

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 441

H. P. 398

House of Representatives, January 26, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Kany of Waterville.

Cosponsors: Senator Conley of Cumberland and Senator Najarian of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Establish Statutory Definitions of Entrapment Under the Criminal Code.

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

17-A MRSA § 63 is enacted to read:

§ 63. Entrapment

1. Entrapment defined. A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting the offense by either:

A. Making knowingly false representations designed to induce the belief that the conduct is not prohibited; or

B. Employing methods of persuasion or inducement which create a substantial risk that the offense will be committed by persons other than those who are ready to commit it.

2. Court to try issue. The issue of entrapment shall be tried by the court in the absence of the jury.

**3. Circumstances when defense unavailable. The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening that type of injury to a person other than the person perpetrating the entrapment.**

#### COMMENT

This section is based on the Model Penal Code 1962 official draft, § 2.13.

There are currently no statutes in Maine's Penal Code dealing with entrapment. The Supreme Judicial Court has adopted the "subjective" definition of entrapment, where the jury considers the predisposition of the defendant to commit the crime as the major factor in whether the defense is established.

State v. Matheson 363A 2d 716 (1976)

This section changes the law to an "objective" definition, where the focus is solely on the conduct of the law enforcement officers and the predisposition of the defendant is irrelevant.

#### STATEMENT OF FACT

This bill enacts a statutory definition of entrapment. Currently, Maine's entrapment law is the result of law court decisions which adopt the subjective definition, which focuses solely on the predisposition of the defendant to commit the crime. This often produces the untenable situation in which officials entice a person into committing a crime, and the mere fact of the existence of a prior criminal record goes to prove that the person was "predisposed" to commit the crime, and the entrapment defense fails. This bill substitutes an objective definition, which focuses solely on conduct of the law enforcement officers involved. It is based on the most recent draft of the Model Penal Code.