

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1210

S. P. 395

In Senate, March 14, 1979

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

Presented by Senator Collins of Knox.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

AN ACT Concerning Revisions in the Maine Criminal Code.

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

**Sec. 1.** 17-A MRSA § 106, sub-§ 5, as enacted by PL 1975, c. 499, § 1, is amended to read:

5. ~~Whenever a~~ A person is required by law to enforce rules and regulations, or to maintain decorum or safety, in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled, any use nondeadly force when and to the extent that he reasonably believes it necessary for such purposes ~~but he may use deadly force only when he reasonably believes it necessary to prevent death or serious bodily injury.~~

**Sec. 2.** 17-A MRSA § 107, sub-§ 5, 2nd sentence, as amended by PL 1975, c. 740, § 31, is further amended to read:

He is justified in using a reasonable degree of nondeadly force when and to the extent he reasonably believes it necessary to prevent any other escape from such a facility **or to enforce the rules and regulations of the facility.**

**Sec. 3.** 17-A MRSA § 301, sub-§§ 2-A and 2-B are enacted to read:

2-A. "Hostage" means a person restrained with the intent that a 3rd person, not the person restrained or the actor, perform or refrain from performing some act.

**2-B. It is a defense to a prosecution under this section that the person restrained is the child of the actor.**

**Sec. 4. 17-A MRSA § 302, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:**

**§ 302. Criminal restraint**

**1. A person is guilty of criminal restraint if:**

**A. Knowing he has no legal right to do so, he intentionally or knowingly takes, retains or entices a person who is:**

**(1) Under the age of 14;**

**(2) Incompetent; or**

**(3) Fourteen years or older, but has not attained his 16th birthday, the actor being at least 18 years of age, from the custody of his parent, guardian or other lawful custodian, with the intent to hold the person permanently or for a prolonged period; or**

**B. He knowingly restrains another person. As used in this paragraph, "restrain" shall have the same meaning as in section 301, subsection 2.**

**2. It is a defense to a prosecution under this section that the actor is the parent of the person taken, retained, enticed or restrained. Consent by the person taken, retained or enticed is not a defense to a prosecution under subsection 1, paragraph A.**

**3. Criminal restraint is a Class D crime.**

**Sec. 5. 17-A MRSA § 303 is enacted to read:**

**§ 303. Criminal restraint by parent**

**1. A person is guilty of criminal restraint by parent if, being the parent of a child under the age of 16, he takes, retains or entices the child from the custody of his other parent, guardian or other lawful custodian, knowing he has no legal right to do so and with the intent to remove the child from the State or to secrete the child and hold him in a place where he is not likely to be found.**

**2. Consent by the person taken, enticed or retained is not a defense under this section.**

**3. A law enforcement officer shall not be held liable for taking physical custody of a child whom he reasonably believes has been taken, retained or enticed in violation of this section and for delivering the child to a person whom he reasonably believes is the child's lawful custodian or to any other suitable person.**

**4. A law enforcement officer may arrest without a warrant any person who he has probable cause to believe has violated or is violating this section.**

**5. Criminal restraint by parent is a Class E crime.**

**Sec. 6.** 17-A MRSA § 451, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. It is an affirmative defense to prosecution under this section ~~That that~~ the defendant retracted the falsification in the course of the official proceeding in which it was made, and before it became manifest that the falsification was or would have been exposed; ~~or~~. **It is an affirmative defense to prosecution under subsection 1, paragraph A,** that proof of falsity rested solely upon contradiction by testimony of a single witness.

**Sec. 7.** 17-A MRSA § 452, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read:

2. It is an affirmative defense to prosecution under this section that, when made in an official proceeding, the defendant retracted the falsification in the course of such proceeding before it became manifest that the falsification was or would have been exposed; ~~or~~. **It is an affirmative defense to prosecution under subsection 1, paragraph A,** that proof of falsity rested solely upon contradiction by testimony of a single witness.

**Sec. 8.** 17-A MRSA § 902, sub-§ 1, ¶ B, sub-¶ (2), as enacted by PL 1975, c. 499, § 1, is amended to read:

(2) presents in writing to any creditor or to an ~~assignee for the benefit of creditors~~ **administrator**, any false statement relating to the debtor's estate, knowing that a material part of such statement is false.

**Sec. 9.** 17-A MRSA § 902, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

2. As used in this section, "administrator" means an assignee for the benefit of creditors, a receiver, or trustee in bankruptcy or any other person entitled to administer property for the benefit of creditors.

**Sec. 10.** 17-A MRSA § 1108, as enacted by PL 1975, c. 499, § 1, is repealed and the following is enacted in its place:

**§ 1108. Acquiring drugs by deception**

1. A person is guilty of acquiring drugs by deception if, as a result of deception, he obtains or exercises control over what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug.

2. As used in this section, "deception" has the same meaning as in section 354, subsection 2.

3. For purposes of this section, information communicated to a physician in an effort to violate this section, including a violation by procuring the administration of a scheduled drug by deception, shall not be deemed a privileged communication.

#### 4. Acquiring drugs by deception is a Class D crime.

**Sec. 11. 17-A MRSA § 1112, sub-§ 1**, as amended by PL 1975, c. 740, § 104, is further amended to read:

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

**Sec. 12. 34 MRSA § 811, first ¶**, as enacted by PL 1975, c. 756, § 20, is amended to read:

The State shall maintain the institution located at South Windham, heretofore known as the Men's Correctional Center and hereby renamed the Maine Correctional Center, for the confinement and rehabilitation of ~~persons under the age of 18 years with respect to whom probable cause has been found under Title 15, section 2611, subsection 3, who have pleaded guilty to, or have been tried and convicted of, crimes in the Superior Court~~ **boundover juveniles** and persons over the age of 18 years ~~and of not more than 26 years of age~~ who have been convicted of, or who have pleaded guilty to, crimes in the courts of the State, and who have been duly sentenced and committed thereto, and women sentenced to the Maine State Prison and committed to the center. **Nothing in this section shall be construed to prevent the sentencing of convicted boundover juveniles to other penal institutions in this State.**

#### STATEMENT OF FACT

This bill contains amendments to the Criminal Code as recommended by the Criminal Law Advisory Commission. The amendments are largely technical in nature; none are intended to make any major policy changes in Maine's Criminal Code.