

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1661**

S. P. 592

In Senate, June 1, 1979

Reported by Senator Trafton of Androscoggin from the Committee on Judiciary.  
Printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

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**AN ACT Concerning Revisions in the Maine Juvenile Code and Maine Criminal Code.**

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

**Sec. 1.** 1 MRSA § 1 is amended to read:

The jurisdiction and sovereignty of the State extend to all places within its boundaries, subject only to such rights of concurrent jurisdiction as are granted over places ceded by State to the United States. **This section shall not limit or restrict the jurisdiction of the State over any person or with respect to any subject, within or without its boundaries, which jurisdiction is exercisable by reason of citizenship, residence or for any other reason recognized by law.**

**Sec. 2.** 15 MRSA § 3101, sub-§ 4, ¶ G, is enacted to read:

**G.** In all prosecutions for subsequent crimes, any person bound over and convicted as an adult shall be proceeded against as if he were an adult.

**Sec. 3.** 15 MRSA § 3203, sub-§ 5, ¶ D is enacted to read:

**D.** No continued detention shall be ordered unless the juvenile court shall determine that there is probable cause to believe that the juvenile has committed a juvenile crime. That determination shall be made on the basis of evidence, including reliable hearsay evidence, presented in testimony or affidavits.

**Sec. 4. 15 MRSA § 3307, sub-§ 3**, as amended, is further amended to read:

**3. Record.** A verbatim record shall be made of all **detention**, bind over, adjudicatory and dispositional hearings.

**Sec. 5. 15 MRSA § 3309**, as enacted by PL 1977, c. 520, § 1, is repealed and the following is enacted in its place:

**§ 3309. Procedure**

**To the extent not inconsistent with or inapplicable to Part 6, procedure in juvenile proceedings shall be in accordance with the Maine District Court Criminal Rules. The Supreme Judicial Court may promulgate rules for juvenile proceedings as provided under Title 4, section 8.**

**Sec. 6. 15 MRSA § 3314, sub-§ 1, ¶D**, as enacted by PL 1977, c. 520, § 1, is amended to read:

**D.** The court may commit a person over the age of 18 years to the Department of Mental Health and Corrections if he is adjudicated as having committed a juvenile crime prior to attaining 18 years of age or upon revocation of probation **for placement in a foster home, group care home or halfway house, or for the provision of services to that person in his own home.**

**Sec. 7. 15 MRSA § 3316, sub-§ 2, ¶A, first sentence**, as amended by PL 1977, c. 664, § 41 is further amended to read:

A commitment of a juvenile to the Department of Mental Health and Corrections, including a commitment to the Maine Youth Center, pursuant to section 3314, shall be for an indeterminate period not to extend beyond the juvenile's 18th birthday unless the court expressly further limits or extends the **indeterminate** commitment, provided that ~~no commitment shall extend the court shall not limit the commitment to less than one year nor extend the commitment~~ beyond a juvenile's 21st birthday.

**Sec. 8. 15 MRSA § 3401** as last amended by PL 1977, c. 664, § 44, is repealed and the following enacted in its place:

**§ 3401. Appeals structure and goals**

**1. Structure.** Except as otherwise provided, appeals from the juvenile court shall be to the Superior Court and appeals from the Superior Court shall be to the Law Court.

**2. Goals of juvenile appellate structure.** The goals of the juvenile appellate structure are:

- A. To correct errors in the application and interpretation of law;**
  - B. To insure substantial uniformity of treatment to persons in like situations;**
- and**

C. To provide for review of juvenile court decisions so that the legislatively defined purposes of the juvenile justice system as a whole are realized.

Sec. 9. 15 MRSA § 3402, as amended by PL 1977, c. 664, § 45, is repealed and the following enacted in its place:

**§ 3402. Appeals to Superior Court**

1. Matters for appeal. Appeals of the following matters may be taken from the juvenile court to the Superior Court by a party specified in subsection 2:

A. An adjudication, provided that no appeal shall be taken until after an order of disposition;

B. An order of disposition, or of any subsequent order modifying disposition, for an abuse of discretion;

C. A bind-over order; and

D. A detention order or any refusal to alter an order for changed circumstances entered pursuant to section 3203, subsection 5, for abuse of discretion, provided that the appeal shall be handled expeditiously.

2. Who may appeal. An appeal may be taken by the following parties:

A. The juvenile; or

B. The juvenile's parents, guardian or legal custodian on behalf of the juvenile, if the juvenile is not emancipated and the juvenile does not wish to appeal.

3. Appeals by the State. The State may appeal from the juvenile court to the Superior Court for the failure of the juvenile court to order a bind-over.

4. Stays and releases. On an appeal pursuant to subsection 1, paragraphs A through C, the Superior Court shall consider a stay of execution and release pending the appeal.

5. Time for appeals. An appeal from the juvenile court to the Superior Court shall be taken within 5 days of the entry of an order of disposition or other appealed order.

Sec. 10. 15 MRSA § 3403, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

**§ 3403. Rules for appeals**

Procedure for appeals from the juvenile court to the Superior Court, including provision for a record, subject to section 3405, shall be as provided by rule promulgated by the Supreme Judicial Court.

Sec. 11. 15 MRSA § 3404, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

**§ 3404. Counsel on appeal**

A juvenile or other party specified in section 3402, subsection 2, paragraph B, who is indigent shall be entitled to appointment of counsel.

Sec. 12. 15 MRSA § 3405, as amended by PL 1977, c. 664, § 46, is repealed and the following enacted in its place:

**§ 3405. Scope of review on appeal; record**

Scope of review. Review on all appeals from juvenile court to Superior Court shall be for errors of law or abuses of discretion.

2. Record on appeals. In appeals taken pursuant to section 3402, subsection 1, paragraphs A, B and C, review shall be on the basis of the record of the proceedings in juvenile court. In the interest of justice, the Superior Court may order that the record shall consist of:

- A. The untranscribed sound recording of the proceedings; or
- B. An agreed or settled statement of facts with the consent of the parties.

3. Record on appeals of detention orders. In appeals taken pursuant to section 3402, subsection 1, paragraph D, the court shall order a review by the most expeditious of the following methods that is consistent with the interests of justice:

- A. The untranscribed sound recording of the detention hearing;
- B. Evidence presented to the Superior Court, provided the scope of review shall be as specified in subsection 1;
- C. A transcribed record; or
- D. A record consisting of a statement of facts as described in subsection 2, paragraph B.

Sec. 13. 15 MRSA § 3406, as enacted by PL 1977, c. 520, § 1, is repealed.

Sec. 14. 15 MRSA § 3407, as enacted by PL 1977, c. 520, § 1 is repealed and the following enacted in its place:

**§ 3407. Appeal to the Law Court**

1. Appeals from the juvenile court by the State. The State may appeal from a decision or order of the juvenile court to the Law Court to the same extent and in the same manner as in criminal cases under section 2115-A.

**2. Appeals from the Superior Court**

- A. Decisions of the Superior Court on appeal from the juvenile court, as to matters described in section 3402, subsection 1, paragraphs A and B only, may be appealed to the Law Court by an aggrieved party.

**B. Decisions of the Superior Court on an appeal from the juvenile court of a bind-over order pursuant to section 3402, subsection 1, paragraph C, may only be reviewed pursuant to an appeal of a judgment of conviction in Superior Court following bind-over.**

**C. Appeals pursuant to this subsection shall be taken in the same manner as appeals from a judgment of conviction of an adult in Superior Court, except as otherwise provided by rule promulgated by the Supreme Judicial Court.**

**Sec. 15. 17-A MRSA § 7, sub-§ 1, ¶A**, as enacted by PL 1975, c. 499, § 1, is amended to read:

**A. Either the conduct which is an element of the crime or the result which is such an element occurs within this State or has a territorial relationship to this State; or**

**Sec. 16. 17-A MRSA § 7, sub-§ 1, ¶C**, as enacted by PL 1975, c. 499, § 1, is amended to read:

**C. Conduct occurring outside this State would constitute a criminal conspiracy under the laws of this State, an overt act in furtherance of the conspiracy occurs within this State or has a territorial relationship to this State, and the object of the conspiracy is that a crime take place within this State;**

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

**D. Conduct occurring within this State or having a territorial relationship to this State would constitute complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction which is also a crime under the law of this State;**

**Sec. 18. 17-A MRSA § 7, sub-§ 3, first sentence**, as enacted by PL 1975, c. 499, § 1, is amended to read:

When the crime is homicide, a person may be convicted under the laws of this State if either the death of the victim or the bodily impact causing death occurred within the State **or had a territorial relationship to the State.**

**Sec. 19. 17-A MRSA § 7, sub-§ 4** is enacted to read:

**4. Conduct or a result has a territorial relationship to this State if it is not possible to determine beyond a reasonable doubt that it occurred inside or outside of this State, because a boundary cannot be precisely located or the location of any person cannot be precisely established in relation to a boundary, and if the court determines that this State has a substantial interest in prohibiting the conduct or result. In determining whether this State has a substantial interest, the court shall consider the following factors:**

**A. The relationship to this State of the actor or actors and of persons affected by the conduct or result, whether as citizens, residents or visitors;**

**B. The location of the actor or actors and persons affected by the conduct or result prior to and after the conduct or result;**

**C. The same place in which other crimes, if any, in the same criminal episode were committed; and**

**D. The place in which the intent to commit the crime was formed.**

Sec. 20. 17-A MRSA § 13, sub-§ 2, as enacted by PL 1975, c. 740, § 20, is repealed.

Sec. 21. 17-A MRSA § 13-A is enacted to read:

**§ 13-A. Included offenses**

1. The court shall not instruct the jury to consider, nor shall the court as factfinder consider, a lesser included offense, as defined in subsection 2, unless on the basis of the evidence there is a rational basis for finding the defendant guilty of that lesser included offense. If a rational basis exists, the lesser included offense shall be considered by the factfinder if requested by either the State or defendant; otherwise, its consideration shall be a matter within the discretion of the court.

2. For purposes of this section, a lesser included offense is an offense carrying a lesser penalty which:

A. As legally defined, must necessarily be committed when the offense or alternative thereof actually charged, as legally defined, is committed. If the lesser offense is defined in a manner that it may be committed in alternative ways, each alternative which meets the above definition shall be deemed to be a lesser included offense. Facts which are a basis for sentencing classification of either the crime charged or the lesser crime shall be considered alternatives of those crimes;

B. Meets the requirements of paragraph A, except that a culpable state of mind is required which is different than that charged but which results in lesser criminal liability; or

C. Is by statute expressly declared to be charged when the greater offense is charged.

3. The court in its discretion may instruct the jury to consider, or may as factfinder consider, any other offense or another alternative of the offense charged, although that other offense or alternative is not a lesser included offense, if:

A. On the basis of the evidence, there is a rational basis for finding the defendant guilty of the other offense;

B. The other offense does not carry a greater penalty than the offense charged;

**C. Both the State and the defendant consent to the consideration of the other offenses by the factfinder; and**

**D. The defendant waives any applicable right to an indictment for the other offense.**

**When the other offense is defined in such a manner that it may be committed in alternative ways, the court may instruct the jury to consider, or may as factfinder consider, any alternative which meets the requirements of this subsection.**

**Sec. 22. 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, may 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. 23. 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. 24. 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. 25. 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 take, restrains 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. 26. 17-A MRSA § 303 is enacted to read:

§ 303. Criminal restraint by parent

1. A person is guilty of criminal restraint by a 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 any 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. 27. 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. 28. 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 under contradiction by testimony of a single witness.

**Sec. 29.** 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. 30.** 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. 31.** 17-A MRSA § 905, sub-§ 2-A, is enacted to read:

2-A. It shall be presumed that a person presenting a credit card knew it was cancelled upon proof of actual or constructive notice.

**Sec. 32.** 17-A MRSA § 907, is enacted to read:

**§ 907. Possession or transfer of theft of services devices.**

1. A person is guilty of possession or transfer of theft of services devices if:

A. He possesses or makes any device, instrument, apparatus or other article which is designed or primarily useful for advancing or facilitating the commission of the theft of services, with the intent to use such device, instrument, apparatus or other article to commit any such criminal offense; or

B. He transfers or possesses with the intent to transfer any device described in paragraph A that he knows is designed or primarily useful for the commission of the theft of services.

2. Possession or transfer of theft of services devices in violation of section 1, paragraph B is a Class D crime; otherwise it is a Class E crime.

**Sec. 33.** 17-A MRSA § 1108, as enacted by PL 1975, c. 499, § 1, is repealed and the following 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. A Class C crime if the drug is a schedule W drug; or**
- B. A Class D crime if the drug is a schedule X, Y or Z drug.**

**Sec. 34. 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. 35. 17-A MRSA § 1155, as enacted by PL 1975, c. 499, § 1 is repealed and the following enacted in its place:**

**§ 1155. Multiple sentences of imprisonment**

**1. Other provisions of this section notwithstanding, when a person subject to an undischarged term of imprisonment is convicted of a violation of chapter 31, section 755, or of a crime against the person of a member of the staff of the institution in which he was imprisoned, or of an attempt to commit either of such crimes, the sentence shall run consecutively to the undischarged term of imprisonment.**

**2. In all other cases, the court shall state in the sentence of imprisonment whether a sentence shall be served concurrently with or consecutively to any other sentence previously imposed or to another sentence imposed on the same date. The sentences shall be concurrent unless, in considering the following factors, the court decides to impose sentences consecutively:**

- A. That the convictions are for offenses based on different conduct or arising from different criminal episodes;**
- B. That the defendant was under a previously imposed suspended or unsuspended sentence and was on probation, under incarceration or on a release program at the time he committed a subsequent offense;**
- C. That the defendant had been released on bail when he committed a subsequent offense, either pending trial of a previously committed offense or pending the appeal of previous conviction; or**

- D. That the seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes or the seriousness of the criminal record of the convicted person, or both, require a sentence of imprisonment in excess of the maximum available for the most serious offense.
3. A defendant may not be sentenced to consecutive terms for crimes arising out of the same criminal episode when:
- A. One crime is an included crime of the other;
  - B. One crime consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other;
  - C. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of that conduct; or
  - D. Inconsistent findings of fact are required to establish the commission of the crimes.
4. If the court decides to impose consecutive sentences, it shall state its reasons for doing so on the record or in the sentences.
5. If a person has been placed on probation pursuant to a previously imposed sentence and the court determines that the previously imposed sentence and a new sentence shall be served consecutively, the court shall revoke probation pursuant to section 1206, subsections 7 and 7-A. The court may order that the sentence which had been suspended be served at the same institution as that which is specified by the new sentence.
6. If it is discovered subsequent to the imposition of a sentence of imprisonment that the sentencing court was unaware of a previously imposed sentence of imprisonment which is not fully discharged, the court shall resentence the defendant and shall specify whether the sentences are to be served concurrently or consecutively. The court shall not resentence the defendant if the sentences are required to be served consecutively pursuant to subsection 1.

Sec. 36. 17-A MRSA § 1155-A, is enacted to read:

§ 1155-A. Multiple fines

When multiple fines are imposed on a person at the same time or when a fine is imposed on a person already subject to an unpaid or partly unpaid fine, the fines shall be cumulative unless the court specifies that only the highest single fine shall be paid in the case of offenses based on the same conduct or arising out of the same criminal episode or for other good cause stated on the record or in the sentences.

Sec. 37. 17-A MRSA § 1156, 2nd sentence, as enacted by PL 1975, c. 740, § 108-A, is repealed.

Sec. 38. 17-A MRSA § 1203, sub-§ 1, as amended, is further amended to read:

1. Subject to the limitation in subsection 2, the court may sentence a person to ~~an initial~~ a term of imprisonment in a designated institution, not to exceed the maximum term authorized for the crime, an initial portion of which shall be served and the remainder of which shall be suspended 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.~~ **The imprisonment for the initial unsuspended portion of the term may be at a different institution from that specified for the suspended portion.** The period of probation shall commence on the date the person is released from his initial ~~period~~ **unsuspended portion of the term** of imprisonment, unless the court orders that it shall commence on an earlier date. If the period of probation is to commence upon release from the initial ~~unsuspended period~~ **portion of the term** of imprisonment, the court may nonetheless revoke probation for any criminal conduct committed during that initial period of imprisonment.

Sec. 39. 17-A MRSA § 1203, sub-§ 2, as repealed is reenacted to read:

2. **The initial unsuspended portion of the term of imprisonment imposed by the court under subsection 1 shall not exceed 120 days.**

Sec. 40. 17-A MRSA § 1203, sub-§ 3, as enacted by PL 1977, c. 671, § 27, is amended to read:

3. The ~~deduction~~ **deductions** authorized by section 1253, subsection 2, for detention pending trial shall apply to ~~an~~ **the initial unsuspended portion of the term of imprisonment under subsection 1.** The ~~deduction~~ **deductions** authorized by section 1253, subsection 3, 3-A and 3-B, for observance of the rules and requirements of the institution, shall not apply to ~~an~~ **the initial unsuspended portion of the term of imprisonment under subsection 1.** **The deductions authorized by section 1253, subsection 4, for the performance of duties outside the institution or work within the institution shall apply to the initial unsuspended portion of the term of imprisonment under subsection 1.**

Sec. 41. 17-A MRSA § 1203-A, is enacted:

#### § 1203-A. Probation after imprisonment

1. The court may, at any time of imposing an unsuspended term of imprisonment pursuant to section 1252, impose a term of probation, not to exceed one year, and a suspended term of imprisonment, not to exceed 2 years, to follow the initial unsuspended term of imprisonment. At the time of sentencing, the court shall attach conditions of probation as authorized by section 1204.

2. **The total of the initial unsuspended term of imprisonment and the suspended term of imprisonment shall not exceed the maximum term authorized for the crime.**

**Sec. 42.** 17-A MRSA § 1206, sub-§ 7, as enacted by PL 1977, c. 510, § 73, is amended to read:

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 **and** 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** **Sentencing for the multiple offenses shall be** 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.

**Sec. 43.** 17-A § 1206, sub-§ 7-A, is enacted.

**7-A.** Upon revocation of probation pursuant to subsections 5, 6 or 7, the court may impose all of the sentence which was suspended when probation was granted or it may impose a portion thereof, considering the nature of the violation and the reasons for granting probation. The remaining portion of the sentence which is not imposed upon the revocation of probation shall remain suspended and subject to revocation at a later date. During the service of the portion of the sentence imposed upon revocation, the running of the period of probation shall be interrupted and shall resume again upon release. The court may nevertheless revoke probation and impose the remainder of the suspended sentence or a portion thereof for any criminal conduct committed during the service of the portion imposed upon revocation.

**Sec. 44.** 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.**

**Sec. 45. Effective date.** Sections 4 and 38 to 40 shall take effect 91 days after adjournment. All other sections shall take effect 90 days after adjournment.

## STATEMENT OF FACT

This new draft contains amendments to the Maine Criminal Code as recommended by the Criminal Law Advisory Committee. Except as noted below, most of the amendments are largely technical and none are intended to make any major policy changes in either the Maine Juvenile or the Maine Criminal Code. This new draft does have the following policy changes incorporated in it:

1. Section 30 adds a provision to the code to allow prosecution for possession of a device designed and intended to be used for theft of services. (E.G., a telephone "black box" used to circumvent telephone long distance toll charges;)

2. Section 33 changes the penalties for acquiring drugs by deception by establishing an increased penalty if the drug is a schedule W drug;

3. Sections 20 and 21 expressly define what are "lesser included offenses." The definition is based on Maine Case Law; and

4. The delayed effective date applicable to certain sections of the bill will in effect amend prior pieces of legislation that have been enacted but not yet signed: L. D. 1399 and L. D. 1406. These changes relate to the recording of certain juvenile hearings and the code provisions relating to split sentences. Both these provisions are altered to conform to procedural changes made in this new draft.