

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2144

S. P. 697

In Senate, February 15, 1978

The Committee on Judiciary suggested. Approved for introduction by
Legislative Council pursuant to Rule 24.

MAY M. ROSS, Secretary

Presented by Senator Collins of Knox

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Revise the State Criminal Extradition and Criminal Codes.

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

Sec. 1. 12 MRSA § 2954, 2nd ¶, as repealed and replaced by PL 1971, c. 437, § 1, is repealed and the following enacted in its place:

Any person violating this section shall be guilty of a Class C crime and in addition thereto shall be denied the right to hunt or trap anywhere in the State with or without a license for a period of 10 years. It is a defense to a prosecution under this section that the actor took all steps which he reasonably believed were available to him to procure aid for the victim with the least possible delay.

Sec. 2. 15 MRSA §§ 201 through 207 are allocated to the following:

SUBCHAPTER I

ISSUANCE OF GOVERNOR'S WARRANT

Sec. 3. 15 MRSA § 201 is repealed and the following enacted in its place:

§ 201. Definitions

As used in this chapter, unless the context indicates otherwise, the following words shall have the following meanings.

1. **Application.** “Application” means a request, by any person specified in section 223, upon the Governor of this State to make a demand upon the executive authority of another state for the extradition of a fugitive from justice.

2. **Demand.** “Demand” means the request, as provided in section 203, by the executive authority of another state upon the Governor of this State for the extradition of a fugitive from justice.

3. **Executive authority.** “Executive authority” includes the Governor and any person performing the functions of governor in a state other than this State.

4. **Fugitive from justice.** “Fugitive from justice” means:

A. Any person accused of a crime in the demanding state who is not in that state, unless he is lawfully absent pursuant to the terms of his bail or other release. A person is a fugitive from justice under this paragraph if he was present in the demanding state at the time of the commission of the alleged crime and thereafter left the demanding state or if he committed an act in this State or in a 3rd state or elsewhere resulting in or constituting a crime in the demanding state; or

B. Any person convicted of a crime in the demanding state who is not in that state, unless he is lawfully absent pursuant to the terms of his bail or other release, and who has committed any of the acts described in section 203, subsection 2, paragraph A.

5. **Governor.** “Governor” includes any person performing the functions of Governor by authority of the law of this State.

6. **State.** “State,” referring to a state other than this State, refers to any other state or territory, organized or unorganized, of the United States of America.

Sec. 4. 15 MRS § 202 is amended to read:

§ 202. Governor to deliver up person charged with crime in other state

Subject to ~~the qualifications~~ of this chapter and ~~the provisions of~~ the Constitution of the United States controlling any ~~acts~~ Acts of Congress in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled is a fugitive from justice and is found in this State.

Sec. 5. 15 MRS § 203 is repealed and the following enacted in its place:

§ 203. Form of demand

1. **Persons accused of a crime.** No demand for the extradition of a person

accused, but not yet convicted, of a crime in another state shall be recognized by the Governor of this State unless made in writing and containing the following:

A. An allegation that the accused is a fugitive from justice, as defined in section 201, subsection 4, paragraph A. The allegation shall be sufficient if it alleges that the accused was present in the demanding state at the time of the commission of the alleged crime and that he thereafter left the demanding state; or that he committed an act in this State or in a 3rd state, or elsewhere, resulting in or constituting a crime in the demanding state; and

B. A copy of an indictment found; or an information issued upon a waiver of indictment; or an information issued upon a judicial determination of probable cause in the state having jurisdiction of the crime; or any other formal charging instrument, together with any affidavits in support thereof, or in support of an arrest warrant, which supports a finding of probable cause; or an affidavit which supports a finding of probable cause. The indictment, information, other formal charging instrument or affidavit shall substantially charge the person demanded with having committed a crime under the law of that state, and the copy shall be authenticated by the executive authority making the demand.

2. Person convicted of a crime. no demand for the extradition of a person convicted of a crime in another state shall be recognized by the Governor of this State unless it is made in writing and contains the following:

A. A statement by the executive authority of the demanding state that the person demanded has escaped from the confinement or has broken the terms of his bail, probation or parole; and

B. A copy of the judgment of conviction, or of the sentence imposed in execution thereof, which has been authenticated by the executive authority making the demand.

3. Defects in written demand. Defects in the written demand of the executive authority of another state or in any accompanying document or in the application for requisition may be remedied at any time, including at the hearing allowed by section 210, by new or amended documents or by other evidence.

Sec. 5-A. 15 MRSA § 206 is repealed.

Sec. 6. 15 MRSA § 207 is amended to read:

§ 207. Governor to issue warrant and deliver to officer

If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to a ~~sheriff, marshal~~ any law enforcement officer or other person whom he may think

fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue.

Sec. 7. 15 MRSA §§ 208 through 212 are allocated to the following:

SUBCHAPTER II

PROCEEDINGS AFTER ISSUANCE OF GOVERNOR'S WARRANT

Sec. 8. 15 MRSA § 208 is amended to read:

§ 208. Warrant to authorize arrest

Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the State and to command the aid of ~~all sheriffs and other peace officers~~ **any law enforcement officer** in the execution of the warrant and to deliver the accused, subject to this chapter, to the duly authorized agent of the demanding state.

Sec. 9. 15 MRSA § 210 is repealed and the following enacted in its place:

§ 210. Rights of accused person; habeas corpus

No person arrested upon such a warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him, unless he is first taken forthwith before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel. If the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of that court of record shall fix a reasonable time, not to exceed 7 days, to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, to the Attorney General and to the agent of the demanding state.

A person arrested upon the warrant of the Governor of this State may be admitted to bail, in the discretion of the presiding justice, pending decision of the petition for a writ of habeas corpus. If the presiding justice's order is appealed to the Supreme Judicial Court sitting as the law court, the petitioner may be admitted to bail, in the discretion of the presiding justice, pending that appeal. No person charged with an offense punishable by death or life imprisonment under the laws of the state in which it was committed shall be admitted to bail.

Sec. 10. 15 MRSA § 210-A is enacted to read:

§ 210-A. Procedure at hearing; review of final judgment

At the hearing on the petition for a writ of habeas corpus, if the Governor's

warrant and the demand comply with the provisions of this chapter, the petitioner shall have the burden of proving by a preponderance of the evidence that he has not been charged with a crime in the demanding state and that he is not a fugitive from justice, as defined in section 201. If the name of the petitioner is the same as that of the person named in the Governor's warrant, the petitioner shall have the burden of proving, by a preponderance of the evidence, that he is not the person whom the demanding state is seeking to extradite. If the names are not identical, the respondent shall have the burden of proving by a preponderance of the evidence that the petitioner is the person sought to be extradited by the demanding state.

Affidavits, including any affidavits supplied pursuant to the provisions of section 203 or in support of an application for requisition, and any other hearsay evidence which may be deemed reliable by the court, shall be admissible at the hearing on the petition for a writ of habeas corpus, for the purpose of showing that the petitioner is charged with a crime in the demanding state, that the petitioner is in fact the person charged with the crime and that the petitioner is a fugitive from justice as defined in section 201.

The order or judgment making final disposition of the petition shall constitute a final judgment for the purpose of review. A final judgment entered under this section may be reviewed by the Supreme Judicial Court sitting as the law court. An appeal may be taken within 10 days after entry of the order or judgment appealed from. An appeal by the petitioner shall not proceed unless the law court issues a certificate of probable cause. The filing of the notice of appeal shall be deemed to constitute a request for such a certificate. Upon the filing of a notice of appeal, the presiding justice shall prepare a statement of the facts of the proceedings in the Superior Court, which shall be forwarded to the law court. In his discretion and upon a finding that special circumstances exist, the presiding justice, in lieu of preparing a statement of facts, may order that a transcript of all or part of the proceedings in the Superior Court be prepared and transmitted to the law court. The statement of facts or the transcript so forwarded shall be returned to the Superior Court with the order of the court. Denial of the certificate constitutes finality of the proceedings. An appeal after the issuance of a certificate of probable cause to the petitioner shall be in the same mode and scope of review as any civil appeal.

If an appeal is taken by the State, a certificate of probable cause shall not be required but the appeal shall be in accordance with the civil rules.

Sec. 11. 15 MRSA §§ 213 through 218 are allocated to the following:

SUBCHAPTER III

ARREST AND PROCEEDINGS PRIOR TO ISSUANCE OF GOVERNOR'S WARRANT

Sec. 12. 15 MRSA § 213 is repealed and the following enacted in its place:

§ 213. Arrest prior to requisition

1. **Warrant of arrest.** A warrant of arrest shall be issued whenever a person within this State is charged, on the oath of any credible person before a judge or magistrate of this State, or by a complaint made before a judge or magistrate of this State upon an affidavit of any credible person in another state, with:

A. The commission of a crime in any other state and with being a fugitive from justice as defined in section 201, subsection 4, paragraph A; or

B. Having been convicted of a crime in another state and with having escaped from confinement or with having broken the terms of his bail, probation or parole.

2. **Apprehension by warrant.** A warrant issued by a judge or magistrate pursuant to subsection 1 shall command the law enforcement officer to whom it is directed to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge or magistrate who may be available in or convenient of access to the place where the arrest may be made, to answer the charge on the complaint and affidavit.

3. **Copy of charge attached to warrant.** A certified copy of the sworn charge or the complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Sec. 13. 15 MRSA § 215 is repealed and the following enacted in its place:

§ 215. Commitment to await requisition; bail

If, from the examination by the judge or magistrate of the complaint, affidavits in support thereof, formal charging documents or judgments supplied by the demanding state or any other evidence, including reliable hearsay evidence, which may be presented, it appears that the person held is the person charged with having committed the crime alleged and that there is probable cause to believe that he committed the crime, and that he is a fugitive from justice, as defined in section 201, the judge or magistrate shall continue the case and may commit the person to jail, by a warrant specifying the accusation, for any time not exceeding 60 days which will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense.

An indictment or an information issued upon a waiver of indictment or any formal charging instrument issued upon a judicial determination of probable cause or waiver thereof in the demanding state shall be conclusive on the issue of probable cause.

The examination shall take place within a reasonable time after arrest, not to

exceed 30 days, if the person held has not been admitted to bail, as provided in section 216.

Sec. 14. 15 MRSA § 216 is amended to read:

§ 216. Bail permitted unless offense punishable by death or life imprisonment

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the judge or magistrate ~~must~~ may admit the person arrested to bail by bond or undertaking, with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the Governor of this State.

Sec. 15. 15 MRSA § 217 is repealed and the following enacted in its place:

§ 217. Extension of time of commitment

If the accused is not arrested under a warrant of the Governor by the expiration of time specified in the warrant, bond or undertaking, the judge or magistrate may discharge him or may continue the case for any further time not to exceed 60 days. If, after the expiration of any further time specified by the judge or magistrate, the accused has not been arrested under a Governor's warrant, the complaint shall be dismissed. Nothing in this section shall be construed to prevent the rearrest of the accused upon a Governor's warrant issued subsequent to the expiration of the time period specified in this section.

Sec. 16. 15 MRSA § 219 through 229 are allocated to the following:

SUBCHAPTER IV

APPLICATION; MISCELLANEOUS PROVISIONS

Sec. 17. 15 MRSA § 220 is amended to read:

§ 220. Guilt or innocence not inquired into after extradition demanded

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime, and except insofar as it may be inquired into for the purpose of establishing probable cause as required by sections 203 and 210-A.

Sec. 18. 15 MRSA § 223, as amended by PL 1971, c. 622, §§ 57 and 58, is repealed and the following enacted in its place:

§ 223. Application for issuance of requisition

1. Person charged with crime. When the return to this State of a person charged with a crime in this State is required, the prosecuting attorney shall present to the Governor a written application for a requisition for the return of the person charged. The application shall state:

- A. The name of the person charged;**
- B. The crime with which he is charged;**
- C. The approximate time, place and circumstances of its commission; and**
- D. The state in which the accused is believed to be, including his location therein at the time the application is made.**

The prosecuting attorney shall certify in his application that in his opinion the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

2. Person convicted of a crime. When the return to this State of a person charged with a crime in this State is required and the person has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney, the State Parole Board, or the warden of the institution, or the sheriff of the county from which the escape was made shall present to the Governor a written application for a requisition for the return of that person. The application shall state:

- A. The name of the person;**
- B. The crime of which he was convicted;**
- C. The circumstances of his escape from confinement, or of the breach of the terms of his bail, probation or parole; and**
- D. The state in which he is believed to be, including his location therein at the time the application is made.**

3. Verification; filing. The application shall be verified by affidavit, executed in duplicate and accompanied by 2 certified copies or:

- A. The indictment return;**
- B. The information filed or the complaint made to the judge or magistrate stating the offense with which the accused is charged, together with the affidavit in support of the information or complaint; or**
- C. The judgement of conviction.**

The prosecuting attorney, State Parole Board, warden or sheriff may attach any

further affidavits and other documents which he shall deem proper to be submitted with the application, including affidavits with attached photographs or fingerprints which serve to establish that the person named and shown therein is the person for whom a requisition is sought. One copy of the application with the action of the Governor indicated thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction, or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

4. Prosecuting attorney; defined. As used in this section only, the term "prosecuting attorney" shall mean:

A. The district attorney or the deputy district attorney of the county in which the offense was committed; or

B. The Attorney General or a Deputy Attorney General.

Sec. 19. 17-A. MRSA § 15, sub-§ 1, as repealed and replaced by PL 1977, c. 326, and by c. 510, § 24, is repealed and the following enacted in its place:

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) Murder;

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

(3) Assault while hunting;

(4) Any offense defined in chapter 45;

(5) Assault, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;

(6) Theft as defined in section 375, when the value of the services is \$1,000 or less, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested; or

(8) Negotiating a worthless instrument, if the officer reasonably believes that the person will not be apprehended unless immediately arrested; and

B. Any person who has committed in his presence or is committing in his presence any Class D or Class E crime.

A law enforcement officer may, without fee, take the personal recognizance of any person for his appearance on a charge of a Class D or Class E crime.

Sec. 20. 17-A MRSA § 17, sub-§ 2, first sentence, as last amended by PL 1975, c. 770, § 82, is further amended to read:

Any person to whom a law enforcement officer is authorized to deliver a citation ~~for a violation of Title 23, section 2303~~, pursuant to subsection 1, who intentionally 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.

Sec. 20. 17-A MRSA § 17, sub-§ 2, first sentence, as last amended by PL 1975, c. 770 § 82, is further amended to read:

Any person to whom a law enforcement officer is authorized to deliver a citation ~~for a violation of Title 23, section 2303~~, pursuant to subsection 1, who intentionally fails or refuses to provide such officer reasonable 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.

Sec. 21 17-A MRSA § 59, sub-§ 2, ¶ B, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

B. Evidence of mental disease or defect, as defined in section 58, subsection 2, shall not be admissible in the guilt or innocence phase of the trial for the purpose of establishing the defense of a lack of criminal responsibility, as defined in section 58, subsection 1. Such evidence shall be admissible for that purpose only in the 2nd phase following a verdict of guilty.

Sec. 22. 17-A MRSA § 208-A is enacted to read:

§ 208-A. Assault while hunting

1. A person is guilty of assault while hunting if, while in the pursuit of wild game or game birds, he, with criminal negligence, causes bodily injury to another with the use of a dangerous weapon.

2. Assault while hunting is a Class D crime.

Sec. 23. 17-A MRSA § 210, sub-§ 1, first ¶, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person ~~threatened to whom the communication is made~~ or another, and

the natural and probable consequence of such a threat, whether of not such consequence in fact occurs, is:

Sec. 24. 17-A MRSA § 210, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:

A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed; or

Sec. 25. 17-A MRSA § 361, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. Proof that the defendant concealed unpurchased property stored, offered or exposed for sale while he was still on premises of the place where it was stored, offered or exposed, or in a parking lot or public or private way immediately adjacent thereto shall give rise to a presumption that the defendant obtained or exercised unauthorized control over the property with the intent to deprive the owner thereof.

Sec. 26. 17-A MRSA § 1113, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

§ 1113. Inspection of records

State law enforcement officers, members of the Board of Commissioners of the Profession of Pharmacy and pharmacy inspectors shall have the right to inspect the records of any pharmacy which relate to any scheduled drug or any substance designated as a "potent medical substance" under Title 22, section 2201.

Sec. 27. 17-A MRSA § 1203, as amended by PL 1977, c. 510, § 69, is repealed and the following enacted in its place:

§ 1203. Split sentences

1. Subject to the limitation in subsection 2, the court may sentence a person to an initial term of imprisonment in a designated institution to be followed by a suspended term of imprisonment with probation; provided that the aggregate of the initial term of imprisonment and the suspended term of imprisonment shall not exceed the maximum term authorized for the crime.

2. If the initial term of imprisonment imposed by the court under subsection 1 is to the State Prison, that term shall not exceed 120 days.

3. The deduction authorized by section 1253, subsection 2, for detention pending trial shall apply to an initial term of imprisonment under subsection 1. The deduction authorized by section 1253, subsections 3, 3-A and 3-B, for observance of the rules and requirements of the institution, shall not apply to an initial term of imprisonment under subsection 1.

Sec. 28. 17-A MRSA § 1204, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

1. **If the court imposes a suspended sentence of imprisonment with probation or a suspended fine with probation, it shall attach such conditions of probation, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life, provided that in every case it shall be a condition of probation that the convicted person refrain from criminal conduct.**

Sec. 29. 17-A MRSA § 1204, sub-§ 2-A, ¶ F, as enacted by PL 1975, c. 740, § 110-A, is repealed and the following enacted in its place:

F. To refrain from frequenting specified places or consorting with specified persons;

Sec. 30. 17-A MRSA § 1253, sub-§ 1, as enacted by PL 1975, c. 499, § 1, is amended to read:

1. **The sentence of any person committed to the custody of the Department of Mental Health and Corrections shall commence to run on the date on which such person is received into the custody of the department pursuant to that sentence. The sentence of any person committed to the custody of a sheriff shall commence to run on the date on which that person is received in to the custody of the sheriff pursuant to that sentence.**

Sec. 31. 17-A MRSA § 1253, sub-§ 2, as amended by PL 1977, c. 510, § 79, is further amended to read:

2. ~~When a person sentenced to imprisonment has been committed for pre-sentence evaluation pursuant to section 1251, subsection 2 or has previously been detained to await trial, in any state or county institution, or local lock-up, for the conduct for which such sentence is imposed, such period of evaluation and detention shall be deducted from the time he is required to be imprisoned under such sentence. The attorney representing the State shall furnish the court, at the time of sentence, a statement showing the length of such detention, and the statement shall be attached to the official records of the commitment.~~

Sec. 32. 17-A MRSA § 1253, sub-§ 3-B is enacted to read:

3-B. Each person sentenced, on or after the effective date of this subsection, to imprisonment for 6 months or less shall earn a deduction of 3 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. The procedure described in subsection 3-A shall apply to the deductions authorized under this subsection.

Sec. 33. 17-A MRSA § 1253, sub-§ 5 is enacted to read:

5. Any portion of the time deducted from the sentence of any person pursuant to subsections 3, 3-A or 3-B may be withdrawn by the supervising officer of the institution for the infraction of any rule of the institution, for any misconduct or for the violation of any law of the State. The withdrawal of deductions may be made at the discretion of the supervising officer of the institution, who may restore any portion thereof if the person's later conduct and outstanding effort warrant that restoration.

Sec. 34. 34 MRSA § 705, first ¶, as last amended by PL 1975, c. 499, § 58, is repealed.

Sec. 35. 34 MRSA § 952, as last amended by PL 1975, c. 187, is repealed.

STATEMENT OF FACT

This bill contains amendments to the Criminal Extradition Act and to the Maine Criminal Code. The amendments to the Maine Criminal Code are the result of recommendations made by the Criminal Law Advisory Commission.