

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
110TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 444, L.D. 1282, Bill, "AN ACT to Amend the Criminal Code and Related Criminal Laws."

Amend the bill by inserting after section 4 the following:

'Sec. 5. 17-A MRSA §11, sub-§5, first sentence, as amended by PL 1975, c. 740, §19, is further amended to read:

If a statute defining a crime ~~in this code~~ does not expressly prescribe a culpable mental state with respect to some or all of the elements of the crime, a culpable mental state is nevertheless required, pursuant to subsections 1, 2 and 3, unless:'

Further amend the bill by renumbering section 5 to be section 6.

Further amend the bill by inserting after section 5 the following:

'Sec. 7. 17-A MRSA §351, as enacted by PL 1975, c. 499, §1, is amended by adding at the end a new sentence to read:

If the evidence is sufficient to permit a finding of guilt of theft in more than one manner, ~~there is~~ no election among those manners is ~~not~~ required.

Sec. 8. 17-A MRSA §352, sub-§3, ¶C, as amended by PL 1975, c. 740, §52, is further amended to read:

C. To use or dispose of the property under circumstances that make it unlikely that the owner will recover it or that manifest an indifference as to whether the owner will recover it.

DFR

Sec. 9. 17-A MRSA §356, as enacted by PL 1975, c. 499, §1, is repealed and the following enacted in its place:

§356. Theft of lost, mislaid, mistakenly delivered or mistakenly acquired property

A person is guilty of theft if:

1. He obtains or exercises control over the property of another:

A. Which he knows to have been lost or mislaid or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property;
or

B. Which he has acquired under a mistake as to ownership, but which he later learns is the property of another; and

2. With the intent to deprive the owner of the property at any time subsequent to acquiring it, he fails to take reasonable measures to return it.

Sec. 10. 17-A MRSA §362, sub-§3, as last amended by PL 1977, c. 510, §49, is repealed and the following enacted in its place:

3. Theft is a Class C crime if:

A. The value of the property or services is more than \$1,000 but not more than \$5,000;

B. The theft is a violation under section 355; or

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C. The actor has 2 prior convictions for any combination of theft or violation of section 702, 703 or 708 or attempts thereat. For purposes of this paragraph, the dates of both of the prior convictions must precede the commission of the offense being enhanced, although both such prior convictions may have occurred on the same day. This paragraph does not apply if the commission of the 2 prior offenses occurred within a 3-day period. The date of a conviction shall be deemed the date that sentence is imposed, even though an appeal was taken. The date of a commission of prior offenses shall be presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent."

Further amend the bill by renumbering sections 6 to 15 to be sections 11 to 20.

Further amend the bill by inserting after section 15 the following:

'Sec. 21. 17-A MRSA §703, sub-§2, as last amended by PL 1977, c. 510, §58, is repealed and the following enacted in its place:

2. Violation of this section is a Class C crime if the actor has 2 prior convictions for any combination of theft, violation of this section, violation of section 702 or 708, or attempts thereat. Determination of whether a conviction constitutes a prior conviction for purposes of this subsection shall be pursuant to section 362, subsection 3, paragraph C. Forgery is otherwise a Class D crime.

Sec. 22. 17-A MRSA §708, sub-§4, as last amended by PL 1977, c. 510, §59, is repealed and the following enacted in its place:

4. Violation of this section is a Class C crime if the actor has 2 prior convictions for any combination of theft, a violation of section 702, 703 or this section, or attempts thereat. Determination of whether a conviction constitutes a prior conviction for purposes of this subsection shall be pursuant to section 362, subsection 3, paragraph C. Negotiating a worthless instrument is otherwise a Class D crime.

Sec. 23. 17-A MRSA §753, sub-§2-A is enacted to read:

2-A. Hindering apprehension when the other person has committed a crime against another jurisdiction shall be graded as in subsection 2. For purposes of this subsection, the classification of the crime of the other jurisdiction shall be determined according to the formula contained in section 4-A, subsection 3, as if it were a crime of this jurisdiction outside this code.

Sec. 24. 17-A MRSA §1107, sub-§1, first sentence, as enacted by PL 1975, c. 499, §1, is amended to read:

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A person is guilty of unlawful possession of a scheduled drug if he intentionally or knowingly possesses ~~a useable amount of~~ what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such possession is either: '

Further amend the bill by renumbering section 16 to be section 25.

Further amend the bill by inserting at the end before the statement of fact the following:

'Sec. 26. 17-A MRSA §1253, sub-§2-A is enacted to read:

2-A. For the purposes of calculating imprisonment of less than 30 days, when used by the sentencing court, "day" means 24 hours.

Sec. 27. 17-A MRSA §1301, sub-§3, as amended by PL 1975, c. 740, §123, is repealed and the following enacted in its place:

3. If the defendant convicted of a crime is an organization and the statute which it is convicted of violating expressly provides that the fine it authorizes may not be suspended, the organization shall be sentenced to pay the fine authorized therein. Otherwise, the maximum allowable fine which such a defendant may be sentenced to pay shall be:

- A. Any amount for murder;
- B. \$50,000 for a Class A crime;
- C. \$20,000 for a Class B crime;
- D. \$10,000 for a Class C crime;

E. \$5,000 for a Class D crime or a Class E crime; and

F. Any higher amount which does not exceed twice the pecuniary gain derived from the crime by the convicted organization.

Statement of Fact

The purposes of this amendment are:

Section 5 deletes a limitation in the applicability provisions of the Criminal Code made inappropriate as a result of the 1977 amendments to those provisions.

Section 7 provides that the prosecution shall not be required to elect the manner by which theft was committed when the evidence supports a violation of more than one of the provisions Title 17-A, in chapter 15,

Section 8 codifies the rule in State v. Gordon, Me., 321 A.2d 352, (1974).

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Sections 10, 21 and 22 clarify certain penalty enhancement provisions of the ~~code~~;

Section 23 makes criminal conduct by a person in this State designed to hinder the apprehension of a person who has committed a crime in another state;

Section 24 deletes \longleftrightarrow the phrase "useable amount" in light of the recent Law Court decision of State v. Bonney, Me., A.2d (March 24, 1981);

Section 26 standardizes the length of incarceration in short, "shock" sentences, and

Section 27 provides a penalty for an organization which is found guilty of murder.

Reported by the Committee on Judiciary.
Reproduced and distributed pursuant to Senate Rule 11-A.
April 30, 1981 (Filing No. S-155)