

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

R. of S.

L.D. 1844

DATE: 4-2-04

(Filing No. H-854)

MINORITY
CRIMINAL JUSTICE AND PUBLIC SAFETY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "B" to H.P. 1370, L.D. 1844, Bill, "An Act To Amend the Maine Criminal Code and Motor Vehicle Laws as Recommended by the Criminal Law Advisory Commission"

Amend the bill in section 7 in that part designated "~~§1158-A.~~" by striking out all of subsection 2 and inserting in its place the following:

'2. Except as provided in subsection 3, a court may not order the forfeiture of a firearm otherwise qualifying for forfeiture under subsection 1 if another person can satisfy the court by a preponderance of the evidence and prior to the imposition of the defendant's sentence that:

A. Other than in the context of either subsection 1, paragraph A, subparagraph (1) or subsection 1, paragraph B relative to murder or any other unlawful homicide crime in which the firearm used is a handgun, the other person, at the time of the commission of the crime, had a right to possess the firearm to the exclusion of the defendant;

B. In the context of subsection 1, paragraph A, subparagraph (1), the other person, at the time of the commission of the crime, had a right to possess the firearm to the exclusion of the defendant; or

C. In the context of subsection 1, paragraph B relating to murder or any other unlawful homicide crime in which the firearm used is a handgun, the other person, at the time of

COMMITTEE AMENDMENT

R. of S

COMMITTEE AMENDMENT "B" to H.P. 1370, L.D. 1844

2 the commission of the crime, was the rightful owner from
3 whom the handgun had been stolen and the other person was
4 not a principal or accomplice in the commission of the crime.

6 3. If another person satisfies subsection 2, paragraph B, a
7 court shall nonetheless order the forfeiture of a firearm
8 otherwise qualifying for forfeiture under subsection 1, paragraph
9 A, subparagraph (1) if the State can satisfy the court by a
10 preponderance of the evidence both that the other person knew or
11 should have known that the defendant was a prohibited person
12 under Title 15, section 393 and that the other person
13 intentionally, knowingly or recklessly allowed the defendant to
14 possess or have under the defendant's control the firearm.'

16 Further amend the bill in section 7 in that part designated
17 "§1158-A." by renumbering the subsections to read consecutively.

18 Further amend the bill in section 8 in subsection 1-B in
19 paragraph A in subparagraph (1) in the 4th line (page 6, line 33
20 in L.D.) by striking out the following: "section" and inserting
21 in its place the following: 'sections 302 and'

22 Further amend the bill in section 10 by striking out all of
23 paragraph A (page 7, lines 7 to 13 in L.D.) and inserting in its
24 place the following:

26 'A. In the case of a Class A crime, except as otherwise
27 specified in paragraph A-1, the court shall set a definite
28 period not to exceed -40- 20 years,---The court may consider
29 a serious criminal history of the defendant and impose a
30 maximum period of incarceration in excess of 20 years based
31 on either the nature and seriousness of the crime alone or
32 on the nature and seriousness of the crime coupled with the
33 serious criminal history of the defendant;'

34 Further amend the bill by inserting after section 10 the
35 following:

36 'Sec. 11. 17-A MRSA §1252, sub-§2, ¶A-1 is enacted to read:
37
38 A-1. In the case of the following Class A crimes, the court
39 shall set a definite period not to exceed 40 years:

- 40 (1) Attempted murder under section 152, subsection 1,
41 paragraph A;
- 42 (2) Felony murder under section 202;
- 43 (3) Manslaughter under section 203, subsection 1,
44 paragraph A;

COMMITTEE AMENDMENT

B. of S

COMMITTEE AMENDMENT "B" to H.P. 1370, L.D. 1844

- 2 (4) Elevated aggravated assault under section 208-B;
- 4 (5) Gross sexual assault under section 253, subsection
 1;
- 6 (6) Kidnapping under section 301, subsection 1,
 paragraph A, subparagraph (2), (3) or (4);
- 8 (7) Robbery under section 651, subsection 1, paragraph
 C or D;
- 10 (8) Arson under section 802, subsection 1, paragraph
 B, subparagraph (2) only when the actor recklessly
 endangers another person; and
- 12 (9) Causing a catastrophe under section 803-A,
 subsection 2.'

20 Further amend the bill by relettering or renumbering any
22 nonconsecutive Part letter or section number to read
 consecutively.

24
26

SUMMARY

28 This amendment is the minority report of the Joint Standing
30 Committee on Criminal Justice and Public Safety. This amendment
32 clarifies the burden of proof in cases regarding forfeiture of
34 firearms, adds the Class D crime of criminal restraint to crimes
36 involving domestic violence for purposes of 2-year sentences of
38 probation and eliminates the 2-tier sentencing system for Class A
40 crimes. The amendment eliminates the constitutional doubts
42 raised by our 2-tier system for Class A crimes by enumerating
44 certain Class A crimes or certain forms of Class A crimes for
46 which a 40-year ceiling is authorized. All other Class A crimes,
 or forms of Class A crimes, are subject to a 20-year sentencing
 ceiling. The Class A crimes and forms of Class A crimes to which
 the 40-year ceiling has application are of a similar nature and
 constitute the most serious antisocial and violent Class A
 crimes. Given the nature of those included, even in the absence
 of serious criminal history or other aggravating circumstances of
 the offender, a period of incarceration in excess of 20 years may
 properly be merited based upon the particular circumstances of
 the crime as committed by the offender when compared against all
 possible means of committing that crime.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1844

**An Act To Amend the Maine Criminal Code and Motor Vehicle Laws as
Recommended by the Criminal Law Advisory Commission**

LR 2693(03)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Minority Report

Fiscal Note

Minor cost increase - General Fund

Correctional and Judicial Impact Statements:

Clarifies probation for certain Class D and E crimes

Clarifies criteria for sentences for certain Class A crimes