

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2217

S. P. 697

In Senate, February 17, 1976

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Collins of Knox.

Cosponsor: Senator Clifford of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

**AN ACT to Revise the Maine Criminal Code as Recommended
by the Criminal Law Revision Commission.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Criminal Code as enacted by the 107th Legislature will become effective March 1, 1976 and several sections have been found to need amendment, correction or clarification; and

Whereas, the prompt correction of these problems will enable all sections of the Criminal Code, as amended, to become effective on the same date, enhancing an orderly transition to the application of the provisions of the new Code; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 17 MRSA § 330, sub-§ 1, as enacted by PL 1973, c. 735, § 3 and as amended by PL 1975, c. 410, § 1, is repealed and the following enacted in place thereof:

1. **Game of chance.** "Game of chance" shall mean a game, contest, scheme or device in which a person stakes or risks something of value for an oppor-

tunity to win something of value and in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestant or participant may also be a factor therein. For the purposes of this chapter, "Beano" or "Bingo" is not to be included in this definition.

Sec. 2. 17 MRSA § 330, sub-§ 8 is enacted to read:

8. **Something of value.** "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

Sec. 3. 17 MRSA § 331, sub-§ 1, as enacted by PL 1973, c. 735, § 3 and as repealed and replaced by PL 1975, c. 424, § 1, is amended to read:

1. **License required.** No person, firm, corporation, association or organization shall hold, conduct or operate a game of chance within the State unless a license therefor is obtained from the Chief of the State Police, or the game of chance constitutes "social gambling" as that term is defined by Title 17-A, section 952, subsection 8.

Sec. 4. 17 MRSA §1461, as enacted by PL 1969, c. 418, is repealed.

Sec. 5. 17 MRSA § 1952, as enacted by PL 1971, c. 539, § 11, is repealed.

Sec. 6. 17 MRSA §§ 2302 and 2303 are repealed.

Sec. 7. 17 MRSA § 3704, as enacted by PL 1967, c. 176, is repealed.

Sec. 8. 17-A MRSA § 1, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. This code shall become effective ~~March~~ April 1, 1976, and it shall apply only to crimes committed subsequent to its effective date. Prosecution for crimes committed prior to the effective date shall be governed by the prior law which is continued in effect for that purpose as if this code were not in force; provided ~~however~~ that in such prosecution the court may, with the consent of the defendant, impose sentence under the provisions of the code. In such cases, the sentencing authority of the court is determined by the application of section 4 to the prior law; provided that the provisions of section 4 relating to civil violations shall not apply to offenses committed prior to the effective date of the code. For purposes of this section, a crime was committed subsequent to the effective date if all of the elements of the crime occurred on or after that date; a crime was not committed subsequent to the effective date if any element thereof occurred prior to that date.

Sec. 9. 17-A MRSA § 2, sub-§ 23, as enacted by PL 1975, c. 499, § 1, is amended to read:

23. "Serious bodily injury" means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or ~~extended~~ substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health.

Sec. 10. 17-A MRSA § 4, sub-§ 2, 3rd sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

In statutes defining crimes which are outside this code and which are not expressly designated as **Class A, Class B, Class C, Class D** or **Class E** crimes, the class depends upon the imprisonment penalty that is provided as follows.

Sec. 11. 17-A MRSA § 4, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

3. If a criminal statute outside the code prohibits defined conduct but does not provide an imprisonment penalty, it is a civil violation when the statute is violated by a human being acting solely on his own behalf. When the violation is by a human being acting, at least in part, on behalf of an organization, the conduct is criminal as to the organization and the human being and is classified pursuant to subsection 4. Civil violations may also be expressly provided for in a statute defining prohibited conduct. All civil violations are expressly declared not to be criminal offenses. They are enforceable by the Attorney General, his representative or any other appropriate public official in a civil action to recover what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the statute.

Sec. 12. 17-A MRSA § 4, sub-§ 4, 1st ¶, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

If, under subsection 3, a statute outside this code defines a crime when the prohibited conduct is committed by an organization or by a human being acting, at least in part, on behalf of the organization, unless the prohibited conduct is expressly declared to constitute a civil violation, the sentencing class is determined by the maximum amount of the fine provided as follows:

Sec. 13. 17-A MRSA § 5, sub-§ 2, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:

A. By allegation in the indictment, or information or complaint; or

Sec. 14. 17-A MRSA § 5, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 15. 17-A MRSA § 9, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. The District Courts shall have jurisdiction to try **civil violations, Class D and E crimes, to impose sentence in class A, B and C crimes in which the District Court has accepted a plea of guilty and to bind over for the grand jury all other crimes.**

Sec. 16. 17-A MRSA § 10, sub-§ 4, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. A risk is substantial and unjustifiable within the meaning of this subsection if the person's failure to ~~perceive~~ **be aware** of it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable and prudent person would observe in the same situation.

Sec. 17. 17-A MRSA § 13, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

§ 13. Other offenses

1. The existence of a crime other than the one charged, but based on the same conduct or arising from the same criminal episode, for which a person may be prosecuted, whether that crime is a lesser or greater crime as to elements or sentencing classification, shall not preclude prosecution for the offense charged unless a contrary legislative intent plainly appears.

2. The court is not required to instruct the jury concerning a lesser offense, unless on the basis of the evidence there is a rational basis for the jury finding the defendant guilty of such lesser offense.

Sec. 18. 17-A MRSA § 14, as enacted by PL 1975, c. 499, § 1, is amended to read:

§ 14. Separate trials

A defendant shall not be subject to separate trials in the venue of a single court for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses were known to the appropriate prosecuting officer at the time of the commencement of the first trial and were within the jurisdiction venue of a single court, unless the court ordered such separate trials on its own motion or on application of the prosecuting attorney or of the defendant, orders any such charge to be tried separately, if it is satisfied that justice so requires.

Sec. 19. 17-A MRSA §§ 15 and 16 are enacted to read:

§ 15. Arrests

1. Except as otherwise specifically provided, a law enforcement officer shall have the authority to arrest without a warrant:

A. Any person as to whom he has probable cause to believe he has committed or is committing;

(1) Criminal homicide in the first degree or criminal homicide in the 2nd degree; or

(2) Any Class A, Class B or Class C crime; and

B. Any person committing a Class D or Class E crime in his presence.

2. A law enforcement officer, who has probable cause to believe any person has committed a Class D or Class E crime, may require from such person reasonably credible evidence of his name and address. The provisions of section 16, subsections 2 and 3, shall apply to the refusal or failure of the person to furnish such evidence.

§ 16. Enforcement of civil violations

1. A law enforcement officer who has probable cause to believe that a civil violation has been committed shall deliver a citation to such person di-

recting him to appear in the Distirct Court to answer the allegation that he has committed the violation. The citation shall include the signature of the officer, a brief description of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. As soon as practicable after service of the citation, the officer shall cause a copy thereof to be filed with the court.

2. Any person to whom a law enforcement officer is authorized to deliver a citation pursuant to subsection 1 who knowingly fails or refuses to provide such officer reasonably credible evidence of his name and address is guilty of a Class E crime, provided that he persists in such failure or refusal after having been informed by the officer of the provisions of this subsection. If such person furnishes the officer evidence of his name and address 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 such verification is being attempted, the officer may require the person to remain in his presence for a period not to exceed 2 hours. During this period, the person may be subjected only to such search and seizure for weapons as are permitted by the Constitutions of the State and of the United States as to persons lawfully subject to inquiry by a law enforcement officer, but as to whom there are not lawful grounds for arrest. The requirement that the person remain in the presence of the officer shall not be deemed an arrest. An arrest may be made immediately upon the refusal of the person to furnish any evidence of his name and address, or upon the inability of the officer to verify the evidence as provided for in this subsection.

3. If, at any time subsequent to an arrest made pursuant to subsection 2, it appears that the evidence of the person's name and address was accurate, he shall be released from custody and any record of such custody shall show that he was released for that reason. If, upon trial for violating subsection 2, a person is acquitted on the ground that the evidence of his name and address was accurate, the record of acquittal shall show that such was the ground.

4. Any person who fails to appear in court, as directed by a citation served on him pursuant to subsection 1, is guilty of a Class E crime. Upon a failure to appear, the court may issue a warrant of arrest. It is an affirmative defense to prosecution under this subsection that the failure to appear was neither intentional nor knowing.

Sec. 20. 17-A MRSA § 58, sub-§ 1-A is enacted to read:

1-A. In a prosecution for a crime which may be committed intentionally, knowingly or recklessly, where such culpable state of mind is a necessary element, the existence of a reasonable doubt as to such state of mind may be established by evidence of an abnormal condition of mind.

Sec. 21. 17-A MRSA § 58, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a "mental disease or defect."

Sec. 22. 17-A MRSA § 58-A is enacted to read:

§ 58-A. Intoxication

Intoxication is no defense, affirmative or otherwise, except as follows.

1. In a prosecution for a crime which may be committed intentionally or knowingly, where such culpable state of mind is a necessary element, the existence of a reasonable doubt as to such state of mind may be established by evidence of intoxication.

2. In a prosecution for a crime which may be committed recklessly, where such culpable state of mind is a necessary element, the existence of a reasonable doubt as to such state of mind may be established by evidence of intoxication if such intoxication is not self-induced.

3. As used in this section:

A. "Intoxication" means a disturbance of mental capacities resulting from the introduction of alcohol, drugs or similar substances into the body; and

B. "Self-induced intoxication" means intoxication caused when the actor intentionally or knowingly introduces into his body substances which the actor knows or ought to know tend to cause intoxication, unless he introduces them pursuant to medical advice or under such duress as would afford a defense to a charge of crime.

Sec. 23. 17-A MRSA § 107, sub-§ 2, ¶ B, sub-¶ (2), as enacted by PL 1975, c. 499, § 1, is amended to read:

(2) He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest and has reasonable grounds to believe that the person is aware of these facts this advice or he reasonably believes that the person to be arrested otherwise knows that he is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest.

Sec. 24. 17-A MRSA § 107, sub-§ 2, ¶ B, sub-¶ (3) is enacted to read:

(3) For purposes of this subparagraph, a reasonable belief that another has committed a crime involving use or threatened use of deadly force means such reasonable belief in facts, circumstances and the law which, if true, would constitute such an offense by such person. If the facts and circumstances reasonably believed would not constitute such an offense, an erroneous though reasonable belief that the law is otherwise justifies the use of force to make an arrest or prevent an escape.

Sec. 25. 17-A MRSA § 107, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended to read:

4. A private person acting on his own is justified in using a reasonable degree of nondeadly force upon another when and to the extent that he reasonably believes it necessary to effect an arrest or detention which is lawful for him to make or prevent the escape from such an arrest or detention; of such other whom he reasonably believes to have committed a crime; but he

is justified in using deadly force for such purpose only when he reasonably believes it necessary to defend himself or a 3rd person from what he reasonably believes to be the imminent use of deadly force.

Sec. 26. 17-A MRSA § 107, sub-§ 6, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 27. 17-A MRSA § 108, sub-§ 2, 1st ¶, as enacted by PL 1975, c. 499, § 1, is amended to read :

A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the actor or a 3rd person, or is likely to use any unlawful force against a person present in a dwelling while committing or attempting to commit a burglary of such dwelling, or is committing or about to commit kidnapping, robbery or a forcible sex offense. ~~However~~ A person is not justified in using deadly force on another to defend himself or a 3rd person ~~from deadly force by the other~~ :

Sec. 28. 17-A MRSA § 201, sub-§ 2, ¶ A, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof :

A. The criminal homicide was committed by a person who has been convicted of criminal homicide in the first or 2nd degree. For the purposes of this paragraph, a person shall be deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere, or verdict of finding of guilty by a court of competent jurisdiction ;

Sec. 29. 17-A MRSA § 201, sub-§ 2, ¶ B, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 30. 17-A MRSA § 201, sub-§ 2, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read :

C. The person knowingly created a great risk of death to ~~many~~ 4 or more persons ;

Sec. 31. 17-A MRSA § 202, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof :

1. A person is guilty of criminal homicide in the 2nd degree if :

A. He causes the death of another intending to cause such death, or knowing that death will almost certainly result from his conduct ; or

B. He intentionally or knowingly causes another to commit suicide by the use of force, duress or deception.

Sec. 32. 17-A MRSA § 204, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof :

B. Causes the death of another human being under circumstances which would otherwise be criminal homicide in the first or 2nd degree except that the actor causes the death while under the influence of extreme mental or emotional disturbance upon adequate provocation.

Sec. 33. 17-A MRSA § 206, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person is guilty of ~~causing or~~ aiding or soliciting suicide if he intentionally aids or solicits another to commit suicide, and the other commits or attempts suicide.

Sec. 34. 17-A MRSA § 208, sub-§ 1, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

Such circumstances include, but are not limited to, the number, location or nature of the injuries, or the manner or method inflicted.

Sec. 35. 17-A MRSA § 251, sub-§ 1, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. "Sexual act" means any act of sexual gratification between 2 persons involving direct physical contact between the sex organs of one and the mouth or anus of the other or direct physical contact between the sex organs of one and the sex organs of the other ~~without penetration~~, or direct physical contact between the sex organs of one and an instrument or device manipulated by the other. **A sexual act may be proved without allegation or proof of penetration.**

Sec. 36. 17-A MRSA § 252, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:

A. With any person who has not **in fact** attained his 14th birthday; or

Sec. 37. 17-A MRSA § 252, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. It is an affirmative defense to a prosecution under subsection 1, paragraph B that the defendant and the victim were living together as man and wife at the time of the crime.

Sec. 38. 17-A MRSA § 252, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. Rape is a Class A crime. It is ~~however~~ a defense to a prosecution under subsection 1, paragraph B, which reduces the crime to a Class B crime that the victim was a voluntary social companion of the defendant at the time of the crime and had, on that occasion, permitted the defendant sexual contact.

Sec. 39. 17-A MRSA § 253, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. The other person has not **in fact** attained his 14th birthday; or

Sec. 40. 17-A MRSA § 253, sub-§ 2, ¶¶ B and D, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. He compels or induces the other to engage in such **sexual intercourse** or sexual act by any threat; or

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to such **sexual intercourse or** sexual act; or

Sec. 41. 17-A MRSA § 254, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person is guilty of sexual abuse of a minor if, having attained his ~~18th~~ **19th** birthday he engages in sexual intercourse or a sexual act with another person **not his spouse**, who has attained his 14th birthday but has not attained his 16th birthday; provided the actor is at least 5 years older than such other.

Sec. 42. 17-A MRSA § 255, sub-§ 1, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. The other person has not **in fact** attained his 14th birthday and the actor is at least 3 years older; or

Sec. 43. 17-A MRSA § 352, sub-§ 3, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. To dispose of the property under circumstances that make it unlikely that the owner will recover it **or that manifest an indifference as to whether the owner will recover it.**

Sec. 44. 17-A MRSA § 352, sub-§ 4, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

"Property of another" includes property in which any person **or government** other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband.

Sec. 45. 17-A MRSA § 352, sub-§ 5, ¶ E, as enacted by PL 1975, c. 499, § 1, is amended to read:

E. Amounts of value involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated ~~in determining the~~ **to charge a single theft of appropriate class or grade of the crime.** Subject to the requirement that the conduct of the defense shall not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregated count be considered as separate thefts. No aggregated count of theft shall be deemed duplicitous because of such an order and no election shall be required.

Sec. 46. 17-A MRSA § 360, sub-§ 1, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. Having custody of property pursuant to a rental or lease agreement with the owner thereof whereby such property is to be returned to the owner at a specified time and place, he ~~intentionally~~ **knowingly** fails to comply with the agreed terms concerning return of such property without

the consent of the owner, for so lengthy a period beyond the specified time for return as to render his retention or possession or other failure to return a gross deviation from the agreement.

Sec. 47. 17-A MRSA § 360, sub-§ 2, last sentence, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 48. 17-A MRSA § 361, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. Proof that the defendant was in exclusive possession of property that had recently been taken under circumstances constituting a violation of this chapter or of chapter 27 shall give rise to a presumption that the defendant is guilty of the theft or robbery of the property, as the case may be, and proof that the theft or robbery occurred under circumstances constituting a violation of section 401 also shall give rise to a presumption that the defendant in exclusive possession of property recently so taken is guilty of the burglary.

Sec. 49. 17-A MRSA § 362, sub-§ 3, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. The actor has been twice before convicted of ~~the theft of property or services, or any combination of the following offenses:~~ Theft or violation of section 703 or 708.

Sec. 50. 17-A MRSA § 401, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. A person may be convicted both of burglary and of the crime which he committed or attempted to commit after entering or remaining in the dwelling place, other building, structure or place of business, but sentencing for both crimes shall be governed by chapter 47, section 1155.

Sec. 51. 17-A MRSA § 451, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:

A. In any official proceeding, a false material statement under oath or affirmation, or swears or affirms the truth of a material statement previously made, and he does not believe that the statement to be true; or

Sec. 52. 17-A MRSA § 451, sub-§ 4, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not ~~mentally~~ a competent witness in making ~~to make~~ the statement or was disqualified from doing so.

Sec. 53. 17-A MRSA § 452, sub-§ 3, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not ~~mentally~~ a competent witness in making ~~to make~~ the statement or was disqualified from doing so.

Sec. 54. 17-A MRSA § 501, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. In a public or private place, he knowingly accosts, insults, taunts or challenges any person with offensive, derisive or annoying words, or by gestures or other physical conduct, which would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged; or

Sec. 55. 17-A MRSA § 501, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

4. A law enforcement officer or a justice of the peace may forbid any person to violate this section.

Sec. 56. 17-A MRSA § 506, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

§ 506. Harassment

1. A person is guilty of harassment if:

A. By means of telephone he makes any comment, request, suggestion or proposal which is, in fact, offensively coarse or obscene, without the consent of the person called;

B. He makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;

C. He makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;

D. He makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

E. He knowingly permits any telephone under his control to be used for any purpose prohibited by this section.

2. The crime defined in this section may be prosecuted and punished in the county in which the defendant was located when he used the telephone, or in the county in which the telephone called or made to ring by the defendant was located.

3. Harassment is a Class D crime.

Sec. 57. 17-A MRSA § 509, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. He knowingly gives false information to any law enforcement officer, ~~or~~ member of a fire fighting agency, including a volunteer fire department, or any other person knowing that such other is likely to communicate the information to a law enforcement officer or member of a fire fighting agency, concerning a fire, explosive or other similar substance which is capable of endangering the safety of persons, knowing that such information is false,

or knowing that he has no information relating to the fire, explosive or other similar substance.

Sec. 58. 17-A MRSA § 510, sub-§ 1, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

A person is guilty of cruelty to animals if, intentionally, **knowingly** or recklessly:

Sec. 59. 17-A MRSA § 515, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. He knowingly sends or publishes a challenge or acceptance of a challenge for such, or carries or delivers such a challenge ~~for~~ or acceptance, or trains or assists any person in training or preparing for such fight, or acts as umpire or judge for such fight.

Sec. 60. 17-A MRSA § 554, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person is guilty of endangering the welfare of a child if ~~except as provided in subsection 2~~ he knowingly permits a child under the age of 16 to enter or remain in a house of prostitution; or he knowingly sells, furnishes, gives away or offers to sell, furnish or give away to such a child, any intoxicating liquor, cigarettes, tobacco, air rifles, firearms or ammunition; or he otherwise knowingly endangers the child's health, safety or mental welfare by violating a duty of care ~~of~~ or protection.

Sec. 61. 17-A MRSA § 556, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

1. A person is guilty of incest if, being at least 18 years of age, he has sexual intercourse with another person as to whom he knows he is related within the 2nd degree of consanguinity.

Sec. 62. 17-A MRSA § 651, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

§ 651. Robbery

1. A person is guilty of robbery if he commits or attempts to commit theft and at the time of his actions:

A. He recklessly inflicts bodily injury on another;

B. He threatens to use force against any person present with the intent

(1) to prevent or overcome resistance to the taking of the property, or to the retention of the property immediately after the taking; or

(2) to compel the person in control of the property to give it up or to engage in other conduct which aids in the taking or carrying away of the property;

C. He uses physical force on another with the intent enumerated in paragraph B, subparagraphs (1) and (2),

D. He intentionally inflicts or attempts to inflict bodily injury on another; or

E. He or an accomplice to his knowledge is armed with a dangerous weapon in the course of a robbery as defined in paragraphs A through D.

2. Robbery as defined in subsection 1, paragraphs A and B, is a Class B crime. Robbery as defined in subsection 1, paragraphs C, D, and E, is a Class A crime.

Sec. 63. 17-A MRSA § 652, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 64. 17-A MRSA § 701, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible holder, author, maker or drawer;

Sec. 65. 17-A MRSA § 702, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person is guilty of aggravated forgery if, with intent to defraud or deceive another person or government, he falsely makes, completes, endorses or alters a written instrument, or knowingly utters or possesses such an instrument, and the instrument is:

Sec. 66. 17-A MRSA § 703, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:

A. Falsely makes, completes, endorses or alters a written instrument, or knowingly utters or possesses such an instrument; or

Sec. 67. 17-A MRSA § 703, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

2. Violation of this section is a Class C crime if the actor has been twice before convicted of any combination of the following offenses: Violation of this section, theft or violation of section 708. Forgery is otherwise a Class D crime.

Sec. 68. 17-A MRSA § 708, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

4. Violation of this section is a Class C crime if the actor has been twice before convicted of any combination of the following offenses: Violation of this section, theft or violation of section 703. Negotiating a worthless instrument is otherwise a Class D crime.

Sec. 69. 17-A MRSA § 752, sub-§ 2, 2nd sentence, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 70. 17-A MRSA § 752, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

3. Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B, is a Class C crime.

Sec. 71. 17-A MRSA § 755, sub-§ 3, 2nd sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

It does not include custody of persons under 18 years of age unless ~~such person has been administratively transferred to custody in the men's or women's correctional center, or~~ the custody is as a result of a finding of probable cause made under the authority of Title 15, section 2611, subsection 3 or is in regard to offenses over which juvenile courts have no jurisdiction, as provided in Title 15, section 2552.

Sec. 72. 17-A MRSA § 755, sub-§ 3, ¶ A is enacted to read :

A. Prosecution for escape or attempted escape from any institution included in subsection 3 shall be in the county in which the institution is located. Prosecution for escape or attempted escape of a person who has been transferred from one institution to another shall be in the county in which the institution the person was transferred to is located. Prosecution for an escape or attempted escape for failure to return to official custody following temporary leave granted for a specific purpose or a limited period shall be in the county in which the institution from which the leave was granted is located or in any county to which leave was granted.

Sec. 73. 17-A MRSA § 756, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. As used in this section, ~~and in section 757~~ "contraband" means a dangerous weapon, any tool or other thing that may be used to facilitate a violation of section 755, or any other thing which a person confined in official custody is prohibited by statute or regulation from making or possessing.

Sec. 74. 17-A MRSA § 757, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

As used in this section, "contraband" has the same meaning as in section 756.

Sec. 75. 17-A MRSA § 802, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. In a prosecution under subsection 1, paragraph B, the requirements of specificity in the charge and proof at the trial otherwise required by law do not include a requirement to allege or prove the ownership of the property. In a prosecution under subsection 1, paragraph A, it is a defense that the actor reasonably believed he had the permission of the property owner to engage in the conduct alleged. In a prosecution under subsection 1, paragraph A, "property of another" has the same meaning as in section 352, subsection 4.

Sec. 76. 17-A MRSA § 805, sub-§§ 1-A and 1-B are enacted to read :

1-A. As used in this section, "property of another" has the same meaning as in section 352, subsection 4.

1-B. As used in this section, "value", if the property is destroyed, shall be determined pursuant to section 352, subsection 5. If the property is damaged, "value" shall be determined by the cost of repair unless that determination exceeds the determination of the value of the property had it been destroyed, in which case the property shall be deemed destroyed for purposes of this subsection. Amounts of value involved in mischiefs may be aggregated in the same manner as provided in section 352, subsection 5, paragraph E.

Sec. 77. 17-A MRSA § 806, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:

A. Damages or destroys the property of another, having no reasonable ground to believe that he has a right to do so; or knowingly damages or destroys property ~~with the intent~~ to enable any person to collect insurance proceeds for the loss caused; or

Sec. 78. 17-A MRSA § 806, sub-§ 1-A is enacted to read:

1-A. As used in this section, "property of another" has the same meaning as in section 352, subsection 4.

Sec. 79. 17-A MRSA § 854, sub-§ 1, ¶ A, sub-¶ (2), as enacted by PL 1975, c. 499, § 1, is amended to read:

(2) he knowingly exposes his genitals to a person under the age of 12, ~~or~~ under circumstances which, in fact, are likely to cause affront or alarm; or

Sec. 80. 17-A MRSA § 901, sub-§ 3, ¶ C, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 81. 17-A MRSA § 951, as enacted by PL 1975, c. 499, § 1, is amended to read:

§ 951. Inapplicability of chapter

Any person licensed by the Chief of the State Police as provided in Title 17, chapter 13-A or chapter 14, or authorized to operate or conduct a raffle pursuant to Title 17, section 331, subsection 2, shall be exempt from the application of the provisions of this chapter insofar as his conduct is within the scope of such license.

Sec. 82. 17-A MRSA § 953, sub-§ 1, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. Receiving in connection with a lottery, mutuel or other gambling scheme or enterprise, more than \$500 in any 24-hour period ~~play~~ played in the scheme or enterprise.

Sec. 83. 17-A MRSA § 954, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person is guilty of unlawful gambling if he intentionally or knowingly advances or profits from unlawful gambling activity.

Sec. 84. 17-A MRSA § 1101, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. "Marijuana" includes the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not; but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin including hashish and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake or the sterilized seed of such plant which is ~~capable~~ incapable of germination.

Sec. 85. 17-A MRSA § 1101, sub-§ 10, as enacted by PL 1975, c. 499, § 1, is amended to read:

10. "Prescription drug", any drug upon **the container of** which the manufacturer or distributor is obliged to place, in order to comply with federal law and regulations, the following legend: "Caution, federal law prohibits dispensing without prescription."

Sec. 86. 17-A § 1102, sub-§ 1, ¶ C, sub-¶¶ (10), (11) and (12) are enacted to read:

- (10) 2, 5 dimethoxyamphetamine
- (11) 4-bromo-2, 5-dimethoxyamphetamine
- (12) 4-methoxyamphetamine.

Sec. 87. 17-A MRSA § 1102, sub-§ 1, ¶ H, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

H. Methylphenidate or its salts;

Sec. 88. 17-A MRSA § 1102, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

- 3. Schedule Y:
 - A. Barbitol or its salts;
 - B. Chloral betaine;
 - C. Ethchlorvynol;
 - D. Ethinamate;
 - E. Methohexital or its salts;
 - F. Methylphenobarbital or its salts;
 - G. Paraldehyde;
 - H. Petrichloral;
 - I. Phenobarbital or its salts;
 - J. Codeine (methyldorphine) or its salts;

K. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non narcotic active medicinal ingredient in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

(1) not more than 2.5 milligrams of diphenoxylate with not less than 25 micrograms of atropin sulfate per dosage unit ;

L. Meprobamate ;

M. Ergot or any salt, compound or derivatives of ergot unless listed in another schedule ;

N. Flurazepam or its salts ;

O. Chlordiazepoxide or its salts ;

P. Diazepam ;

Q. Carbromal ;

R. Chloralhydrate ;

S. Fenfluramine or its salts ;

T. Diethylpropion or its salts ;

U. Phentermine or its salts.

Sec. 89. 17-A MRSA § 1105, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read :

1. A person is guilty of aggravated trafficking or furnishing scheduled drugs if he trafficks with or furnishes to a child, **in fact**, under 16 a scheduled drug in violation of ~~section~~ sections 1103, ~~or~~ 1104 or 1106.

Sec. 90. 17-A MRSA § 1111, sub-§ 2 is enacted to read :

2. Possession of hypodermic apparatuses is a Class D crime.

Sec. 91. 17-A MRSA § 1112, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read :

1. A ~~state~~ laboratory which receives a drug or substance from a law enforcement officer or agency for analysis under this chapter shall, if it is capable of so doing, analyze the same as requested, and shall issue a certificate stating the results of such analysis. Such certificate, when duly signed and sworn to by a person certified as qualified for this purpose by the Department of Human Services under certification standards set by that department, ~~qualified chemist, or by a laboratory technician whose testimony as an expert has been received in any court of the State of Maine, of the United States, or of any state~~ shall be admissible in evidence in any court of the State of Maine, and shall be prima facie evidence that the composition and quality of the drug or substance is as stated therein, unless ~~within~~ **with** 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to such composition and quality.

Sec. 92. 17-A, § 1112, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. Transfer of drugs and substances to and from a ~~state~~ laboratory for purposes of analysis under this chapter may be by certified or registered mail, and when so made shall be deemed to comply with all the requirements regarding the continuity of custody of physical evidence.

Sec. 93. 17-A MRSA § 1112, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 94. 17-A MRSA § 1152, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

Nor shall this chapter deprive the Department of Mental Health and Corrections of any authority to grant furloughs and work releases or to transfer persons from one facility to another.

Sec. 95. 17-A MRSA § 1201, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person who has been convicted of any crime, except ~~aggravated murder or murder~~ **criminal homicide in the first degree or criminal homicide in the 2nd degree**, may be sentenced to a suspended term of imprisonment with probation or to an unconditional discharge, unless the court finds that:

A. There is undue risk that during the period of probation the convicted person would commit another crime; or

~~**B.** The convicted person is in need of correctional treatment that can be provided most effectively by commitment to the Department of Mental Health and Corrections; or~~

C. Such a sentence would diminish the gravity of the crime for which he was convicted.

Sec. 96. 17-A MRSA § 1204, sub-§ 2, ¶ H, as enacted by PL 1975, c. 499, § 1, is amended to read:

H. To remain within the jurisdiction of the court unless permission to leave temporarily is granted in writing by the probation officer, and to notify ~~the court or~~ the probation officer of any change in his address or employment;

Sec. 97. 17-A MRSA § 1205, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end a new sentence to read:

If the probation officer cannot, with due diligence, locate the person on probation in order to serve the summons on him, he shall note such fact on the summons and file it with the court which placed the person on probation.

Sec. 98. 17-A MRSA § 1205, sub-§ 4 is enacted to read:

4. The running of the period of probation shall be tolled upon either the service of the summons, the filing of the summons with the court when it cannot be served or the arrest of the person on probation, as provided for in

subsection 1. If the person on probation fails to appear at the preliminary hearing after having been served with the summons, or the summons is filed with the court because it cannot be served, the probation officer may request the court to issue a warrant for the arrest of the person. The court may then issue the warrant and order the person committed, with or without bail, pending the preliminary hearing which shall be held within 48 hours of the time the person is arrested. The running of the period of probation shall cease to be tolled upon a finding of no probable cause under subsection 3, or upon disposition of the charges of probation violation by a court pursuant to section 1206.

Sec. 99. 17-A MRSA § 1206, sub-§ 1, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

If, as a result of proceedings held under section 1205, there is a determination of probable cause, the Director of Probation and Parole or his designated representative may apply to any court for a summons ordering the person to appear before the court for a hearing on the alleged violation.

Sec. 100. 17-A MRSA § 1251, sub-§ 2, 2nd sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

No later than 120 days from such commitment, the ~~department~~ Department of Mental Health and Corrections shall return the convicted person to the court, along with the report of its evaluation and a recommended sentence.

Sec. 101. 17-A MRSA § 1251, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

In the event a person has been convicted of criminal homicide in the first degree by virtue of section 201, subsection 2, paragraph A and prior offense upon which the section 201, subsection 2, paragraph A conviction was based is finally invalidated as a result of an appeal or collateral proceeding the person may petition a court of competent jurisdiction to be resentenced pursuant to subsections 2 and 3.

Sec. 102. 17-A MRSA § 1252, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. In the case of a person convicted of a crime other than criminal homicide in the first or 2nd degree, the court may sentence to imprisonment for a definite term as provided for in this section, unless the statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to the imprisonment and required to pay the fine authorized therein. The sentence of the court shall specify the place of imprisonment, provided that no person shall be sentenced to imprisonment in the Men's Correctional Center located at South Windham, Maine, if his sentence exceeds 5 years or he ~~is~~ has already attained his 27th birthday at the time of sentence ~~more than 26 years old~~.

Sec. 103. 17-A MRSA § 1252, sub-§ 3, 2nd sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

In such cases, it shall be the responsibility of the ~~department~~ **Department of Mental Health and Corrections** to determine whether the order has been complied with and consideration shall be given in the department's administrative decisions concerning the imprisoned person as to whether the order has been complied with.

Sec. 104. 17-A MRSA § 1254, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. A person sentenced to life imprisonment may, after having served 25 years, and annually thereafter, and a person sentenced to a term ~~in excess of 20 years of 20 years or more~~, may, after having served 4/5 of said sentence, and annually thereafter, petition the Superior Court of the county in which he is imprisoned for a reduction of his sentence to a term of years. Upon notice to the Attorney General and the victim or next of kin of the victim, the court shall hold a hearing on the petition and may, in its discretion, reduce the sentence from life imprisonment to a term of years that is not less than 30, and reduce any other sentence to a term that is not less than 20. If the sentence is so reduced the imprisoned person shall be unconditionally released and discharged upon the expiration of the term specified in such sentence, minus such deductions authorized under section 1253 as he shall have accumulated; provided, however, that notwithstanding any deductions that may be accumulated under section 1253, no such person shall be so released and discharged until he has served 25 years, if his sentence is life imprisonment or 4/5 of his sentence, if that sentence is for a term of years ~~in excess of 20 years of 20 years or more~~.

Sec. 105. 17-A MRSA § 1254, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. All persons in the custody of the Bureau of Corrections serving a criminal sentence on the effective date of this code shall be released and discharged according to the law as it was in force on the date they were sentenced and such law shall continue in force for this purpose as if this code were not enacted; provided, however, that any such person ~~may elect to be released and discharged according to section 1253 and of this section. Upon such election he shall be released and discharged as if section 1253 and this section were in force on the date he was sentenced~~ who is entitled to a deduction of 7 days a month from his sentence under the provisions of Title 34, section 705, may elect to have 10 days a month deducted instead of 7. Any such election shall apply only to that part of the sentence which is served subsequent to the effective date of this code.

Sec. 106. 17-A MRSA § 1301, sub-§ 1, 1st ¶, as enacted by PL 1975, c. 499, § 1, is amended to read:

A natural person who has been convicted of a **Class B, Class C, Class D or Class E** crime may be sentenced to pay a fine, ~~subject~~ unless the statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to the imprisonment and required to pay the fine authorized therein. Subject to such sentences and to section 1302, the fine ~~which~~ shall not exceed:

Sec. 107. 17-A MRSA § 1301, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

A. \$10,000 for a Class B crime;

A-1. \$1,000 for a Class C crime;

Sec. 108. 17-A MRSA § 1301, sub-§ 3, 1st ¶, as enacted by PL 1975, c. 499, § 1, is amended to read:

If the defendant convicted of a crime is an organization and the statute which it is convicted of violating expressly provides that the fine it authorizes may not be suspended, the organization shall be sentenced to pay the fine authorized therein. Otherwise, the maximum allowable fine which such a defendant may be sentenced to pay shall be:

Sec. 109. 29 MRSA § 1313 is repealed.

Sec. 110. 29 MRSA § 1315, 1st sentence; 2nd sentence as amended by PL 1973, c. 330, § 20 and the 3rd sentence, are amended to read:

Any person who operates a vehicle with reckless disregard for the safety of others and thereby causes the death of another person, when the death of such person results within one year, shall be guilty of the offense of reckless homicide. Any person convicted of reckless homicide shall be punished by a fine of not more than \$2,000 and by imprisonment for not less than 6 months nor more than 5 years. The license of any person convicted of violating this section Title 17-A, section 204, subsection 1, paragraph A or Title 17-A, section 205 where the crime occurs as the result of the operation of a motor vehicle shall be revoked immediately by the Secretary of State upon receipt of an attested copy of the court records, without further hearing.

Sec. 111. 29 MRSA § 1316, as last amended by PL 1973, c. 329, is repealed.

Sec. 112. 34 MRSA § 1007, sub-§ 9, last sentence, as enacted by PL 1969, c. 136, is amended to read:

If said prisoner does not return to the county jail within 48 hours from the time scheduled to return, he shall be guilty of escape under Title 17, section 755 17-A, section 755.

Sec. 113. 34 MRSA § 1008, 3rd ¶, 1st sentence, as enacted by PL 1975, c. 191, § 2, is amended to read:

Any such prisoner who willfully violates the terms of his release under this section in relation to the time for reporting to his place of furlough, the activities he is authorized to conduct while on furlough, or his time of reporting back to the county jail, may be punished by imprisonment for not more than 60 days; except that any prisoner who does not return to the county jail within 24 hours from the time he is scheduled to return may be prosecuted for escape under Title 17, section 755 17-A, section 755.

Sec. 114. PL 1975, c. 623, § 83 is repealed and the following enacted in place thereof:

Sec. 83. PL 1975, c. 499, § 72 is enacted to read:

Sec. 72. Effective date. Sections 2 to 71 of this Act shall become effective April 1, 1976.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect April 1, 1976.

STATEMENT OF FACT

PL 1975, c. 499 enacted the Maine Criminal Code, effective March 1, 1976. The 107th Legislature also continued the Criminal Law Revision Commission in existence until March 1, 1976 "for the purpose of receiving and evaluating proposed amendments to the code" and reporting to the special session of the 107th.

This Act contains the Commission's recommendations for amending, correcting and clarifying various sections of the code in response to recent court decisions and after consideration of the thoughtful and critical analyses of members of the Office of the Attorney General, of district attorneys, of judges, and of other interested persons. A subcommittee of the Judiciary Committee joined as consultants in this process of review.

In order to allow time for the code, as amended, to be distributed to those responsible for its administration, the effective date has been advanced to April 1, 1976.