

## CHAPTER 63

### SENTENCES OF IMPRISONMENT

#### **§1601. Definite term of imprisonment required**

In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment, the court shall set a definite term of imprisonment. [PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1602. Sentencing procedure**

**1. Class A, Class B or Class C crimes.** In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment for a Class A, Class B or Class C crime, in setting the appropriate length of that term as well as any unsuspended portion of that term accompanied by a period of probation or administrative release, the court shall employ the following 3-step process.

A. First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual. [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest. [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**2. Crime of murder.** In imposing a sentence pursuant to section 1603 for the crime of murder, the court shall employ only the first 2 steps of the sentencing process as specified in subsection 1, paragraphs A and B.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**3. Imposition of supervised release after imprisonment for violation of gross sexual assault.** When the court imposes a period of supervised release after imprisonment for a violation of section 253, subsection 1, paragraph C as required by section 1881, subsection 1 or chooses to impose a period of supervised release after imprisonment for any other violation of section 253, as authorized by section 1881, subsection 2, the court, after employing the first 2 steps of the sentencing process as specified in subsection 1, paragraphs A and B, shall determine the appropriate period of supervised release to follow the maximum term of imprisonment.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1603. Imprisonment for crime of murder**

**1. Sentence.** A person convicted of the crime of murder must be sentenced to imprisonment for life or for any term of years that is not less than 25. The sentence of the court must specify the length of the sentence to be served and must commit the person to the Department of Corrections. [PL 2019, c. 113, Pt. A, §2 (NEW).]

**2. Factors of domestic violence or victim's age or pregnancy.** In setting a term of imprisonment pursuant to subsection 1, the court shall assign special weight to each of the following 3 factors as they relate to the sentencing procedure in section 1602, subsection 2:

A. That the victim is a child who had not in fact attained 6 years of age at the time the crime was committed; [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. That the victim is a woman whom the convicted individual knew or had reasonable cause to believe to be in fact pregnant at the time the crime was committed; and [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. That the victim is a family or household member as defined in Title 19-A, section 4002, subsection 4 who is a victim of domestic violence committed by the convicted individual. [PL 2019, c. 113, Pt. A, §2 (NEW).]

This subsection may not be construed to restrict a court in setting a term of imprisonment from considering the age of the victim in other circumstances when relevant.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### §1604. Imprisonment for crimes other than murder

**1. Maximum terms of imprisonment dependent on crime class.** Unless a different maximum term of imprisonment is specified by statute, the maximum term of imprisonment is as follows:

A. In the case of a Class A crime, 30 years; [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. In the case of a Class B crime, 10 years; [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. In the case of a Class C crime, 5 years; [PL 2019, c. 113, Pt. A, §2 (NEW).]

D. In the case of a Class D crime, less than one year; or [PL 2019, c. 113, Pt. A, §2 (NEW).]

E. In the case of a Class E crime, 6 months. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**2. Exceptions to maximum term of imprisonment based on crime class.** Notwithstanding subsection 1:

A. In the case of the Class A crime of aggravated attempted murder, the court shall set a term of imprisonment under section 152-A, subsection 2 of life or a definite period of any term of years; [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. If the State pleads and proves that the defendant is a repeat sexual assault offender, the court may set a definite term of imprisonment under section 253-A, subsection 1 for any term of years; and [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. In the case of the Class A crime of gross sexual assault against an individual who had not yet attained 12 years of age, the court shall set a definite term of imprisonment under section 253-A, subsection 2 for any term of years. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**3. Mandatory minimum term of imprisonment for crime with use of firearm against an individual.** If the State pleads and proves that a Class A, B or C crime was committed with the use of

a firearm against an individual, the minimum sentence of imprisonment, which may not be suspended, is as follows:

- A. In the case of a Class A crime, 4 years; [PL 2019, c. 113, Pt. A, §2 (NEW).]
- B. In the case of a Class B crime, 2 years; and [PL 2019, c. 113, Pt. A, §2 (NEW).]
- C. In the case of a Class C crime, one year. [PL 2019, c. 113, Pt. A, §2 (NEW).]

For purposes of this subsection, the applicable sentencing class is determined in accordance with subsection 5, paragraph A.

This subsection does not apply if the State pleads and proves criminal threatening or attempted criminal threatening, as defined in section 209, or terrorizing or attempted terrorizing, as defined in section 210, subsection 1, paragraph A.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**4. Mandatory minimum sentence of imprisonment for certain drug crimes.** For an individual convicted of violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A, except as otherwise provided in section 1125, subsections 2 and 3, the court shall impose a minimum sentence of imprisonment, which may not be suspended, as provided in section 1125, subsection 1.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**5. Circumstances elevating class of crime.** The following circumstances elevate the class of a crime.

A. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon, then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use must be assigned special weight by the court in exercising its sentencing discretion. This paragraph does not apply to a violation or an attempted violation of section 208, to any other offenses to which use of a dangerous weapon serves as an element or to any offense for which the sentencing class is otherwise elevated because the actor or an accomplice to that actor's or accomplice's knowledge was armed with a firearm or other dangerous weapon. [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 12, 13, 27 or 35, excluding section 853-A; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, or an attempt of any such crime was committed, the individual had 2 or more prior convictions under chapter 9, 11, 12, 13, 27 or 35, excluding section 853-A; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C, or for an attempt of any such crime, or for engaging in substantially similar conduct in another jurisdiction, the sentencing class for the crime is one class higher than it would otherwise be.

(1) In the case of a Class A crime, the sentencing class is not elevated, but the prior record must be assigned special weight by the court when imposing a sentence.

(2) Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, for violations under chapter 11, the dates of prior convictions may have occurred at any time.

This paragraph does not apply to section 210-A if the prior convictions have already served to elevate the sentencing class under section 210-A, subsection 1, paragraph C or E or any other offense in which prior convictions have already served to elevate the sentencing class. [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. The sentencing class for a crime that is pled and proved and is subject to elevation pursuant to both paragraphs A and B may be elevated successively pursuant to both of those paragraphs if the

crime that is pled and proved contains different class elevation factors. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**6. Special weight required for certain aggravating sentencing factors pleaded and proved.**

In exercising its sentencing discretion, a court shall assign special weight to the following aggravating sentencing factors pleaded and proved by the State:

A. In the case of Class A gross sexual assault, the aggravating sentencing factor specified in section 253-A, subsection 3, paragraph A; [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. In the case of gross sexual assault in violation of section 253, subsection 1 or section 253, subsection 2, the aggravating sentencing factor specified in section 253-A, subsection 3, paragraph B; and [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. In the case of sexual exploitation of a minor, the aggravating sentencing factor specified in section 282, subsection 3. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**7. Special weight required for certain aggravating sentencing factors found present by court.**

In exercising its sentencing discretion, the court shall assign special weight to the following aggravating sentencing factors if found by the court.

A. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of aggravated attempted murder, attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a child who had not in fact attained 6 years of age at the time the crime was committed, the court shall assign special weight to this objective fact in determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd and final step in the sentencing process specified in section 1602, subsection 1, paragraph C. This paragraph may not be construed to restrict a court in setting a sentence from considering the age of the victim in other circumstances when relevant. [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of aggravated attempted murder, attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a woman who the convicted individual knew or had reasonable cause to believe to be in fact pregnant at the time the crime was committed, the court shall assign special weight to this fact in determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd and final step in the sentencing process specified in section 1602, subsection 1, paragraph C. This paragraph may not be construed to restrict a court in setting a sentence from considering the fact that the victim was pregnant in other circumstances when relevant. [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of a Class C or higher crime, the victim of which was at the time of the commission of the crime in fact being stalked by that individual, the court shall assign special weight to this objective fact in determining the basic sentence in the first step of the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective

victim impact caused by the stalking in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1605. Suspension of all or part of the term of imprisonment imposed**

Unless the law that the individual is convicted of violating expressly provides that an authorized term of imprisonment may not be suspended, if the individual is eligible for probation as authorized by chapter 67, subchapter 1 or administrative release as authorized by chapter 67, subchapter 2, a sentencing court may suspend the authorized term of imprisonment in whole or in part and accompany the suspension with a period of probation, which may not exceed the maximum period of probation authorized for the crime pursuant to section 1804, or a period of administrative release, which may not exceed one year. [PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1606. General inapplicability of deductions under chapter 81 in setting the term of imprisonment**

If a court imposes a sentencing alternative pursuant to section 1502 that includes a term of imprisonment, in setting the appropriate length of that term, as well as an unsuspended portion of that term, if any, the court may not consider the potential impact of deductions under chapter 81 except in the context of a plea agreement in which both parties are recommending to the court a particular disposition under the Maine Rules of Unified Criminal Procedure, Rule 11-A. [PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1607. Prohibition against imprisonment based on incapacity to pay fine**

If a court finds that an individual has met the burden of proving incapacity to pay a fine pursuant to section 1702, subsection 2, the court may not impose a term of imprisonment or any other sentencing alternative involving imprisonment solely for the reason that the individual does not have the present or future capacity to pay the fine. [PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1608. Multiple sentences of imprisonment**

**1. Court to state whether sentence is served concurrently or consecutively; consecutive sentence contingent upon certain factors.** The court shall state in the sentence of imprisonment whether a sentence must be served concurrently with or consecutively to any other sentence previously imposed or to another sentence imposed on the same date. The sentences must be concurrent except that the court may impose the sentences consecutively after considering the following factors:

A. The convictions are for offenses based on different conduct or arising from different criminal episodes; [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. The individual was under a previously imposed suspended or unsuspended sentence and was on probation or administrative release, under incarceration or on a release program or period of

supervised release at the time the individual committed a subsequent offense; [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. The individual had been released on bail when that individual committed a subsequent offense, either pending trial of a previously committed offense or pending the appeal of previous conviction; or [PL 2019, c. 113, Pt. A, §2 (NEW).]

D. The seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes or the seriousness of the criminal record of the individual, or both, require a sentence of imprisonment in excess of the maximum available for the most serious offense. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**2. Limitations on imposition of consecutive terms for crimes in same criminal episode.** An individual may not be sentenced to consecutive terms for crimes arising out of the same criminal episode if:

A. One crime is an included crime of the other; [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. One crime consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other; [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of that conduct; or [PL 2019, c. 113, Pt. A, §2 (NEW).]

D. Inconsistent findings of fact are required to establish the commission of the crimes. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**3. Reason for consecutive sentences must be stated.** If the court decides to impose consecutive sentences, the court shall state its reasons for doing so on the record or in the sentences.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**4. When new sentence is to be served consecutively for individual on probation, administrative release or supervised release.** If an individual has been placed on probation, administrative release or supervised release pursuant to a previously imposed sentence and the court determines that the previously imposed sentence and a new sentence must be served consecutively, the court shall revoke probation or administrative release pursuant to section 1812, subsections 5 and 6 or terminate supervised release pursuant to section 1881, subsection 6. The court may order that the sentence that had been suspended be served at the same institution as that which is specified by the new sentence.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**5. Mandatory resentencing following discovery of previously imposed sentence.** If it is discovered subsequent to the imposition of a sentence of imprisonment that the sentencing court was unaware of a previously imposed sentence of imprisonment that is not fully discharged, the court shall resentence the individual and shall specify whether the sentences are to be served concurrently or consecutively.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**6. Special requirements for individual previously sentenced in another jurisdiction.** If an individual who has been previously sentenced in another jurisdiction has not commenced or completed that sentence, the court may, with consideration of the factors stated in subsection 1, sentence the individual to a term of imprisonment that must be treated as a concurrent sentence from the date of sentencing although the individual is incarcerated in an institution of the other jurisdiction. A concurrent sentence pursuant to this subsection may not be imposed unless the individual being

sentenced consents or unless the individual being sentenced executes, at the time of sentencing, a written waiver of extradition for that individual's return to this State, upon completion of the sentence of the other jurisdiction, if any portion of this State's sentence remains unserved. In the absence of an order pursuant to this subsection requiring concurrent sentences, any sentence of imprisonment in this State commences as provided in section 2303, subsections 1 and 2 and runs consecutively to the sentence of the other jurisdiction.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**7. Sentencing subsequent to probation, administrative release or supervised release.** A court may not impose a sentence of imprisonment, not wholly suspended, to be served consecutively to any split sentence, or to any sentence including supervised release under chapter 67, subchapter 3, previously imposed or imposed on the same date, if the net result, even with the options made available by subsections 4 and 8, section 1804, subsection 12, section 1852, subsection 5 and section 1881, subsection 6, would be to have the individual released from physical confinement to be on probation, administrative release or supervised release for the first sentence and thereafter be required to serve an unsuspended term of imprisonment on the 2nd sentence.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**8. Rearrangement of order of sentences.** A court imposing a sentence of imprisonment to be served consecutively to any other previously imposed sentence that the individual has not yet commenced, in order to comply with subsection 7, may rearrange the order in which the sentences are to be served.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1609. Nonconcurrent sentence for crime attempted or committed while in execution of term of imprisonment**

Notwithstanding section 1608, when an individual subject to an undischarged term of imprisonment is convicted of a crime committed while in execution of any term of imprisonment or of an attempt to commit a crime while in execution of any term of imprisonment, the sentence is not concurrent with any undischarged term of imprisonment. The court may order that any undischarged term of imprisonment be tolled and service of the nonconcurrent sentence commence immediately and the court shall so order if any undischarged term of imprisonment is a split sentence. No portion of the nonconcurrent sentence may be suspended. Any sentence that the convicted individual receives as a result of the conviction of a crime or attempt to commit a crime while in execution of a term of imprisonment must be nonconcurrent with all other sentences. [PL 2019, c. 113, Pt. A, §2 (NEW).]

This section applies to prisoners on supervised community confinement pursuant to Title 34-A, section 3036-A. [PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1610. Place of imprisonment**

**1. Class D or Class E crimes.** The court shall specify a county jail as the place of imprisonment for an individual convicted of a Class D or Class E crime, except that, if a sentence to a term of imprisonment in a county jail is consecutive to or is to be followed by a sentence to a term of imprisonment in the custody of the Department of Corrections, the court imposing either sentence may order that both be served in the custody of the Department of Corrections. If a court imposes consecutive terms of imprisonment for Class D or Class E crimes and the aggregate length of the terms

imposed is one year or more, the court may order that they be served in the custody of the Department of Corrections.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**2. Class A, Class B or Class C crimes.** For an individual convicted of a Class A, Class B or Class C crime the court shall:

A. Specify a county jail as the place of imprisonment if the term of imprisonment is 9 months or less; or [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. Commit the individual to the Department of Corrections if the term of imprisonment is more than 9 months. [PL 2019, c. 113, Pt. A, §2 (NEW).]

[PL 2019, c. 113, Pt. A, §2 (NEW).]

**3. Intermittent service of county jail sentence.** At the request of or with the consent of a convicted individual, the court may order a sentence of imprisonment under this chapter in a county jail, a sentence of probation involving imprisonment in a county jail under chapter 67, subchapter 1 or a sentence of administrative release involving imprisonment in a county jail under chapter 67, subchapter 2 to be served intermittently.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1611. Commitments to Department of Corrections of bound-over juveniles who have not attained 18 years of age at the time of sentencing**

A juvenile who has been bound over, pursuant to Title 15, section 3101, subsection 4, who is subsequently, as to the juvenile crime's adult counterpart, convicted and sentenced to a sentencing alternative involving imprisonment and who has not attained 18 years of age at the time of sentence imposition must be committed to a Department of Corrections juvenile correctional facility for an indeterminate period not to extend beyond the juvenile's 18th birthday to serve the term of imprisonment or any unsuspended portion until discharge from the juvenile correctional facility, and once discharged the juvenile must be transferred to a correctional facility in which adult individuals are confined to serve out the remainder of the imprisonment term or unsuspended portion, if any. [PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

#### **§1612. Tolling of sentence of noncompliant witness**

In the event a witness in a grand jury or criminal proceeding has been ordered confined by a court in the State as a remedial coercive sanction for refusing to comply with an order of the court to testify or provide evidence, and that witness is already in execution of an undischarged term of imprisonment on a sentence in the State, that court may order that the undischarged term of imprisonment be tolled for the duration of the coercive imprisonment. [PL 2019, c. 113, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 129th Maine Legislature and is current through October 1, 2020. The*



*text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.