

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 306

S. P. 127

In Senate, February 9, 1977

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

MAY M. ROSS, Secretary

Presented by Senator Collins of Knox.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Amend the Maine Criminal Code as Recommended by the  
Criminal Law Advisory Commission.**

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

**Sec. 1.** 14 MRSA § 5544, 2nd ¶, as last amended by PL 1973, c. 788, § 60, is further amended to read:

Any arresting officer may either take any person under arrest for a ~~misdemeanor~~ **Class D or Class E crime**, before a bail commissioner, who shall inquire into the charge and pertinent circumstances and admit him to bail if proper, or without fee may take the personal recognizance of any person for his appearance on a ~~misdemeanor~~ charge of a **Class D or Class E crime**.

**Sec. 2.** 15 MRSA § 2115-A, sub-§ 1, 2nd sentence, as enacted by PL 1967, c. 547, § 1, is amended to read:

Such appeal shall be taken within ~~40~~ 20 days after such order, decision or judgment has been entered, and in any case before the defendant has been placed in jeopardy under established rules of law.

**Sec. 3.** 15 MRSA § 2115-A, sub-§ 2, as enacted by PL 1967, c. 547, § 1, is repealed and the following enacted in its place:

2. **Appeal after trial or mistrial.** An appeal may be taken by the State in criminal cases, with the written approval of the Attorney General, from the Superior Court or District Court to the law court from any decision, ruling or order of the court when the defendant appeals from the judgment, and in any other instance where principles of finality would allow an appeal, except that no appeal shall lie where the double jeopardy provisions of the United

States Constitution or the Constitution of the State of Maine prohibit further prosecution. Such instances shall include, but shall not be limited to, a dismissal of an indictment, information or complaint or count thereof and a judgment or other decision or order terminating the prosecution in favor of the accused. Such appeal shall be taken within 20 days after such dismissal, judgment, decision or order has been entered or, when the defendant appeals from the judgment, within 20 days after the notice of appeal of the defendant is filed.

Sec. 4. 17-A MRSA § 2, sub-§ 3-A, as enacted by PL 1975, c. 499, § 1, is repealed as follows:

~~3-A. "Armed" means in actual possession of, regardless of whether the possession is visible or concealed~~

Sec. 5. 17-A MRSA § 2, sub-§ 9, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

9. Dangerous weapon.

A. "Use of a dangerous weapon" means the use of a firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which, in the manner it is used, is capable of producing or threatening death or serious bodily injury.

B. "Armed with a dangerous weapon" means in actual possession, regardless of whether the possession is visible or concealed, of:

- (1) A firearm;
- (2) Any device designed as a weapon and capable of producing death or serious bodily injury; or
- (3) Any other device, instrument, material or substance, whether animate or inanimate, which, in the manner it is intended to be used by the actor, is capable of producing or threatening death or serious bodily injury. For purposes of this definition, the intent may be conditional.

C. When used in any other context, "dangerous weapon" means a firearm or any device designed as a weapon and capable of producing death or serious bodily injury.

D. For purposes of this subsection, a thing presented in a covered or open manner as a dangerous weapon shall be presumed to be a dangerous weapon.

Sec. 6. 17-A MRSA § 2, sub-§ 10, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

10. "Dwelling place" means a structure which is adapted for overnight accommodation of persons, or sections of any structure similarly adapted. A dwelling place does not include garages or other structures, whether adjacent or attached to the dwelling place, which are used solely for the storage of property or structures formerly used as dwelling places which are uninhabitable. It is immaterial whether a person is actually present.

Sec. 7. 17-A MRSA § 2, sub-§ 24 is enacted to read:

24. "Structure" means a building or other place designed to provide protection for persons or property against weather or intrusion, but does not include vehicles and other conveyances whose primary purpose is transportation of persons or property unless such vehicle or conveyance, or a section thereof, is also a dwelling place.

Sec. 8. 17-A MRSA § 57, sub-§ 6, as enacted by PL 1975, c. 499, § 1, is amended to read:

6. An accomplice may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or is **not subject to prosecution as a result of immaturity**, or has an immunity to prosecution or conviction, or has been acquitted.

Sec. 9. 17-A MRSA § 59, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended by adding after the first sentence the following new sentence:

**Alternate jurors who were present during the first phase of the trial but who did not participate in the deliberations and verdict thereof may be substituted for jurors who did participate.**

Sec. 10. 17-A MRSA § 151, sub-§ 7, as enacted by PL 1975, c. 499, § 1, is amended to read:

7. It is no defense to prosecution under this section that the person with whom the defendant is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, **is not subject to prosecution as a result of immaturity**, or is immune from or otherwise not subject to prosecution.

Sec. 11. 17-A MRSA § 152, sub-§ 3-A is enacted to read:

3-A. **An indictment, information or complaint, or count thereof, charging the commission of a crime under chapters 9 through 45, or a crime outside this code shall be deemed to charge the commission of the attempt to commit that crime and shall not be deemed duplicitous thereby.**

Sec. 12. 17-A MRSA § 153, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person is guilty of solicitation if he commands or attempts to induce another person to commit **criminal homicide in the first or 2nd degree** or a particular Class A or Class B crime, whether as principal or accomplice, with the intent to cause the ~~imminent~~ commission of the crime, and under circumstances which the actor ~~knows~~ **believes** make it ~~very likely~~ **probable** that the crime will take place.

Sec. 13. 17-A MRSA § 153, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. It is no defense to a prosecution under this section that the person solicited could not be guilty of the crime because of lack of responsibility or culpability, **immaturity**, or other incapacity or defense.

**Sec. 14.** 17-A MRSA § 204, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. Criminal homicide in the 4th degree is a ~~Class B~~ **Class A** crime, provided that it is a defense which reduces it to a Class C crime if it occurs as the result of the reckless operation of a motor vehicle.

**Sec. 15.** 17-A MRSA § 208, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

**B. Bodily injury to another with the use of a dangerous weapon; or**

**Sec. 15-A.** 17-A MRSA § 210, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

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

**Sec. 16.** 17-A MRSA § 352, sub-§ 5, ¶ E, as amended by PL 1975, c. 740, § 54, is further amended by adding at the end the following new sentence:

**Prosecution may be brought in any venue in which one of the thefts which have been aggregated was committed.**

**Sec. 17.** 17-A MRSA § 354, sub-§ 2, ¶ B, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

**B. Fails to correct an impression which is false and which he does not believe to be true, and which:**

(1) **He had previously created or reinforced; or which**

(2) **He knows to be influencing another whose property is involved and to whom he stands in a fiduciary or confidential relationship;**

**Sec. 18.** 17-A MRSA § 362, sub-§ 2, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

**C. The actor is armed with a ~~deadly~~ dangerous weapon at the time of the offense.**

**Sec. 19.** 17-A MRSA § 362, sub-§ 3, ¶ B, as amended by PL 1975, c. 740, § 59, is repealed and the following enacted in its place:

**B. The actor has been twice before convicted of any combination of the following offenses: Theft or violation of sections 703 or 708, or attempts thereat; or**

**Sec. 20.** 71-A MRSA § 401, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. **A person is guilty of burglary if he enters or surreptitiously remains in a dwelling place, or other building, structure or place of business, knowing**

that he is not licensed or privileged to do so, with the intent to commit a crime therein.

**Sec. 21. 17-A MRSA § 401, sub-§ 2, ¶ B**, as enacted by PL 1975, c. 499, § 1, is amended to read:

**B.** A Class B crime if the defendant intentionally or recklessly inflicted or attempted to inflict bodily injury on anyone during the commission of the burglary, or an attempt to commit such burglary, or in immediate flight after such commission or attempt or if the defendant was armed with a ~~deadly~~ dangerous weapon other than a firearm, or knew that an accomplice was so armed; or if the violation was against a **structure which is a dwelling place**;

**Sec. 22. 17-A MRSA § 401, sub-§ 3**, as amended by PL 1975, c. 740, § 60, is further 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. 23. 17-A MRSA § 402, sub-§ 1**, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

**A.** He enters in any secured premises;

**B.** He remains in any place in defiance of a lawful order to leave which was personally communicated to him by the owner or other authorized person; or

**C.** He enters in any place in defiance of a lawful order not to enter which was personally communicated to him by the owner or other authorized person.

**Sec. 24. 17-A MRSA § 454** as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

**§ 454. Tampering with witness or informant**

1. A person is guilty of tampering with witness or informant if, believing that an official proceeding as defined in section 451, subsection 5, paragraph A, or an official criminal investigation, is pending or will be instituted:

**A.** He induces or otherwise causes, or attempts to induce or cause, a witness or informant:

(1) To testify or inform falsely;

(2) To withhold, beyond the scope of any privilege which the witness or informant may have, any testimony, information or evidence;

(3) To absent himself from any criminal proceeding or criminal investigation; or

(4) To absent himself from any other proceeding or investigation to which he has been summoned by legal process; or

B. He solicits, accepts or agrees to accept any pecuniary benefit in consideration of his doing any of the things specified in paragraph A.

2. Violation of subsection 1, paragraph A, is a Class C crime if it is committed by means of force, violence or intimidation, or by the offering or giving of any pecuniary benefit. Violation of subsection 1, paragraph A, is otherwise a Class D crime. Violation of subsection 1, paragraph B, is a Class C crime.

Sec. 25. 17-A MRSA § 501, sub-§ 4, as amended by PL 1975, c. 740, § 65, is repealed as follows:

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

Sec. 26. 17-A MRSA § 509, sub-§ 1, ¶ C is enacted to read:

C. He knowingly gives or causes to be given false information concerning an emergency to any ambulance service, or to any government agency or public utility that deals with emergencies involving danger to life or property, with the intent of inducing such service, agency or utility to respond to the reported emergency, knowing such information to be false.

Sec. 27. 17-A MRSA § 556, sub-§ 1-A is enacted to read:

1-A. It is a defense to a prosecution under this section that, at the time he engaged in sexual intercourse with the other person, the actor was legally married to the other person.

Sec. 28. 17-A MRSA § 703, sub-§ 2, as repealed and replaced by PL 1975, c. 740, § 78, is amended to read:

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 or attempts thereat. Forgery is otherwise a Class D crime.

Sec. 29. 17-A MRSA § 703, sub-§ 4, as repealed and replaced by PL 1975, c. 740, § 79, is amended to read:

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 or attempts thereat. Negotiating a worthless instrument is otherwise a Class D crime.

Sec. 30. 17-A MRSA § 753, sub-§ 3, is enacted to read:

3. As used in subsection 1, "crime" includes juvenile offenses. The sentencing class for hindering the apprehension of a juvenile shall be determined in the same manner as if the juvenile were a person 18 years of age or over; provided that if the offense committed by the juvenile would not have been a crime if committed by a person 18 years of age or over, hindering apprehension is a Class E crime.

Sec. 31. 17-A MRSA § 754, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

§ 754. Obstructing criminal prosecution

1. A person is guilty of obstructing criminal prosecution if:

A. He uses force, violence or intimidation, or he promises, offers or gives any pecuniary benefit to another, with the intent to induce the other:

(1) To refrain from initiating a criminal prosecution or juvenile proceeding; or

(2) To refrain from continuing with a criminal prosecution or juvenile proceeding which he has initiated; or

B. He solicits, accepts or agrees to accept any pecuniary benefit in consideration of his doing any of the things specified in this subsection.

2. This section shall not apply to conduct authorized by Title 15, section 891.

3. It is an affirmative defense to prosecution under this section that the pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.

4. Obstructing criminal prosecution is a Class C crime.

Sec. 32. 17-A MRSA § 755, sub-§ 3, 2nd sentence, as amended by PL 1975, c. 740, § 82, is repealed as follows:

~~It does not include custody of persons under 18 years of age unless 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. 33. 17-A MRSA § 757, sub-§ 2, as amended by PL 1975, c. 740, § 85, is repealed and the following enacted in its place:

2. As used in this section, "official custody" has the same meaning as in section 755. As used in this section, "contraband" has the same meaning as in section 756.

Sec. 34. 17-A MRSA § 801, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is repealed as follows:

~~4. As used in this section "structure" includes but is not limited to a building, tent, lean-to and a vessel or vehicle adapted for overnight accommodation.~~

Sec. 35. 17-A MRSA § 805, sub-§ 1-B, as enacted by PL 1975, c. 740, § 87, is amended by adding at the end the following new sentence:

Prosecution for an aggregated aggravated criminal mischief may be brought in any venue in which one of the criminal mischiefs which have been aggregated was committed.



**Sec. 36.** 17-A MRSA § 1203, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

1. Subject to the limitations in subsection 2, the court may require that a person sentenced to a suspended term of imprisonment with probation, pursuant to section 1201, subsection 1, be imprisoned in a designated institution for any portion of the suspended term of imprisonment.

**Sec. 37.** 17-A MRSA § 1204, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

3. The convicted person shall be given an opportunity to address the court on the conditions which are proposed to be attached and shall, after sentence, be given a written statement setting forth the particular conditions on which he is released on probation.

**Sec. 38.** 17-A MRSA § 1252, sub-§ 3, first sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

The court may add to the sentence of imprisonment a restitution order as is provided for in chapter 49, section 1204, subsection ~~2~~ **2-A**, paragraph ~~C~~ **B**.

**Sec. 39.** 17-A MRSA § 1252, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended by adding at the end the following new sentence:

This subsection shall not apply to a violation or an attempted violation of section 208 or to any offense for which the sentencing class is otherwise increased because the actor or an accomplice to his knowledge is armed with a firearm or other dangerous weapon.

**Sec. 40.** 17-A MRSA § 1253, sub-§ 2, 2nd sentence, as enacted by PL 1975, c. 499, § 1, is repealed as follows:

~~The department shall have the same authority regarding such local lock-ups as is provided regarding county jails by Title 34, section 3.~~

**Sec. 41.** 34 MRSA § 3, as last amended by PL 1975, c. 771, § 378, is further amended by adding at the end the following new paragraph:

The department shall have the same authority over local lock-ups as they have over county jails pursuant to this section.

#### STATEMENT OF FACT

This bill contains the recommendations of the Criminal Law Advisory Commission as authorized by Title 17-A, section 1354, subsection 2. The proposed amendments respond to problems which have come to light subsequent to the effective date of the Criminal Code.