

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1282

S. P. 444

In Senate, March 13, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Devoe of Penobscot.

STATE OF MAINE

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

AN ACT to Amend the Criminal Code and Related Criminal Laws.

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

Sec. 1. 15 MRSA § 201, sub-§ 4, ¶ B, as enacted by PL 1977, c. 671, § 3, is amended to read:

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 not served or completed a sentence imposed pursuant to the conviction. This definition shall include, but not be limited to, a person who has been released pending appeal or other review of the conviction, the review having been completed; a person who has been serving a sentence in this State; a person who has escaped from confinement in the demanding state; or a person who has broken the terms of his bail, probation or parole.~~

Sec. 2. 15 MRSA § 203, sub-§ 2, ¶ A, as enacted by PL 1977, c. 671, § 5, is amended to read:

A. A statement by the executive authority of the demanding state that the person demanded ~~has escaped from confinement or has broken the terms of his bail, probation or parole is a fugitive from justice, as defined in section 201, subsection 4, paragraph B; and~~

Sec. 3. 15 MRSA § 210-A, 2nd paragraph, as enacted by PL 1977, c. 671, § 10, is amended to read:

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 contesting extradition~~, for the purpose of showing that the petitioner is charged with a crime in the demanding state, **that there is probable cause**, that the petitioner is in fact the person charged with the crime and that the petitioner is a fugitive from justice.

Sec. 4. 17-A MRSA § 8, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended to read:

4. If a timely complaint, **information** or indictment is dismissed for any error, defect, insufficiency or irregularity, a new prosecution for the same crime based on the same conduct may be commenced within 6 months after the dismissal, or during the next session of the grand jury, whichever occurs later, even though the periods of limitations ~~has~~ **have** expired at the time of such dismissal or will expire within such period of time.

Sec. 5. 17-A MRSA § 208, sub-§ 1, ¶C, as amended by PL 1975, c. 740, § 43, is further amended to read:

C. Bodily injury to another under circumstances manifesting extreme indifference to the value of human life. Such circumstances include, but are not limited to, the number, location or nature of the injuries, ~~or~~ the manner or method inflicted, **or the observable physical condition of the victim.**

Sec. 6. 17-A MRSA § 402, sub-§ 1, ¶C, as repealed and replaced by PL 1979, c. 701, § 23, is amended to read:

C. He enters any place from which he may lawfully be excluded and which is posted in a manner **prescribed by law or in a manner** reasonably likely to come to the attention of intruders or which is fenced or otherwise enclosed in a manner designed to exclude intruders;

Sec. 7. 17-A MRSA § 451, sub-§ 3, 2nd sentence, as amended by PL 1979, c. 512, § 27, is repealed.

Sec. 8. 17-A MRSA § 451, sub-§ 3-A is enacted to read:

3-A. **In a prosecution under subsection 1, paragraph A, evidence that the allegedly false testimony in the prior official proceeding was contradicted by evidence in that proceeding may not be a sufficient basis by itself to sustain a conviction for perjury.**

Sec. 9. 17-A MRSA § 452, sub-§ 2, 2nd sentence, as amended by PL 1979, c. 512, § 28, is repealed.

Sec. 10. 17-A MRSA § 452, sub-§ 2-A is enacted to read:

2-A. **In a prosecution under subsection 1, paragraph A, evidence that the allegedly false testimony or statement in the prior official proceeding or before a**

**notary or other person authorized to administer oaths may not be a sufficient basis by itself to sustain a conviction.**

**Sec. 11. 17-A MRSA § 453, sub-§ 1, ¶ A, as enacted by PL 1975, c. 499, § 1, is amended to read:**

**A. He makes a written false statement which he does not believe to be true, on or pursuant to, a form conspicuously bearing notification authorizing by statute or regulation to the effect that false statements made therein are punishable; or**

**Sec. 12. 17-A MRSA § 453, sub-§ 1, ¶ B, sub-¶ (1), as enacted by PL 1975, c. 499, § 1, is amended to read:**

**(1) makes any written false statement which he does not believe to be true, provided, however, that this subsection does not apply in the case of a written false statement made to a law enforcement officer by a person then in official custody and suspected of having committed a crime, except as provided in paragraph C; or**

**Sec. 13. 17-A MRSA § 453, sub-§ 1, ¶ B, sub-¶ (3), as enacted by PL 1975, c. 499, § 1, is amended to read:**

**(3) submits or invites reliance on any sample, specimen, map, boundary mark or other object which he knows to be false; or**

**Sec. 14. 17-A MRSA § 453, sub-§ 1, ¶ C is enacted to read:**

**C. With the intent to conceal his identity from a law enforcement officer while under arrest for a crime, after having been warned that it is a crime to give false information concerning identity, he gives false information concerning his name or date of birth, including, but not limited to, a signature.**

**Sec. 15. 17-A MRSA § 506, sub-§ 1, ¶ D, as repealed and replaced by PL 1975, c. 740, § 66, is amended to read:**

**D. He makes repeated telephone calls, during which conversation ensues, solely with the intent to harass any person at the called number; or**

**Sec. 16. 17-A MRSA § 1253, sub-§ 1-A, as enacted by PL 1979, c. 701, § 31, is amended to read:**

**1-A. When a person who has been previously sentenced in another jurisdiction has not commenced or completed that sentence, the court, subject to section 1155, subsection 1, may, with consideration of the factors stated in section 1155, subsection 2, sentence the person to a term of imprisonment which shall be treated as a concurrent sentence from the date of sentencing although the person is incarcerated in an institution of the other jurisdiction. No concurrent sentence pursuant to this subsection may be imposed unless the person being sentenced consents or unless the person being sentenced executes, at the time of sentencing, a written waiver of extradition for his return to this State upon completion of the sentence of the other jurisdiction, if any portion of this state's sentence remains**

**unserved.** In the absence of an order pursuant to this subsection requiring concurrent sentences, any sentence of imprisonment in this State shall commence as provided in subsection 1 and shall run consecutively to the sentence of the other jurisdiction. Subsections 3-A, 3-B and 4 shall apply and shall be administered by the supervising officer of this state's institution to which the person is sentenced. If the person is released from imprisonment under the sentence of the other jurisdiction prior to the termination of this state's sentence, the remainder of this state's sentence shall be served in the institution in this State to which the person was sentenced.

#### STATEMENT OF FACT

This bill contains amendments to the Maine Criminal Code as recommended by the Criminal Law Advisory Commission. The substance of the changes is indicated below.

Sections 1, 2 and 3 correct technical problems in the extradition laws.

Section 4 includes an alternative charging instrument in the savings provision of the statute of limitations.

Section 5 makes clear that the physical condition of the victim is a circumstance taken into account in aggravated assault prosecutions.

Section 6 corrects an inadvertant omission in the 1979 revision.

Sections 7, 8, 9 and 10 clarify the original intent of these provisions concerning the fact that a conviction for perjury or false swearing cannot rest on a single witness. The affirmative defense is eliminated and its replacement ensures that the question does not reach the fact-finder.

Sections, 11, 12, 13 and 14 make it a crime for a person to give a false written statement concerning one's identity to a law enforcement officer, provided that the person has been warned it is a crime to do so.

Section 15 removes the requirement that the prosecution prove that repeated telephone calls are done "solely" with the intent to harass and replaces it with the requirement that there be an "intent to harass," thereby reaching the situation where a caller with mixed motives calls repeatedly although harassment is a primary motive and result.

Section 16 clarifies the relationship between this subsection and section 1155 of the Code and assures the speedy return of a prisoner who has been sentenced pursuant to the provisions of this subsection. At present, the Interstate Agreement on Detainers does not apply to a person already convicted, who must serve a sentence in another jurisdiction, and the cumbersome process of extradition is the only method by which to secure such a person's return.