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**Findings and Recommendations of the Working Group
Convened to Examine the Advisability of
Implementing Aggravating Sentencing Factors for
Crimes Against People Who Are Homeless
Pursuant to Public Law 2005, Chapter 393**

2006

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January 24, 2006

Honorable Bill Diamond, Senate Chair
Honorable Patricia A. Blanchette, House Chair
Joint Standing Committee on Criminal Justice and Public Safety
State House
Augusta, ME 04333

Dear Senator Diamond, Representative Blanchette, and Members of the Committee:

Pursuant to 2005 Public Law Chapter 393, I am reporting the findings and recommendations of the working group that the Legislature directed that I convene to "examine the advisability of implementing aggravating sentencing factors for crimes against people who are homeless."

Recommendation

Following careful consideration, the working group¹ recommends that the Legislature amend 17-A MRS §1151, sub-§8, ¶B, to add the category of victims targeted by the defendant due to their homelessness, as follows:

The general purposes of the provisions of this part are:

8. To permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of:

B. The selection by the defendant of the person against whom the crime was committed or of the property that was damaged or otherwise affected

¹ The members of the working group are: Neale Duffett, criminal defense lawyer, Portland; Rebekah Smith, lawyer in private practice, Union; Robert Clifford, Associate Justice, Maine Supreme Judicial Court; Hartwell Dowling, Diversion and Rehabilitation Coordinator, Administrative Office of the Courts; Stephanie Anderson, District Attorney for Cumberland County; Evert Fowle, District Attorney for Kennebec and Somerset Counties; Mark Swann, Executive Director, Preble Street; Donna Yellen, Advocacy and Adult Services Coordinator, Preble Street; Steve Huston, Homeless Voices for Justice Community Organizer, Preble Street; and Steve Rowe, Chuck Dow and Thomas Harnett from the Attorney General's Office.

by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability or, sexual orientation or homelessness of that person or of the owner or occupant of that property.

Findings

As the Committee may recall, in the report that my office issued on January 5, 2005, we concluded that non-reporting of crimes against people who are homeless is the key barrier to effectively combating discrimination and criminal activity directed at such individuals. In that report, we made legislative recommendations aimed at dismantling this barrier by improving the relationships between law enforcement agencies and people who are homeless and their advocates. The Legislature enacted those recommendations and further directed the Attorney General and the Commissioner of the Department of Public Safety to explore methods of improving the relationship of law enforcement agencies and people who are homeless as well as their advocates. A report to the Judiciary Committee of the 123rd Maine Legislature on the results of this review and the status of the relationship between law enforcement agencies and people who are homeless and their advocates is due next year. (2005 P.L. Ch. 393)

In response to the most recent Legislative charge to reexamine the advisability of implementing aggravating sentencing factors for crimes against people who are homeless, we have concluded that such an amendment is advisable. Three major factors contributed to this conclusion.

1. The Proposed Amendment Will Contribute to Reducing Barriers to Reporting Criminal Activity Directed at the Homeless

The working group believes that the amendment will help to further dismantle the key barrier of non-reporting of crimes against people who are homeless. While no participant in the working group believes that the amendment will routinely result in longer sentences when the victim of a crime is targeted because he/she is homeless, advocates for people who are homeless strongly believe that the fact that the statute is amended to include homelessness as a factor will lead to greater reporting of criminal activity directed at homeless people. In our 2005 report, we found that people who are homeless do not believe that law enforcement agencies take their complaints seriously. Advocates believe that the adoption of the amendment will help to dispel that belief and persuade people who are homeless to report crimes against them and to participate in the investigatory and prosecutorial process.

2. The Proposed Amendment Will Not Have A Negative Impact on the Criminal Code

Our consultations with district attorneys and their assistants as well as members of the Criminal Law Advisory Commission yielded the consistent response that the amendment will not have negative effects on the criminal code or the sentencing process.

Some commentators cautioned that the amendment may heighten expectations for longer sentences in these crimes as a matter of course or that other groups may come later to try to pass similar amendments for their groups. However, some prosecutors expressed the view that adding homelessness to the sentencing statute will make prosecutors look at these cases in a different light and make them more cognizant of the victim's vulnerable status. On balance, the working group determined that recommending adoption of the amendment will not have a negative impact on the criminal code.

3. The Proposed Amendment Would Send a Powerful Statement of Public Policy

We believe that the amendment will send a strong legislative message to Maine's homeless residents and complement the law enforcement training requirements that were adopted last year. Highlighting homelessness in the sentencing provisions as proposed will increase awareness among police, prosecutors, and the judiciary about the particular vulnerability of people who are homeless. This increased awareness may result in a greater understanding of the unique challenges that the members of our society who are homeless face on a daily basis. Finally, the proposed amendment will send a clear message that the criminal exploitation of Maine's homeless citizens will not be tolerated.

Please let me know if you would like additional information or have questions. Thank you very much.

Sincerely,



G. STEVEN ROWE
Attorney General