the officer, department or agency; [PL 2019, c. 651, §1 (AMD).]

B. [PL 2019, c. 651, §1 (RP).]

C. [PL 2019, c. 651, §1 (RP).]

D. The date on which each item of property was ordered forfeited to the officer, department or agency; and [PL 2019, c. 651, §1 (AMD).]

E. A description of each item of property forfeited to the officer, department or agency. [PL 2019, c. 651, §1 (AMD).]

The records must be open to inspection. A copy of each record must be filed with the Department of Public Safety.
[PL 2021, c. 454, §12 (AMD).]

2. Department of Public Safety. A report of the transfer of property previously held by the Department of Public Safety and then ordered by a court to be forfeited to another governmental entity must be provided upon request to the Commissioner of Administrative and Financial Services and the Office of Fiscal and Program Review. The report must account for any such transfer that occurred during the 12 months preceding such a request. The Department of Public Safety shall maintain all records filed with the department pursuant to subsection 1. The Department of Public Safety shall make all records under this subsection available on a publicly accessible website.
[PL 2021, c. 454, §12 (AMD).]

SECTION HISTORY

PL 1987, c. 420, §2 (NEW). PL 1991, c. 780, §Y116 (AMD). RR 2017, c. 1, §9 (COR). PL 2019, c. 651, §1 (AMD). PL 2021, c. 454, §12 (AMD).

§5826. Criminal forfeiture

1. Property subject to criminal forfeiture. Notwithstanding any other provision of law, a person convicted of a crime that subjects the person to forfeiture of property under section 5821 forfeits to the State all rights, privileges, interests and claims to that property. All rights, privileges, interest and title

in property subject to forfeiture under this section vests in the State upon the commission of the act giving rise to forfeiture pursuant to section 5821.
[PL 2019, c. 97, §4 (AMD).]

2. Commencement of criminal forfeiture action. Property subject to forfeiture may be proceeded against by indictment of the grand jury or by complaint in the District Court in any related criminal proceeding in which a person with an interest in the property has been simultaneously charged with a crime that subjects the person to forfeiture of property under section 5821. At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that property is subject to criminal forfeiture. Discovery in the criminal action must be as provided for by the Maine Rules of Unified Criminal Procedure.
[PL 2019, c. 97, §5 (AMD).]

3. Seizure upon indictment. Property subject to forfeiture that has been indicted by the grand jury pursuant to this section may be seized pursuant to section 5822, subsection 6, except that real property subject to forfeiture pursuant to section 5821, subsection 7 may not be seized without prior notice to and opportunity to be heard by all owners of record or upon a finding by probable cause that prior notice to one or more of the owners is likely to result in the destruction, diminution of value or alienation of interest of the property.
[PL 1995, c. 421, §1 (NEW).]

4. Trial proceedings. Trial against property charged by indictment, information or complaint may be by jury and must be held in a single proceeding together with the trial of the related criminal violation.

A. Forfeiture of the property must be proved by the State by a preponderance of the evidence. [PL 1999, c. 408, §3 (NEW).]

B. The court, in its discretion, may allow any defendant with an interest in property charged pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. [PL 1999, c. 408, §3 (NEW).]

C. At trial by jury, the court, upon motion of a defendant or the State, shall separate the trial of the matter against the defendant from the trial of the matter against the property subject to criminal forfeiture. If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of defendants to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues. If the jury finds a defendant guilty of the related criminal offense, the court shall instruct and submit to the jury the issue of the forfeiture of the property. [PL 1999, c. 408, §3 (NEW).]
[PL 1999, c. 408, §3 (AMD).]

5. Ancillary hearing of 3rd-party interests. A person not charged in the indictment may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property, within 30 days of the date of receipt of the notice, may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the

petitioner's claim and the relief sought. Upon the filing of any petition for hearing, the hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require but in no event may the hearing be scheduled later than 6 months after the petition is filed or after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than in any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the acts that gave rise to the forfeiture of the property under this section; or [PL 1995, c. 421, §1 (NEW).]

B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section. [PL 1995, c. 421, §1 (NEW).]

[PL 2011, c. 559, Pt. A, §14 (AMD).]

6. Final order of disposition of property; public education campaign. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record and following the court's disposition of all petitions for hearing timely filed by 3rd parties, the State has clear title to property that is the subject of the indictment, information or complaint. The final order must provide for the deposit of the property or the proceeds from the disposition of the property, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, in the General Fund, except that, to the extent that the court finds it reasonable, the court may order forfeiture of as much of the property as is appropriate, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, to a municipality, county or state agency that has made a substantial contribution to the investigation or prosecution of a related criminal case or, upon request of the investigating agency or the prosecuting agency, to a law enforcement agency in this State that provides case management and other social services to persons affected by crimes that are subject to forfeiture of property under this chapter.

[PL 2019, c. 97, §6 (AMD).]

7. Default proceedings. Upon motion of the State, the court having jurisdiction over a criminal forfeiture matter may declare a default judgment of forfeiture if the court finds as follows:

A. By clear and convincing evidence that:

(1) There was probable cause to support the seizure of the property at the time of its seizure;

(2) The interested party has knowledge of the seizure of the property or the property was seized under circumstances in which a reasonable person would have knowledge of the seizure of that person's property; and

(3) The interested party has failed to appear for any court appearance in accordance with Title 17-A, chapter 45 for a violation that forms the basis of the forfeiture, and that a warrant of arrest for the interested party for such failure to appear has been outstanding for 6 months or more; and [PL 1999, c. 395, §1 (NEW).]

B. By a preponderance of the evidence that the State is entitled to a judgment of forfeiture pursuant to chapter 517. [PL 1999, c. 395, §1 (NEW).]

The State may meet its burden under paragraphs A and B by presentation of testimony or affidavit.

The interested party has 30 days from the date of the declaration of default judgment of forfeiture to appear before the court in person, submit to its jurisdiction on the companion criminal charge and to petition the court to remove the default judgment.

Post-default proceedings are governed by section 5825.
[PL 1999, c. 395, §1 (NEW).]

7. (REALLOCATED TO T. 15, §5826, sub-§8) Equitable transfer of forfeited assets.
[RR 1999, c. 1, §24 (RAL); PL 1999, c. 408, §4 (NEW).]

8. (REALLOCATED FROM T. 15, §5826, sub-§7) Equitable transfer of forfeited assets. In the case of any asset forfeited under this section to any entity other than the State, transfer of title to the asset may not occur until the transfer is approved by:

A. In the case of an agency or department of a county, a majority of the commissioners of the county; and [RR 1999, c. 1, §24 (RAL).]

B. In the case of an agency or department of a municipality, the municipal officers of the municipality. [RR 1999, c. 1, §24 (RAL).]

When property is forfeited and transferred to a municipality in accordance with this section, the municipal officers of the municipality shall determine the disposition of the property. When property is forfeited and transferred to a county in accordance with this section, the county commissioners shall determine the disposition of the property.
[RR 1999, c. 1, §24 (RAL).]

9. Exceptions to requirement for conviction. A conviction is not required for seizure only as provided in this subsection.

A. Nothing in this chapter prevents property from being forfeited as part of:

(1) A plea agreement; or

(2) A grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution. [PL 2021, c. 454, §13 (NEW).]

B. The court may waive the conviction requirement in this section and grant title to the property to the State if the State files a motion no fewer than 90 days after seizure and shows by a preponderance of the evidence that, before conviction, the defendant:

(1) Died;

(2) Was deported by the United States Government;

(3) Abandoned the property; or

(4) Fled the jurisdiction. [PL 2021, c. 454, §13 (NEW).]
[PL 2021, c. 454, §13 (NEW).]

SECTION HISTORY

PL 1995, c. 421, §1 (NEW). RR 1999, c. 1, §24 (COR). PL 1999, c. 395, §1 (AMD). PL 1999, c. 408, §§3,4 (AMD). PL 2011, c. 559, Pt. A, §14 (AMD). PL 2015, c. 431, §33 (AMD). PL 2017, c. 460, Pt. F, §1 (AMD). PL 2019, c. 97, §§4-6 (AMD). PL 2021, c. 454, §13 (AMD).

§5827. Construction

The provisions of this chapter must be liberally construed to effectuate its remedial purposes. [PL 1995, c. 421, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 421, §1 (NEW).

§5828. Post-seizure proceedings

1. Prompt post-seizure hearing. This subsection governs post-seizure proceedings for assets seized pursuant to this chapter.

A. Following the seizure of property, a defendant or any person with an interest in the property has a right to a prompt post-seizure hearing. [PL 2021, c. 454, §14 (NEW).]

B. A person with an interest in the property may petition the court for a hearing. [PL 2021, c. 454, §14 (NEW).]

C. At the court's discretion, the court may hold a prompt post-seizure hearing:

(1) As a separate hearing; or

(2) At the same time as a probable-cause determination, a post-arraignment hearing or other pretrial hearing. [PL 2021, c. 454, §14 (NEW).]

D. A party, by agreement of all parties or for good cause, may move for one extension of the hearing date of no more than 10 days. Any motion may be supported by affidavits or other submissions. [PL 2021, c. 454, §14 (NEW).]

E. The court shall order the return of seized property if it finds:

(1) The seizure was invalid;

(2) A criminal charge has not been filed and no extension of the filing period established under this section is available;

(3) The property is not reasonably required to be held as evidence; or

(4) The final judgment likely will be in favor of the claimant. [PL 2021, c. 454, §14 (NEW).] [PL 2021, c. 454, §14 (NEW).]

SECTION HISTORY

PL 2021, c. 454, §14 (NEW).

PART 8

VICTIMS' RIGHTS

CHAPTER 520

VICTIM INVOLVEMENT

§6101. Victim involvement in criminal proceedings

1. Notice to victims. Whenever practicable, the attorney for the State shall make a good faith effort to inform the victims and families of victims of crimes of domestic violence and sexual assault and crimes in which the victim or the victim's family suffered serious physical trauma or serious financial loss of:

A. The victim advocate and the victims' compensation fund pursuant to Title 5, chapter 316-A; [PL 1995, c. 680, §2 (AMD).]

B. The victim's right to be advised of the existence of a negotiated plea agreement before that agreement is submitted to the court pursuant to Title 17-A, section 2103; [PL 2019, c. 113, Pt. C, §53 (AMD).]

C. The time and place of the trial, if one is to be held; [PL 1993, c. 675, Pt. A, §3 (NEW).]

D. The victim's right to make a statement or submit a written statement at the time of sentencing pursuant to Title 17-A, section 2104 upon conviction of the defendant; and [PL 2019, c. 113, Pt. C, §54 (AMD).]

E. The final disposition of the charges against that defendant. [PL 1993, c. 675, Pt. A, §3 (NEW).]

[PL 2019, c. 113, Pt. C, §§53, 54 (AMD).]

2. Notice to court. Whenever practicable, the attorney for the State shall make a good faith effort to inform the court about the following:

A. If there is a plea agreement, the victim's or the victim's family's position on the plea agreement; or [PL 1995, c. 680, §2 (AMD).]

B. If there is no plea agreement, the victim's or the victim's family's position on sentencing. [PL 1993, c. 675, Pt. A, §3 (NEW).]

[PL 1995, c. 680, §2 (AMD).]

SECTION HISTORY

PL 1993, c. 675, §A3 (NEW). PL 1995, c. 680, §2 (AMD). PL 2019, c. 113, Pt. C, §§53, 54 (AMD).