

MAINE STATE LEGISLATURE

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



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

New Draft of: S. P. 127, L. D. 306
(New Title)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1892

S. P. 574

In Senate, June 28, 1977

Reported by Senator Curtis of Penobscot from the Committee on Judiciary
and printed under Joint Rules No. 2.

MAY M. ROSS, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Amend the Maine Criminal Code and Related Statutes.

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 ~~mis-~~
~~demeanor~~ **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 of a ~~mis-~~
~~demeanor~~ 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 ~~to~~ 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 § 2141, 1st 2 sentences, as enacted by PL 1965, c. 419,
§ 1, are amended to read:

There shall be an appellate division of the Supreme Judicial Court for the
review of ~~sentences~~ any sentence of one year or more to the State Prison,
Maine Correctional Center or any county jail imposed by a final ~~judgments~~
judgment in a criminal ~~cases~~ case, except in any case in which a different
sentence could not have been imposed. The appellate division shall consist
of not more than 3 Justices of the Supreme Judicial Court to be designated

from time to time by the Chief Justice of said court, and shall sit in Rockland, Portland or at such other place as may be designated by the Chief Justice, and at such times as he shall determine.

Sec. 4. 15 MRSA § 2142, 1st ¶, as amended by PL 1975, c. 427, § 2, is further amended to read:

A person aggrieved by a sentence which may be reviewed may after imposition thereof and within such time as the Supreme Judicial Court shall by rule provide, notwithstanding any partial execution of such sentence, file with the clerk of the court in which the sentence was imposed an appeal to the appellate division for the review of such sentence. Upon the imposition of ~~such a sentence to the State Prison~~ of one year or more to any of the institutions enumerated in section 2141, the clerk of the appropriate court shall notify the person sentenced of his right to request such appeal. An appeal shall not stay the execution of a sentence. The clerk shall forthwith notify the justice or judge who imposed the sentence appealed from the appellate division of the filing of such an appeal. Such justice or judge may transmit to the appellate division a statement of his reasons for imposing the sentence and shall make such a statement within 7 days if requested to do so by the appellate division.

Sec. 5. 15 MRSA § 2142, 2nd ¶, 4th sentence, as amended by PL 1975, c. 427, § 2, is further amended to read:

The clerk of the appellate division shall forthwith notify the justice or judge who imposed the sentence appealed from of the final action by the appellate division on the appeal.

Sec. 6. 15 MRSA § 2143, as amended by PL 1975, c. 427, § 3, is further amended to read:

§ 2143. Notice of dismissal of appeal; procedure on amendment of judgment

If an appeal is dismissed, the clerk of the appellate division shall forthwith notify the appellant and the Warden of the State Prison, or the Superintendent of the Maine Correctional Center, or the county jailer, as the case may be, in which the appellant is confined. If the judgment is amended by an order substituting a different sentence or sentences or disposition of the case, any Justice of the Superior Court or Judge of the District Court, whichever court has jurisdiction of the offense for which the sentence was imposed, when in ~~Knox County~~ the county in which the defendant is confined, shall resentence the defendant or make any other disposition of the case ordered by the appellate division. Time served on a sentence appealed from shall be deemed to have been served on a substituted sentence.

Sec. 7. 15 MRSA § 2144, as enacted by PL 1965, c. 419, § 1, is amended to read:

§ 2144. Duty of clerk when appeal heard in another county

When an appeal is considered or heard in a county other than that in which the judgment was rendered, or when a defendant is brought before the court for resentence or other disposition in such a county, the clerk for such county,

or the clerk for any judicial division of the District Court therein, or an assistant clerk of either, shall act as clerk for the county, or for the judicial division of the District Court, in which the judgment was rendered and shall issue any process required, and shall transmit copies thereof with a statement of the proceedings to the last mentioned clerk.

Sec. 8. 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. 9. 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 or threatened to be used is capable of producing 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. 10. 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. 11. 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. 12. 17-A MRSA § 3, sub-§ 1, ¶ B, as amended by PL 1975, c. 740, § 12, is further amended to read:

B. By any statute or private act outside this code, including any rule ~~or~~, regulation or ordinance authorized by and lawfully adopted under a statute.

Sec. 13. 17-A MRSA § 4, sub-§ 1, as repealed and replaced by PL 1975, c. 740, § 13, is amended to read:

1. Except for ~~criminal homicide in the first or second degree murder~~, 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.

Sec. 14. 17-A MRSA § 4-A, sub-§ 2, as enacted by PL 1975, c. 740, § 14, is amended to read:

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, **provided that this section shall not apply to crimes defined in Title 12, Part 4.**

Sec. 15. 17-A MRSA § 4-A, sub-§ 4, as enacted by PL 1975, c. 740, § 14, is amended to read:

4. If a criminal statute or criminal ordinance 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. 16. 17-A MRSA § 6, sub-§§ 2 and 3, as enacted by PL 1975, c. 740, § 16-A, are repealed.

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

2. Prosecutions for crimes other than ~~criminal homicide in the first or second degree murder~~ are subject to the following periods of limitations:

Sec. 18. 17-A MRSA § 9, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. All proceedings for ~~criminal homicide in the first degree and in the second degree murder~~ shall be prosecuted by indictment; and

Sec. 19. 17-A MRSA § 10, sub-§ 3, ¶¶ A and B, as enacted by PL 1975, c. 499, § 1, are amended to read:

A. A person acts recklessly with respect to a result of his conduct when he consciously disregards a ~~substantial and unjustifiable~~ risk that his conduct will cause such a result.

B. A person acts recklessly with respect to attendant circumstances when he consciously disregards a ~~substantial and unjustifiable~~ risk that such circumstances exist.

Sec. 20. 17-A MRSA § 10, sub-§ 3, ¶ C, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

Sec. 21. 17-A MRSA § 10, sub-§ 4, ¶¶ A and B, as enacted by PL 1975, c. 499, § 1, are amended to read:

A. A person acts with criminal negligence with respect to a result of his conduct when he fails to be aware of a ~~substantial and unjustifiable~~ risk that his conduct will cause such a result.

B. A person acts with criminal negligence with respect to attendant circumstances when he fails to be aware of a ~~substantial and unjustifiable~~ risk that such circumstances exist.

Sec. 22. 17-A MRSA § 10, sub-§ 4, ¶ C, as amended by PL 1975, c. 740, § 18, is repealed and the following enacted in its place:

C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

Sec. 23. 17-A MRSA § 15, sub-§ 1, ¶ A, sub-¶ (1), as enacted by PL 1975, c. 740, § 22, is repealed and the following enacted in its place:

(1) Murder; or

Sec. 24. 17-A MRSA § 16, sub-§ 1, ¶ A, as enacted by PL 1975, c. 740, § 22, is repealed and the following enacted in its place:

A. Murder; or

Sec. 24-A, 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. 25. 17-A MRSA § 58-A, 1st ¶, as enacted by PL 1975, c. 740, § 25, is repealed.

Sec. 26. 17-A MRSA § 58-A, sub-§§ 1 and 2, as enacted by PL 1975, c. 740, § 25, are repealed and the following enacted in their place:

1. Intoxication is not a defense unless it establishes a reasonable doubt as to the existence of an element of the offense.

2. When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he not been intoxicated, such unawareness is immaterial.

Sec. 27. 17-A MRSA § 59, sub-§ 3, as enacted by PL 1975, c. 409, § 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. 28. 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. 29. 17-A MRSA § 151, sub-§ 9, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

Conspiracy is an offense classified as one grade less serious than the classification of the most serious crime which is its object, except that conspiracy to commit ~~criminal homicide in the first or 2nd degree murder~~ is a Class A crime.

Sec. 30. 17-A MRSA § 151, sub-§ 9, last sentence, as enacted by PL 1975, c. 740, § 35, is repealed.

Sec. 31. 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. 32. 17-A MRSA § 152, sub-§ 4, 1st sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

Criminal attempt is an offense classified as one grade less serious than the classification of the offense attempted, except that an attempt to commit a Class E crime is a Class E crime, and an attempt to commit ~~criminal homicide in the first or 2nd degree murder~~ is a Class A crime.

Sec. 33. 17-A MRSA § 152, sub-§ 4, last sentence, as enacted by PL 1975, c. 740, § 36, is repealed.

Sec. 34. 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 **murder** 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. 35. 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. 36. 17-A MRSA § 153, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended to read:

4. Solicitation is an offense classified as one grade less serious than the classification of the crime solicited, except that solicitation to commit ~~criminal homicide in the first or second degree~~ **murder** is a Class A crime.

Sec. 37. 17-A MRSA § 201, as amended by PL 1975, c. 740, §§ 37-39 is repealed and the following enacted in its place:

§ 201. Murder

1. A person is guilty of murder if:

A. He intentionally or knowingly causes the death of another human being;

B. He engages in conduct which manifests a depraved indifference to the value of human life and which in fact causes the death of another human being; or

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

2. The sentence for murder shall be as authorized in chapter 51.

Sec. 38. 17-A MRSA § 202, as amended by PL 1975, c. 740, § 40, is repealed and the following enacted in its place:

§ 202. Felony murder

1. A person is guilty of felony murder if acting alone or with one or more other persons in the commission of, or an attempt to commit, or immediate flight after committing or attempting to commit murder, robbery, burglary, kidnapping, aggravated arson, arson, rape, gross sexual misconduct, or escape, he or another participant in fact causes the death of a human being, and such death is a reasonably foreseeable consequence of such commission, attempt or flight.

2. It is an affirmative defense to prosecution under this section that the defendant:

A. Did not commit the homicidal act or in any way solicit, command, induce, procure or aid the commission thereof;

B. Was not armed with a dangerous weapon, or other weapon which under circumstances indicated a readiness to inflict serious bodily injury;

C. Reasonably believed that no other participant was armed with such a weapon; and

D. Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

3. Felony murder is a Class A crime.

Sec. 39. 17-A MRSA § 203, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

§ 203. Manslaughter

1. A person is guilty of manslaughter if he:

A. Recklessly, or with criminal negligence, causes the death of another human being; or

B. Causes the death of another human being under circumstances which would otherwise be murder except that the actor causes the death while under the influence of extreme anger or extreme fear brought about by adequate provocation.

2. For purposes of subsection 1, paragraph B, provocation is adequate if:

A. It is not induced by the actor; and

B. It is reasonable for the actor to react to the provocation with extreme anger or extreme fear, provided that evidence demonstrating only that the actor has a tendency towards extreme anger or extreme fear shall not be sufficient, in and of itself, to establish the reasonableness of his reaction.

3. Manslaughter is a Class C crime if it occurs as the result of the reckless or criminally negligent operation of a motor vehicle; otherwise, manslaughter is a Class A crime.

Sec. 40. 17-A MRSA § 204, as amended by PL 1975, c. 740, § 41, is repealed and the following enacted in its place:

§ 204. Aiding or soliciting suicide

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

2. Aiding or soliciting suicide is a Class D crime.

Sec. 41. 17-A MRSA § 205, as enacted by PL 1975, c. 499, § 1, is repealed.

Sec. 42. 17-A MRSA § 206, as amended by PL 1975, c. 740, § 42, is repealed.

Sec. 43. 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 use of a dangerous weapon ; or

Sec. 44. 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. 45. 17-A MRSA § 352, sub-§ 4, ¶ 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. 46. 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. 47. 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. 48. 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. 49. 17-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. 50. 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. 51. 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. 52. 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. 53. 17-A MRSA § 454 as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

§ 454. Tampering with a witness or informant

1. A person is guilty of tampering with a 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; or

(2) To withhold any testimony, information or evidence, which he knows the witness or informant is not privileged to withhold;

B. He uses force, violence or intimidation, or he promises, offers or gives any pecuniary benefit with the intent to induce a witness or informant:

(1) To withhold any testimony, information or evidence;

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

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

C. He solicits, accepts or agrees to accept any pecuniary benefit in consideration of his doing any of the things specified in paragraph A, subparagraph (1), or in paragraph B, subparagraphs (1), (2) or (3).

2. Tampering with a witness or informant is a Class C crime.

Sec. 54. 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. 55. 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. 56. 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. 57. 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. 58. 17-A MRSA § 708, 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. 59. 17-A MRSA § 753, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

2. Hindering apprehension is a Class B crime if the defendant knew of conduct of the other person which has in fact resulted in a charge of murder or a Class A crime or which has in fact rendered the other person liable to such a charge. It is a Class C crime if the conduct of the other person has in fact resulted in a charge of murder or a Class A crime or has in fact rendered the other person liable to such a charge; otherwise, it is one grade less than the charge in fact made or liable to be made against the other person; provided that if such charge is a Class E crime, hindering apprehension is a Class E crime.

Sec. 60. 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. 61. 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:

A. The charge in fact made or liable to be made was for a Class D or Class E crime or a comparable juvenile offense; and

B. 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. 62. 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. 63. 17-A MRSA § 755, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

4. Escape is classified as:

A. A Class B crime if it is committed by force against a person, threat of such force, or while the defendant is armed with a dangerous weapon;

B. A Class D crime if the person escapes from arrest or escapes from custody while he is being transported to a jail, police station or any other facility enumerated in subsection 3, pursuant to an arrest, unless the escape is committed in the manner described in paragraph A; or

C. A Class C crime for all other escapes.

Sec. 64. 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. 65. 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. 66. 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. 66-A. 17-A MRSA § 1152, sub-§ 1, as amended by PL 1975, c. 499, § 1, is further 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. 67. 17-A MRSA § 1201, sub-§ 1, ¶ A, as repealed and replaced by PL 1975, c. 740, § 109, is amended to read:

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

Sec. 68. 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. 69. 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. 70. 17-A MRSA § 1205, as last amended by PL 1975, c. 740, §§ 111 and 112 is repealed and the following enacted in its place:

§ 1205. Commencement of probation revocation proceedings

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 arrest such person or he may deliver a summons to such person ordering him to appear for a court hearing on the alleged violation. If the probation officer cannot, with due diligence, locate the person in order to arrest him or serve a summons on him, he shall file a written notice of this fact with the court which placed the person on probation.

2. The summons delivered pursuant to subsection 1 shall include the signature of the probation officer, a brief statement 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 summons, the probation officer shall file with the court a motion for revocation of probation, which shall set forth in detail the facts underlying the alleged violation. A copy of the motion shall be furnished to the person on probation prior to the court hearing on the alleged violation.

3. If the person fails to appear in court after having been served with a summons, or if written notice is filed with the court that the person cannot be located, the court may issue a warrant for the arrest of the person. The court may then order the person committed with or without bail, pending the court hearing or pending a preliminary hearing, if the person is entitled to such a hearing under subsection 4.

4. A person arrested pursuant to subsections 1 or 3 shall be afforded a preliminary hearing as soon as reasonably possible, but not later than on the 3rd day after arrest, excluding Saturdays, Sundays and holidays, in accordance with the procedures set forth in section 1205-A. No preliminary hearing shall be afforded if, within the 3-day period, the person is released on bail or is afforded an opportunity for a court hearing on the alleged violation. If a person is arrested pursuant to subsections 1 or 3, but is not entitled to a preliminary hearing under this subsection, the probation officer shall file with the court a motion for revocation of probation, as described in subsection 2. A copy of the motion shall be furnished to the person on probation prior to the court hearing on the alleged violation.

5. If a person on probation is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction, a motion for revocation as described in subsection 2 may be filed with the court. Upon filing of the motion, the court may order the person committed with or without bail, pending the court hearing or pending the preliminary hearing. A person incarcerated pursuant to this subsection shall be afforded a preliminary hearing only if he has been released on bail on the pending criminal charge or pending appeal following a conviction, and has not been released on bail on the alleged violation of probation and has not been afforded a court hearing within the time period specified in subsection 4. A person not entitled to a preliminary hearing under this subsection shall be furnished with a copy of the motion prior to the court hearing on the alleged violation.

6. Whenever a person is entitled to a preliminary hearing pursuant to subsection 4 or 5, the failure to hold the hearing within the time period

specified in subsection 4 shall be grounds for his release on personal recognition pending further proceedings.

7. The running of the period of probation shall be tolled upon either the delivery of the summons, the filing of the written notice with the court that the person cannot be located, or the arrest of the person, as provided for in subsection 1. The running of the period of probation shall cease to be tolled upon a finding of no probable cause under section 1205-A, subsection 4, or upon a disposition of the charges of probation violation pursuant to section 1206. If there is a finding of no probable cause, or if the person is found not to have violated his probation, the running of the period of probation shall be deemed not to have been tolled.

Sec. 71. 17-A MRSA § 1205-A is enacted to read:

§ 1205-A. Preliminary hearing

1. Whenever it appears that a person arrested for an alleged violation of probation is entitled to a preliminary hearing under section 1205, the probation officer shall forthwith furnish the person with a written notice of a preliminary hearing to determine whether there is probable cause to believe that the person has violated a condition of his probation. The notice shall name the place and time of the preliminary hearing, state the conduct alleged to constitute the violation, and inform the person of his rights under this section.

2. The preliminary hearing shall be held before the district supervisor or such other official as may be designated by the Director of Probation and Parole. It shall be held at a location as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. If it is alleged that the person violated probation because of the commission of a new offense, the preliminary hearing shall be limited to the issue of identification, if probable cause on the new offense has been found by the District Court, or he has been indicted, has waived indictment or has been convicted.

3. At the preliminary hearing, the person alleged to have violated a condition of his probation has the right to confront and cross-examine persons who have information to give against him, the right to present evidence on his own behalf and the right to remain silent. If the hearing officer determines on the basis of the evidence before him that there is not probable cause to believe that a condition of probation has been violated, he shall terminate the proceedings and order the person on probation forthwith released from any detention resulting from the alleged violation. If he determines that there is such probable cause, he shall prepare a written statement summarizing the evidence that was brought before him, and particularly describing that which supports the belief that there is probable cause. At the outset of the preliminary hearing, the district supervisor shall inform the person of his rights under this section and of the provisions of section 1206. Such person may waive, at the preliminary hearing, his right to confront and cross-examine witnesses against him, his right to present evidence on his own behalf and his right to remain silent. No other rights may then be waived, nor shall there be a waiver of the right to a preliminary hearing.

4. If, as a result of a preliminary hearing held under this section, there is a determination of probable cause, the Director of Probation and Parole, or

his designated representative, may file with any court a motion for revocation of probation. The motion shall incorporate the written statement prepared pursuant to subsection 3 and shall be accompanied by an application for a summons ordering the person to appear before the court for a hearing on the alleged violation. The motion and the application shall be filed without unnecessary delay. A copy of the motion shall be furnished to the person on probation.

Sec. 72. 17-A MRSA § 1206, as amended by PL 1975, c. 740, § 113, is repealed and the following enacted in its place:

§ 1206. Court hearing on probation revocation

1. Upon receipt of a motion for revocation of probation, pursuant to sections 1205 or 1205-A, the court may, in its discretion:

A. Order a hearing on the allegations; or

B. Dismiss the motion if, after opportunity for amendment, the conduct alleged does not constitute a violation of the conditions of probation and order the person on probation released forthwith if he is being detained on the allegations.

2. The hearing on the motion to revoke probation shall be held in the court which sentenced the person to probation in either the county or division in which the person resides or is incarcerated, unless the court orders otherwise in the interests of justice.

3. If a hearing is ordered, the person on probation shall be notified, and the court may issue a summons or may issue a warrant for his arrest and order him committed, with or without bail, pending the hearing.

4. If a hearing is held, the person on probation shall be afforded the opportunity to confront and cross-examine witnesses against him, to present evidence on his own behalf and to be represented by counsel. If he cannot afford counsel, the court shall appoint counsel for him.

5. When the alleged violation constitutes a crime for which the person on probation has not been convicted, the court may revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime. If the person is subsequently convicted of the crime, or any other crime or crimes arising out of the same conduct, sentencing shall be subject to the requirements of section 1155. If concurrent terms of imprisonment are imposed and the terms do not commence on the same date, any time served as a result of the probation revocation shall be deducted from the time the person is required to serve as a result of the new conviction.

6. If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. In such case, the court shall impose the sentence that was suspended when probation was granted.

7. If a person on probation is convicted of a new crime during the period of probation, the court may sentence him for such crime, revoke probation and impose the sentence that was suspended when probation was granted, subject to section 1155. If the person has been sentenced for the new crime and probation revocation proceedings are subsequently commenced, the court which conducts the revocation hearing may revoke probation and impose the sentence that was suspended when probation was granted, subject to section 1155. If concurrent terms of imprisonment are imposed and the terms do not commence on the same date, any time served as a result of the new conviction shall be deducted from the time the person is required to serve as a result of the probation revocation.

8. Whenever a person is detained in any state or county institution pending a probation revocation proceeding, such period of detention shall be deducted from the time the person is required to serve under the sentence imposed as a result of the probation revocation.

Sec. 73. 17-A MRSA § 1251, as amended by PL 1975, c. 740, §§ 114 and 115, is repealed and the following enacted in its place:

§ 1251. Imprisonment for murder

A person convicted of murder shall be sentenced to the State Prison for life or for any term of years that is not less than 25.

Sec. 74. 17-A MRSA § 1252, sub-§ 1, 1st sentence, as amended by PL 1975, c. 740, § 116, is further amended to read:

In the case of a person convicted of a crime other than ~~criminal homicide in the first or second degree murder~~, 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 imprisonment and required to pay the fine authorized therein.

Sec. 75. 17-A MRSA § 1252, sub-§ 2-A, as enacted by PL 1975, c. 740, § 117, is repealed.

Sec. 76. 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-A~~, paragraph ~~B~~.

Sec. 77. 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. 78. 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. 79. 17-A MRSA § 1253, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. Each person sentenced, before January 1, 1978, to imprisonment for more than 6 months whose record of conduct shows that he has observed all the rules and requirements of the institution in which he has been imprisoned shall be entitled to a deduction of 10 days a month from his sentence, commencing, in the case of all such convicted persons, on the first day of his delivery into the custody of the department.

Sec. 80. 17-A MRSA § 1253, sub-§ 3-A is enacted to read:

3-A. Each person sentenced, on or after January 1, 1978, to imprisonment for more than 6 months shall earn a reduction of 10 days from his sentence for each month during which he has faithfully observed all the rules and requirements of the institution in which he has been imprisoned. Each month the supervising officer of each institution shall cause to be posted a list of all such persons who have earned reductions from their sentences during the previous month. If any such person does not earn all of his reduction from his sentence in any month, a notation of such action shall be entered on a cumulative record of such actions in the person's permanent file.

Sec. 81. 17-A MRSA § 1254, sub-§ 2, as enacted by PL 1975, c. 740, § 119, is repealed.

Sec. 82. 17-A MRSA § 1301, sub-§ 1, ¶ A-1, as enacted by PL 1975, c. 740, § 122, is amended to read:

A-1. ~~\$7,000~~ \$2,500 for a Class C crime;

Sec. 83. 17-A MRSA § 1301, sub-§ 1, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. ~~\$500~~ \$1,000 for a Class D crime;

Sec. 84. 17-A MRSA § 1301, sub-§ 1, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. ~~\$250~~ \$500 for a Class E crime; and

Sec. 85. 17-A MRSA § 1301, sub-§ 4, is enacted to read:

4. Whenever a statute makes the possession of a particular item, whether animate or inanimate, a criminal offense, the statute may expressly provide that the fine shall depend upon the quantity of the item possessed by the defendant. In such case, the fine shall be as provided for in the statute and shall not be subject to the maximum limits placed on fines by subsections 1 and 3.

Sec. 86. 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.

Sec. 87. 34 MRSA § 529, 1st ¶, as amended by PL 1975, c. 756, § 14, is further amended to read:

When it appears to the Director of the Bureau of Corrections, for reasons of availability of rehabilitative programs and the most efficient administration of correctional resources, that the requirements of any person sentenced or committed to a penal, correctional or juvenile institution would be better met in a facility, institution or program other than that to which such person was originally sentenced, the Director of the Bureau of Corrections, with the written consent of the person so sentenced, may transfer ~~after written notice of the transfer to the court which originally had jurisdiction and in the absence of any objection by the court within 14 days following the date of the notice~~ such person to another correctional institution, residential facility or program administered by or providing services to the Bureau of Corrections; provided that no juvenile shall be transferred to a facility or program for adult offenders.

Sec. 88. 38 MRSA § 349, sub-§ 1, as enacted by PL 1977, c. 300, § 9, is amended to read:

1. **Criminal penalties.** ~~Any~~ Notwithstanding Title 17-A, section 4-A and except as provided in subsection 4, any person who violates any provision of the laws administered by the Department of Environmental Protection, or the terms or conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a fine, payable to the State, of not more than \$25,000 ~~except as provided in subsection 4~~ for each day of such violation.

Sec. 89. 38 MRSA § 349, sub-§ 3, as enacted by PL 1977, c. 300, § 9, is amended to read:

3. **Falsification and tampering.** ~~Any~~ Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any rule, regulation, license, permit, approval or decision of the board, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the board shall, upon conviction, be subject to a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or both.

Sec. 90. 38 MRSA § 349, sub-§ 4, as enacted by PL 1977, c. 300, § 9, is repealed and the following enacted in its place:

4. **Violations.** Any person who violates any of the following provisions shall be guilty of a Class E crime for each day of such violation:

- A. Section 419; (high phosphorous detergent);
- B. Section 422; (Great Ponds);
- C. Section 423; (Discharge from watercraft);
- D. Section 471; (Alteration of wetlands);
- E. Section 1306; (Solid waste);
- F. Title 10, section 2205; (Mining reclamation);
- G. Title 12, section 4757; (Regulations for state-held wetlands);
- H. Title 12, chapter 421 and orders thereunder; (Wetlands zoning);
- I. Title 12, chapter 423-A and regulations thereunder (Minimum lot size);
and
- J. Title 30, sections 4104 and 4105 (Septic materials disposal);

STATEMENT OF FACT

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