

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 983

S. P. 332

In Senate, February 24, 1971

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Quinn of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

**AN ACT to Provide Mandatory Penalties for Commission of a Crime with a
Dangerous Weapon.**

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

Sec. 1. R. S., T. 17, § 2, additional. Title 17 of the Revised Statutes is amended by adding a new section 2 to read as follows:

§ 2. Abduction of women while armed with dangerous weapon

Whoever, if armed with a dangerous weapon, takes a woman unlawfully and against her will and by force, menace or duress compels her to marry him or any other person or to be defiled shall be punished by imprisonment for any term of years. Whoever, if armed with a dangerous weapon, takes a woman with intent by such means to compel her to do so shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 2. R. S., T. 17, § 163-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 163-A, to read as follows:

§ 163-A. Dangerous weapon

Any person, if armed with a dangerous weapon, who willfully and maliciously (1) sets fire to (2) burns or (3) causes to be burned any of the buildings or property mentioned in sections 161 to 163 shall be punished by

imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 3. R. S., T. 17, § 166, amended. Section 166 of Title 17 of the Revised Statutes, as enacted by section 2 of chapter 410 of the public laws of 1967, is amended to read as follows:

§ 166. Assault with intent to commit

Whoever assaults another with intent to commit arson, if armed with a dangerous weapon, shall be punished by imprisonment for not more than 10 years; when not so armed, by a fine of not more than \$2,000 or by imprisonment for not more than 5 years less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 4. R. S., T. 17, § 201-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 201-A, to read as follows:

§ 201-A. Dangerous weapon

Whoever, if armed with a dangerous weapon, unlawfully attempts to strike, hit, touch or do any violence to another, however small, in a wanton, willful or angry or insulting manner having an intention and existing ability to do some violence to such person, is guilty of an armed assault. If such attempt is carried into effect, he is guilty of an armed assault and battery and shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 5. R. S., T. 17, § 203, additional. Title 17 of the Revised Statutes is amended by adding a new section 203, to read as follows:

§ 203. Intent to commit felony; dangerous weapon

Whoever, if armed with a dangerous weapon, commits an assault with intent to commit a felony which has not been otherwise described or for which no penalty has been provided shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent

offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 6. R. S., T. 17, § 252, additional. Title 17 of the Revised Statutes is amended by adding a new section 252, to read as follows:

§ 252. Attempt with overt act; dangerous weapon

Whoever, if armed with a dangerous weapon, attempts to commit an offense and does anything towards it, but fails or is interrupted or is prevented in its execution, where no punishment is expressly provided for such attempt, shall, if the offense thus attempted is punishable with imprisonment for life, be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 7. R. S., T. 17, § 751, repealed and replaced. Section 751 of Title 17 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 751. Definition

Whoever breaks and enters in the nighttime with intent to commit a felony or any larceny or, having entered with such intent, breaks in the nighttime a dwelling house, any person being then lawfully therein, is guilty of burglary and shall be punished by imprisonment for any term of years. All burglar tools or implements prepared or designed for committing burglary shall be dealt with as provided in section 1813.

Sec. 8. R. S., T. 17, § 751-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 751-A, to read as follows:

§ 751-A. Dangerous weapon

Whoever, if armed with a dangerous weapon, breaks and enters in the nighttime with intent to commit a felony or any larceny, or having entered with such intent, breaks in the nighttime a dwelling house, any person being then lawfully therein, is guilty of armed burglary and shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted. All burglar tools or implements prepared or designed for committing burglary shall be dealt with as provided in section 1813.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 9. R. S., T. 17, § 752, amended. Section 752 of Title 17 of the Revised Statutes is amended by adding 2 new paragraphs to read as follows:

The imposition or execution of a sentence for a violation of this section, if armed with a dangerous weapon, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 10. R. S., T. 17, § 753, amended. Section 753 of Title 17 of the Revised Statutes is amended by adding 2 new paragraphs to read as follows:

The imposition or execution of a sentence for a violation of this section, if armed with a dangerous weapon, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 11. R. S., T. 17, § 754-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 754-A, to read as follows:

§ 754-A. Dangerous weapon

Whoever, if armed with a dangerous weapon, with intent to commit a felony or any larceny, breaks and enters in the daytime or enters without breaking in the nighttime any dwelling house or breaks and enters any office, bank, shop, store, warehouse, vessel, railroad car of any kind, motor vehicle, aircraft, house trailer or building in which valuable things are kept, any person being lawfully therein and put in fear, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 12. R. S., T. 17, § 1404-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 1404-A, to read as follows:

§ 1404-A. Escape; dangerous weapon

Whoever, if armed with a dangerous weapon, forcibly rescues a prisoner lawfully detained for any criminal offense; or in any way aids him to escape, although such escape is not effected, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or sub-

sequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 13. R. S., T. 17, § 1405-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 1405-A, to read as follows:

§ 1405-A. Escapes from jail; dangerous weapons

Whoever, being lawfully detained in any jail or other place of confinement, except the State Prison, if armed with a dangerous weapon, breaks or escapes therefrom, or attempts to do so, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted. The sentence to such imprisonment shall not be concurrent with any other sentence then being served or thereafter to be imposed upon such escapee.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 14. R. S., T. 17, § 1952, additional. Title 17 of the Revised Statutes is amended by adding a new section 1952, to read as follows:

§ 1952. Dangerous weapon

Whoever, having attained his 20th birthday, if armed with a dangerous weapon, takes any indecent liberty or liberties or indulges in any indecent or immoral practice or practices with the sexual parts or organs of any other person, male or female, who has not attained his or her 16th birthday, either with or without the consent of such male or female person, or, whoever, having attained his 20th birthday, if armed with a dangerous weapon, induces or procures any person who has not attained his or her 16th birthday to take any indecent liberty or liberties or to indulge in any indecent or immoral practice or practices with the sexual parts or organs of any person, male or female, other than the said person who has not attained his or her 16th birthday, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 15. R. S., T. 17, § 2051-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 2051-A, to read as follows:

§ 2051-A. Dangerous weapon

Whoever, if armed with a dangerous weapon, except in the case of a minor

by his parent, kidnaps or unlawfully confines, inveigles, decoys, imprisons, transports or carries another out of the State, or from place to place within it, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 16. R. S., T. 17, § 2551-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 2551-A, to read as follows:

§ 2551-A. Armed with dangerous weapon

Whoever, if armed with a dangerous weapon, unlawfully kills a human being in the heat of passion, on sudden provocation, without express or implied malice aforethought, or commits manslaughter as defined by the common law, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 17. R. S., T. 17, § 2601-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 2601-A, to read as follows:

§ 2601-A. Dangerous weapon

Whoever, if armed with a dangerous weapon, with a malicious intent to maim or disfigure, cuts or maims the tongue, puts out or destroys an eye, cuts or tears off an ear, cuts, slits or mutilates the nose or lip, or cuts off or disables a limb or other member of another person, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 18. R. S., T. 17, § 2602, amended. Section 2602 of Title 17 of the Revised Statutes is amended by adding 2 new paragraphs to read as follows:

The imposition or execution of a sentence for a violation of this section, if armed with a dangerous weapon, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 19. R. S., T. 17, § 2656, amended. Section 2656 of Title 17 of the Revised Statutes is amended by adding 2 new paragraphs to read as follows:

The imposition or execution of a sentence for a violation of this section, if armed with a dangerous weapon, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 20. R. S., T. 17, § 3151-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 3151-A, to read as follows:

§ 3151-A. Dangerous weapon

Whoever, if armed with a dangerous weapon, ravishes and carnally knows any female who has attained her 14th birthday, by force and against her will, or unlawfully and carnally knows and abuses a female child who has not attained her 14th birthday, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 21. R. S., T. 17, § 3154, additional. Title 17 of the Revised Statutes is amended by adding a new section 3154, to read as follows:

§ 3154. —dangerous weapon

Whoever, if armed with a dangerous weapon, assaults a female who has attained her 14th birthday with intent to commit a rape shall be punished by imprisonment for not more than 10 years. If such assault is made on a female who has not attained her 14th birthday, such imprisonment shall be for not less than one nor more than 5 years for the first offense; and such imprisonment shall be for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 22. R. S., T. 17, § 3401-A, additional. Title 17 of the Revised Statutes is amended by adding a new section 3401-A, to read as follows:

§ 3401-A. —dangerous weapon

Whoever, if armed with a dangerous weapon, by force and violence, or by putting in fear, feloniously steals and takes from the person of another property that is the subject of larceny is guilty of robbery and shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 23. R. S., T. 17, § 3402, amended. Section 3402 of Title 17 of the Revised Statutes is amended by adding 2 new paragraphs to read as follows:

The imposition or execution of a sentence for a violation of this section, if armed with a dangerous weapon, shall be punished by imprisonment for not less than one nor more than 5 years for the first offense; and by imprisonment for not less than 2 nor more than 25 years for the 2nd or subsequent offenses for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The imposition or execution of a sentence for violation of this section, if armed with a dangerous weapon, shall be a separate and additional penalty.

Sec. 24. R. S., T. 17, c. 132, additional. Title 17 of the Revised Statutes is amended by adding a new chapter 132, to read as follows:

CHAPTER 132 DEFINITIONS

§ 4001. Definitions

The following words, terms and phrases when used in this Title and in Title 34 shall have the meaning ascribed to them in this section.

1. Armed. "Armed" means armed with a dangerous weapon.

2. Dangerous weapon. "Dangerous weapon" shall include any pistol, revolver, rifle, shotgun, machinegun, automatic and semi-automatic rifle or other firearm as the term is commonly used, or any gun, device or instrument in the nature of a weapon from which may be fired or projected any solid projectile or slug, pellet, missile or bullet or any gas, vapor or other noxious thing by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances; or any other instrument that has the appearance of a firearm even though not capable of discharging a projectile. It shall include, without limitation, blackjack, billy club, metal knuckles, dagger, dirk, knife, stiletto, razor blade, iron claw, grenade bomb or other explosive, or any other instrument or instrumentality capable of being utilized to inflict bodily injury.

Sec. 25. R. S., T. 34, § 710-A, additional. Title 34 of the Revised Statutes is amended by adding a new section 710-A, to read as follows:

§ 710-A. Dangerous weapon

If a convict, sentenced to the State Prison for life, or for a limited term of years, or transferred thereto from the Men's Correctional Center under sections 807 and 808, or committed thereto for safekeeping under Title 15, section 453, if armed with a dangerous weapon, assaults any officer or other person employed in the government thereof, or breaks or escapes therefrom, or forcibly attempts to do so, he may be punished by confinement to hard labor for any term of years, to commence after the completion of his former sentence, or upon termination of such sentence by the State Probation and Parole Board. Said termination shall not take place sooner than the expiration of the parole eligibility hearing date applicable to his former sentence.

The imposition or execution of a sentence for a violation of this section shall not be suspended and probation or parole shall not be granted until the minimum imprisonment fixed by the court shall have been served.

Sec. 26. R. S., T. 34, § 753-A, additional. Title 34 of the Revised Statutes is amended by adding a new section 753-A, to read as follows:

§ 753-A. —dangerous weapon

Whoever, if armed with a dangerous weapon, forcibly rescues or attempts to rescue any convict sentenced to the State Prison, from the legal custody of any officer or other person, or from the State Prison, jail or other place where he is legally confined, shall be punished by imprisonment for not less than 10 nor more than 20 years.

The imposition or execution of a sentence for a violation of this section shall not be suspended and probation shall not be granted.

STATEMENT OF FACT

It is the intent and purpose of this Act to impose a separate and additional penalty upon criminal offenders who carry a gun while committing a crime. The proposed is modeled after federal law which provides that any federal crime committed with a firearm now will be considered 2 crimes and is considered one of the most effective steps taken against crime by Congress.