

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
(New Title)  
(New Draft of S. P. 697, L. D. 2217)  
FIRST SPECIAL SESSION

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ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 2333**

S. P. 778

In Senate, March 26, 1976

Reported by the Minority from the Committee on Judiciary and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

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**AN ACT Making Certain Revisions in the Maine Criminal Code.**

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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 soon become effective 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**Sec. 1.** 12 MRSA § 2953, first sentence, and the 2nd sentence as enacted by PL 1975, c. 516, § 23, are repealed.

**Sec. 7-A.** 14 MRSA § 5545, 3rd ¶, as enacted by PL 1971, c. 224, is repealed and the following enacted in place thereof:

Any prisoner who escapes from custody of the sheriff or any of his deputies or any other law enforcement officer following removal for appearance in court, from a penal or correctional institution or from a county jail, and prior to return thereto, shall be chargeable with escape from the penal or correctional institution or county jail from which he was removed, and shall be punished in accordance with Title 17-A, section 755.

Sec. 2. 15 MRSA § 1741, as repealed by PL 1975, c. 499, § 2, is reenacted to read:

**§ 1741. General penalty**

When no punishment is provided by statute, a person convicted of an offense shall be punished by a fine of not more than \$500 or by imprisonment for less than one year.

Sec. 3. 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 opportunity 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. 4. 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. 5. 17 MRSA § 331, sub-§ 1, as enacted by PL 1973, c. 735, § 3 and as repealed 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. 6. 17 MRSA § 1461, as enacted by PL 1969, c. 418, is repealed.

Sec. 7. 17 MRSA § 1952, as enacted by PL 1971, c. 539, § 11, is repealed.

Sec. 8. 17 MRSA §§ 2302 and 2303 are repealed.

Sec. 9. 17 MRSA § 3704, as enacted by PL 1967, c. 176, is repealed.

Sec. 9-A. 17-A MRSA § 1, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

1. Title 17-A shall be known and may be cited as the Maine Criminal Code. When it is alleged that an element occurred "on or about" any date prior to the effective date of the code, the prosecution shall be governed by the prior law. When it is alleged that all of the elements occurred "on or about" the effective date of the code or any date thereafter, the prosecution shall be governed by the code.

Sec. 10. 17-A MRSA § 1, sub-§ 2, as enacted by PL 1975, c. 499, § 1 and as amended by PL 1975, c. 649, § 1, is further amended to read:

2. ~~This~~ Except as provided in section 4-A, this code shall become effective May 1, 1976, and it shall apply only to crimes committed subsequent to its effective date. Prosecution for crimes ~~repealed by this code, which are~~ 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 that in any 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~~ 4-A, subsection 3 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 dates if any element thereof occurred prior to that date.

Sec. 11. 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. 12. 17-A MRSA § 3, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. By any statute or private act outside this code, including any rule or regulation authorized by and lawfully adopted under a statute ~~provided that it is expressly classified according to section 4, or the penalty applicable thereto, for a first or subsequent violation, includes a term of incarceration.~~

Sec. 13. 17-A MRSA § 4, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

#### § 4. Classification of crime; civil violations

1. Except for criminal homicide in the first or 2nd degree, all crimes defined by this code are classified for purposes of sentencing as Class A, Class B, Class C, Class D and Class E crimes.

2. A statute outside this code may be expressly designated as a Class A, Class B, Class C, Class D or Class E crime, in which case sentencing for violation of such a statute is governed by the provisions of this code.

3. A statute outside this code may be expressly designated as a civil violation. 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. 14. 17-A MRSA § 4-A is enacted to read:

§ 4-A. Crimes and civil violations outside the code

1. This section shall become effective as follows:

A. For the sole purpose of determining the sentencing authority of the court under section 1, subsection 2, of the code, subsection 3 of this section shall become effective May 1, 1976; and

B. For all other purposes, this section shall become effective October 1, 1977.

2. Statutes defining crimes which are outside the code are classified as civil violations or as Class A, Class B, Class C, Class D or Class E crimes according to the provisions of subsections 3 and 4.

3. 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. If the maximum period authorized by the statute defining the crime:

A. Exceed 10 years, the crime is a Class A crime;

B. Exceeds 5 years, but does not exceed 10 years, the crime is a Class B crime;

C. Exceeds 3 years, but does not exceed 5 years, the crime is a Class C crime;

D. Exceeds one year, but does not exceed 3 years, the crime is a Class D crime; and

E. Does not exceed one year, the crime is a Class E crime.

4. If a criminal statute outside this code prohibits defined conduct but does not provide an imprisonment penalty, it is hereby declared to be a civil violation, enforceable in accordance with the provisions of section 4, subsection 3.

Sec. 15. 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. 16. 17-A MRSA § 5, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 17. 17-A MRSA § 6, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

**§ 6. Application to crimes outside the code**

1. The provisions of chapters 1, 3, 5, 7, 47, 49, 51 and 53 are applicable to crimes defined outside this code, unless the context of the statute defining the crime clearly requires otherwise.

2. Except for purposes of determining the applicable sentence, all crimes defined outside this code and not classified as Class A, Class B, Class C, Class D or Class E crimes, which are punishable by a maximum period of imprisonment of one year or more, shall be treated as Class C crimes.

3. Except for purposes of determining the applicable sentence, all crimes defined outside this code and not classified as Class A, Class B, Class C, Class D or Class E crimes, which are not punishable by imprisonment or which are punishable by a maximum period of imprisonment of less than one year, shall be treated as Class D crimes.

**Sec. 18.** 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. 19.** 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. 20.** 17-A MRSA § 11, sub-§ 5, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

If ~~the~~ a statute defining ~~the~~ a crime in this code does not expressly prescribe a culpable mental state with respect to some or all of the elements of the crime, a culpable mental state is nevertheless required, pursuant to subsections 1, 2 and 3, unless:

**Sec. 21.** 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. 22.** 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 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 of a single the same court and within the same venue, unless the court ordered such separate trials, on application of the prosecuting attorney or of the defendant or on its own motion, orders any such charge to be tried separately if it is satisfied that justice so requires.

**Sec. 23.** 17-A MRSA §§ 15, 16 and 17 are enacted to read:

**§ 15. Warrantless arrests by a law enforcement officer**

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

**A.** Any person who he has probable cause to believe 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 who has committed or is committing a Class O or Class E crime in his presence.

2. For the purposes of subsection 1, paragraph B. criminal conduct has been committed or is being committed in the presence of a law enforcement officer when one or more of the officer's senses afford him personal knowledge of facts which are sufficient to warrant a prudent and cautious law enforcement officer in believing that a Class D or Class E crime is being or has just been committed and that the person arrested has committed or is committing it. An arrest made pursuant to subsection 1, paragraph B, shall be made at the time of the commission of the criminal conduct, or some part thereof, or within a reasonable time thereafter or upon fresh pursuit.

3. 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 17, subsections 2 and 3, shall apply to the refusal or failure of the person to furnish such evidence.

**§ 16. Warrantless arrests by a private person**

Except as otherwise specifically provided, a private person shall have the authority to arrest without a warrant:

1. Any person who he has probable cause to believe has committed or is committing:

A. Criminal homicide in the first degree or criminal homicide in the 2nd degree; or

B. Any Class A, Class B or Class C crime.

2. Any person who, in fact, is committing in his presence and in a public place:

A. Any of the Class D or Class E crimes described in sections 207; 209; 211; 254; 255; 501, subsection 2; 503; 751; 752, subsection 1, paragraph A; 806 or 1002.

3. For the purposes of subsection 2, in the presence has the same meaning given in section 15, subsection 2.

#### § 17. 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 directing him to appear in the District 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. After informing the person of the provisions of this subsection, the officer may arrest the person if either the person refuses to furnish any evidence of his name and address or the officer is unable 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. 24. 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. 25. 17- MRSA § 58, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. As used in this section, "mental disease or defect" means any abnormal condition of the mind ~~regardless of its medical label~~ which substantially affects mental or emotional processes and substantially impairs the processes and capacity of a person to control his actions. 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. 26. 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. 27. 17-A MRSA § 105, as enacted by PL 1975, c. 499, § 1, is amended to read:

#### § 105. Use of force in property offenses

A person is justified in using a reasonable degree of nondeadly force upon another when and to the extent that he reasonably believes it necessary to

prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force **only** under such circumstances ~~only in defense of a person~~ as are prescribed in ~~section~~ **sections 104, 107, and 108.**

**Sec. 28.** 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. 29.** 17-A MRSA § 107, sub-§ 2, ¶ B, sub-¶ (3) is enacted to read:

(3) For purposes of this paragraph, 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. 30.** 17-A MRSA § 107, sub-§ 5, as enacted by PL 1975, c. 499, § 1, is amended to read:

5. ~~Except where otherwise expressly provided,~~ a corrections officer or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in subsection 2 ~~of this section.~~ He is justified in using a reasonable degree of nondeadly force when and to the extent ~~they~~ **he reasonably believe believes** it necessary to prevent any other escape from such a facility.

**Sec. 31.** 17-A MRSA § 107, sub-§ 6, as enacted by PL 1975, c. 499, § 1, is repealed.

**Sec. 32.** 17-A MRSA § 107, sub-§ 8, as enacted by PL 1975, c. 499, § 1 is amended to read:

8. Nothing in this section constitutes justification for conduct by a law enforcement officer **or a private person** amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.

**Sec. 33.** 17-A MRSA § 151, sub-§ 9, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

**Conspiracy to commit an offense defined outside the code, and not classified as a Class A, Class B, Class C, Class D or Class E crime, shall be subject to the same kind of punishment that might have been imposed if the offense which was the object of the conspiracy had been committed, but not exceeding ½ thereof.**

**Sec. 34.** 17-A MRSA § 152, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

**An attempt to commit a crime defined outside the code, and not classified as a Class A, Class B, Class C, Class D or Class E crime, shall be subject to the same kind of punishment that might have been imposed if the offense attempted had been committed, but not exceeding ½ thereof.**

**Sec. 35.** 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 nolo contendere, or verdict or finding of guilty by a court of competent jurisdiction;**

**Sec. 36.** 17-A MRSA § 201, sub-§ 2, ¶ B, as enacted by PL 1975, c. 499, § 1, is repealed.

**Sec. 37.** 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. 38.** 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. 39.** 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. 40.** 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. 41.** 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. 42.** 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. 43.** 17-A MRSA § 252, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:

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

**Sec. 44.** 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. 45.** 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. 46.** 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. 47.** 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. 48.** 17-A MRSA § 254, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

7. 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. 49.** 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. 50.** 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. 51.** 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. 52.** 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. 53.** 17-A MRSA § 359, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

For purposes of this section, property is “stolen” if it was obtained or unauthorized control was exercised over it in violation of this chapter.

**Sec. 54.** 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. 55.** 17-A MRSA § 360, sub-§ 2, last sentence, as enacted by PL 1975, c. 499, § 1, is repealed.

**Sec. 56.** 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. 57.** 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 sections 703 or 708.

**Sec. 58.** 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. 59.** 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 the statement to be true; or

**Sec. 60.** 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. 61.** 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. 62.** 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. 63.** 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. 64.** 17-A MRSA § 506, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

§ 506. Harassment by telephone

1. A person is guilty of harassment by telephone 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 by telephone is a Class D crime.

**Sec. 65.** 17-A MRSA § 506-A is enacted to read:

§ 506-A. Harassment

1. A person is guilty of harassment if, without reasonable cause, he engages in any course of conduct with the intent to harass, torment or threaten another person, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace.

2. Harassment is a Class E crime.

**Sec. 66.** 17-A MRSA § 509, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. He knowingly gives or causes to be given 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. 67. 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. 68. 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. 69. 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. 70. 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. 71. 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) or (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, in a Class B crime. Robbery as defined in subsection 1, paragraphs C, D and E, is a Class A crime.

**Sec. 72.** 17-A MRSA § 652, as enacted by PL 1975, c. 499, § 1, is repealed.

**Sec. 73.** 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. 74.** 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. 75.** 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. 76.** 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. 77.** 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. 78. 17-A MRSA § 752, sub-§ 2, 2nd sentence, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 79. 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. 80. 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. 81. 17-A MRSA § 755, sub-§ 3-A is enacted to read:

3-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. 82. 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. 83. 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. 84. 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. 85.** 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. 86.** 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. 87.** 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. 88.** 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. 89.** 17-A MRSA § 901, sub-§ 1, ¶ E, as enacted by PL 1975, c. 499, § 1, is repealed.

**Sec. 90.** 17-A MRSA § 901, sub-§ 3, ¶ C, as enacted by PL 1975, c. 499, § 1, is repealed.

**Sec. 91.** 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. 92.** 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. 93.** 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. 94.** 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. 95.** 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. 96.** 17-A MRSA § 1102, sub-§ 1, ¶¶ C, D and E, as enacted by PL 1975, c. 499, § 1, are repealed.

**Sec. 97.** 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.** Methyphenidate or its salts;

**Sec. 98.** 17-A MRSA § 1102, sub-§ 2, ¶¶ H, I and J are enacted to read:

**H.** Unless listed or described in another schedule, any of the following hallucinogenic drugs or their salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3, 4-methylenedioxy amphetamine
- (2) 5-methoxy-3, 4-methylenedioxy amphetamine
- (3) 3, 4, 5-trimethoxy amphetamine
- (4) 4-methyl-2, 5-dimethoxyamphetamine
- (5) Diethyltryptamine
- (6) Dimethyltryptamine
- (7) Dipropyltryptamine

- (8) Lysergic acid diethylamide
- (9) 2,-3 methylenedioxy amphetamine
- (10) 2, 5-dimethoxyamphetamine
- (11) 4-bromo-2, 5-dimethoxyamphetamine
- (12) 4-methoxyamphetamine.

- I. Lysergic acid;
- J. Lysergic acid amide.

Sec. 99. 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 (methyilmorphine) 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. 100.** 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. 101.** 17-A MRSA § 1111, sub-§ 2 is enacted to read:

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

**Sec. 102.** 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. 103.** 17-A MRSA § 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. 104.** 17-A MRSA § 1112, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is repealed.

**Sec. 104-A.** 17-A MRSA § 1115, first 2 sentences, as enacted by PL 1975, c. 499, § 1, are amended to read:

On the conviction of any person of the violation of any provision of this chapter, or on his being found liable for a civil violation under Title 22, a copy of the judgment or sentence and of the opinion of the court or judge, if any opinion be filed, shall be sent by the clerk of court or by the judge to the board or officer, if any, by whom the person has been licensed or registered

to practice his profession or to carry on his business if the court finds that such conviction or liability renders such person unfit to engage in such profession or business. The court may, in its discretion, suspend or revoke the license or registration of the person to practice his profession or to carry on his business if the court finds that such conviction or liability renders such person unfit to engage in such profession or business.

**Sec. 105.** 17-A MRSA § 1152, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. Every natural person and organization convicted of a crime shall be sentenced in accordance with the provisions of this Part, except that the sentence authorized for a crime defined outside the code, and not classified as a Class A, Class B, Class C, Class D or Class E Crime shall remain in effect.

**Sec. 106.** 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. 107.** 17-A MRSA § 1201, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

1. A person who has been convicted of any crime may be sentenced to a suspended term of imprisonment with probation or to an unconditional discharge, unless:

A. The conviction is for criminal homicide in the first degree or criminal homicide in the 2nd degree;

B. The statute which the person is convicted of violating expressly provides for 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;

C. The court finds that there is an undue risk that during the period of probation the convicted person would commit another crime; or

D. The court finds that such a sentence would diminish the gravity of the crime for which he was convicted.

**Sec. 108.** 17-A §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. 109.** 17-A MRSA § 1205, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

1. If a probation officer has probable cause to believe that a person under his supervision has violated a condition of his probation, he may either arrest

such person or may issue a summons to such person to appear before the district supervisor or such other official as may be designated by the Director of Probation and Parole for a preliminary hearing to determine whether such probable cause in fact exists. If the probation officer arrests the person, he shall forthwith provide the arrested person with a notice of the preliminary hearing. If the probation officer cannot, with due diligence, locate the person on probation in order to arrest him or 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. 110. 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. 111. 17-A MRSA § 1206, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

1. 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; provided that when the person is being detained for the alleged violation, the application for a summons shall be made without unnecessary delay. The application for summons shall include a copy of the written statement prepared pursuant to section 1205, subsection 3. The person on probation shall be furnished a copy of the application by the Director of Probation and Parole.

Sec. 112. 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. 113. 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 the 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. 114. 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. 115. 17-A MRSA § 1252, sub-§ 2-A is enacted to read:

2-A. Any term of imprisonment imposed upon a person convicted of a crime defined outside this code, and not classified as a Class A, Class B, Class C, Class D or Class E crime, must be for a definite term not to exceed the maximum term authorized for the crime.

Sec. 116. 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. 117. 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 that the imprisoned person shall be unconditionally reduced 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. 118. 17-A MRSA § 1254, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in place thereof:

3. All persons in the custody of the Bureau of Corrections pursuant to a sentence imposed under the law in effect prior to the effective date of this code shall be released and discharged according to the law as it was in force prior to the effective date of this code and such law shall continue in force for this purpose as if this code were not enacted; provided that any such person 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. 119. 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. 120. 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. 121. 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. 122. 17-A MRSA Pt. 4 is enacted to read:

#### PART 4

### REVISION OF CRIMINAL LAWS

#### CHAPTER 55

### CRIMINAL LAW ADVISORY COMMISSION

#### § 1351. Establishment

There is established a Criminal Law Advisory Commission for the purpose of conducting a continuing study of the criminal law of Maine.

**§ 1352. Membership; terms; vacancies**

1. The commission shall be composed of 7 members to be appointed by the Attorney General. The members shall be qualified by reason of their experience in the prosecution or defense of criminal cases or by reason of their knowledge of the criminal law.

2. Members of the commission shall serve for a term of 2 years and may be reappointed.

3. In the event of the death or resignation of any member, the vacancy for his unexpired term shall be filled by the Attorney General.

**§ 1353. Consultants; experts**

1. The Senate and House chairmen of the Judiciary Committee, or their designees, shall serve as consultants to the commission. The Chief Justice of the Supreme Judicial Court shall appoint 4 consultants to the commission, at least one of whom shall be an active member of the Superior Court and at least one of whom shall be an active member of the District Court.

2. Whenever it deems it appropriate, the commission shall seek the advice of experts, including representatives of the executive departments, in fields related to its duties.

**§ 1354. Duties**

1. It shall be the duty of the commission:

A. To examine the sections of the Revised Statutes outside of the Criminal Code which pertain to the criminal law and to draft such amendments to those sections as the commission deems advisable in light of the Criminal Code;

B. To evaluate the operation of the Criminal Code and to recommend amendments to the code based on such evaluation;

C. To examine the present laws pertaining to criminal pleadings and to consider possible changes, including, but not limited to, the adoption of code pleading and the preparation of pleading forms; and

D. To examine any other aspects of Maine's criminal law, including substantive, procedural and administrative matters, which the commission deems relevant.

2. The commission shall propose to the Legislature, at the start of each session, such changes in the criminal laws and in related provisions as the commission may deem appropriate. The commission may also make recommendations to the Judicial Council, the Advisory Committee on Criminal Rules and to any other organization or committee whose affairs pertain to the criminal justice system.

**§ 1355. Organization; staff**

1. The Attorney General shall notify all members of the time and place of the first meeting. At that time the commission shall organize, elect a chair-

man, vice-chairman and secretary-treasurer and adopt rules as to the administration of the commission and its affairs. The commission shall maintain such financial records as may be required by the State Auditor.

2. Within the limits of its budget, the commission shall be authorized to contract and employ staff members, who need not be residents of this State, to assist in the legal research and drafting required in connection with the duties of the commission.

#### § 1356. Reimbursement of expenses

The members of the commission shall serve without compensation, but may be reimbursed for their reasonable expenses in attending meetings, procuring supplies, correspondence and other related and necessary expenditures.

#### § 1357. Federal funds

The commission shall be authorized on behalf of the State to accept federal funds and may seek the advice and assistance of the Criminal Justice Planning and Assistance Agency in carrying out its duties.

Sec. 123. 19 MRSA § 481, 7th sentence, as enacted by PL 1973, c. 200, § 2, is amended to read:

Violation of such probation shall be dealt with in the same manner as provided in Title ~~34~~ 17-A, ~~section sections~~ ~~1633~~ 1205 and 1206, and discharge from probation may be obtained in the same manner as provided in Title ~~34~~ 17-A, section ~~1634~~ 1202.

Sec. 124. 22 MRSA § 2387, sub-§ 1, ¶¶ A and B, as enacted by PL 1973, c. 524 and as amended by PL 1975, c. 499, § 53-A, are further amended to read:

A. All materials, products and equipment of any kind which are used, or intended for use, in manufacturing, ~~compounding, processing, delivering, dispensing, distributing, importing or exporting~~ trafficking or furnishing any substance in violation of Title 17-A, chapter 45.

B. All conveyances, including aircraft, watercraft, vehicles or vessels, which are used or are intended for use, to transport, conceal or otherwise to facilitate the manufacture, ~~dispensing, or distribution of, or possession with intent to manufacture, dispense or distribute~~ trafficking or furnishing of a substance in violation of Title 17-A, chapter 45.

Sec. 125. 22 MRSA § 2387, sub-§ 3, 1st sentence, as enacted by PL 1973, c. 524, is amended to read:

The court shall order forfeiture of all conveyances subject to forfeiture under subsection 1, paragraph B, except as follows:

Sec. 126. 22 MRSA § 2387, sub-§ 3, ¶ C, as enacted by PL 1973, c. 524, is amended to read:

C. No conveyance shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance was used in and for the unlawful manufacturing, ~~dispensing or distributing~~ trafficking or furnishing of any ~~illegal substance covered by the sections referred to in para-~~

~~graph B of subsection 4~~ in violation of Title 17-A, chapter 45. Proof that ~~said~~ the conveyance was used on 3 or more occasions for the purpose of unlawfully manufacturing, ~~distributing or dispensing~~ trafficking or furnishing any ~~controlled~~ such substance shall be prima facie evidence that ~~said~~ such owner knew thereof or should have known thereof.

Sec. 127. 22 MRSA § 2387, sub-§ 5, 1st sentence, as enacted by PL 1973, c. 524 is repealed and the following enacted in place thereof:

Any officer, department or agency having custody of property subject to forfeiture under subsection 1, paragraph A or B, or having disposed of the property shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of the property, to whom it delivered the property, the date and manner of destruction or disposition of the property and the exact kinds, quantities and forms of the property.

Sec. 128. 22 MRSA § 2387, sub-§ 6, as enacted by PL 1973, c. 524, is repealed and the following enacted in place thereof:

6. Preliminary order. The court may issue at the request of the State ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody. Process for seizure of such property shall issue only upon a showing of probable cause; and the application therefor and the issuance, execution and return thereof shall be subject to the provisions of applicable Maine law. Any property subject to forfeiture under this section may be seized upon process except that seizure without process may be made when:

A. The seizure is incident to an arrest with probable cause or a search under a valid search warrant or an inspection under a valid administrative inspection warrant;

B. The property subject to seizure has been the subject of a prior judgment in favor of the State in a forfeiture proceeding under this section; or

C. There is a probable cause to believe that the property is directly or indirectly dangerous to health or safety.

Sec. 129. 32 MRSA § 3804-A, as enacted by PL 1971, c. 582, § 1, is amended to read:

### § 3804-A. Construction

Nothing in this chapter shall be construed to confer on any person licensed under this chapter any of the power and authority of sheriffs or police officers, except in cases of felony and offenses under ~~Title 17, chapters 61, 73, 113 and 115 and Title 17, section 3104~~ Title 17-A, chapters 15, 25 and 39.

Sec. 130. 32 MRSA § 4865-A, sub-§ 8, as enacted by PL 1975, c. 477, § 4, is repealed and the following enacted in place thereof:

8. Cruelty to animals. The performance of any act prohibited by Title 17-A, section 510;

**Sec. 131.** 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 1405~~ 17-A, section 755.

**Sec. 132.** 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 1405~~ 17-A, section 755.

**Sec. 133.** 34 MRSA § 1423, as enacted by PL 1971, c. 171 and as amended by PL 1971, c. 544, § 119, is repealed.

**Sec. 134.** 34 MRSA § 1424, as enacted by PL 1971, c. 171, is amended to read:

#### § 1424. Escape

Any person, who escapes or attempts to escape from custody while in another state pursuant to subchapter I, shall be subject to the penalties provided in ~~section 710~~ Title 17-A, section 755 for escape or attempt to escape from the State Prison.

**Sec. 135.** PL 1975, c. 499, § 6 is repealed and the following enacted in place thereof:

**Sec. 6.** 17 MRSA §§ 1053, 1054, 1091, 1092, 1094, 1131, 1133 and 1134, are repealed.

**Sec. 136.** 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 May 1, 1976.

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