

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION

2
3 ONE HUNDRED AND ELEVENTH LEGISLATURE

4
5 Legislative Document

No. 782

6
7 H.P. 630

House of Representatives, February 16, 1983

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

10 EDWIN H. PERT, Clerk

Presented by Representative McGowan of Pittsfield.

Cosponsors: Representative Joyce of Portland, Speaker Martin of Eagle
11 Lake and Representative Joseph of Waterville.

12 STATE OF MAINE

13
14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE

16
17 AN ACT Relating to Victims' Bill of
18 Rights.
19

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

22 Sec. 1. 17-A MRSA §454, as repealed and replaced
23 by PL 1977, c. 510, §54, is amended to read:

24 §454. Tampering with a witness, informant or victim

25 1. A person is guilty of tampering with a
26 witness ~~or~~, informant or victim if, believing that an
27 official proceeding, as defined in section 451, sub-
28 section 5, paragraph A, or an official criminal
29 investigation is pending or will be instituted:

30 A. He induces or otherwise causes, or attempts
31 to induce or cause, a witness ~~or~~, informant or
32 victim:

- 1 (1) To testify or inform falsely; or
2 (2) To withhold any testimony, information
3 or evidence, which he knows the witness ~~or~~,
4 informant or victim is not privileged to
5 withhold;
- 6 B. He uses force, violence or intimidation, or
7 he promises, offers or gives any pecuniary benef-
8 it with the intent to induce a witness ~~or~~,
9 informant or victim:

- 10 (1) To ~~withheid~~ withhold any testimony,
11 information or evidence;
- 12 (2) To absent himself from any criminal
13 proceeding or criminal investigation; or
- 14 (3) To absent himself from any other pro-
15 ceeding or investigation to which he has
16 been summoned by legal process; or

17 C. He solicits, accepts or agrees to accept any
18 pecuniary benefit in consideration of his doing
19 any of the things specified in paragraph A,
20 subparagraph (1), or in paragraph B, subpara-
21 graphs (1), (2) or (3).

22 2. Tampering with a witness or informant is a
23 Class C crime.

24 3. Tampering with a victim is a Class B crime.

25 4. If the State pleads and proves that a Class B
26 crime was committed, the minimum sentence of impris-
27 onment which shall not be suspended shall be a mini-
28 imum term of imprisonment of 2 years.

29 5. Victim means a person who suffers personal
30 injury, death or economic loss as a result of a crime
31 or the good faith effort of any person to prevent a
32 crime.

33 Sec. 2. 17-A MRSa §1257 is enacted to read:

34 §1257. Victim's right to participate in sentence

1 1. In any case where a defendant has been con-
2 victed of any crime or civil violation either upon
3 his plea or after trial, the prosecuting attorney, as
4 the representative of a crime victim, shall have the
5 right to be heard at the time of sentence. The
6 prosecuting attorney may recommend a specific sen-
7 tence including, but not limited to, a specified
8 period of incarceration, a specified fine, a speci-
9 fied period of probation, special conditions of
10 probation, payment of special amounts of restitution
11 or any other alternative sentence.

12 2. The court shall take into consideration, at
13 the time of sentence, the state's recommended sen-
14 tence in addition to recommendations as to sentence
15 by the defendant and his attorney.

16 3. In any case where a defendant has been con-
17 victed of a crime or civil violation and the victim
18 of the crime or civil violation is present in the
19 courtroom at the time of sentence, the victim upon
20 request shall have the right to address the court and
21 make a statement or a specified sentencing recom-
22 mendation.

23 4. In all cases when a victim requests to ad-
24 dress the court at the time of the sentence, the
25 court shall take into consideration the victim's
26 statement, as well as all other appropriate consider-
27 ations in determining sentence.

28 5. If the victim is unable or unwilling to
29 physically appear in the courtroom, the victim may
30 elect to submit a written statement to the sentencing
31 judge which shall become part of the record and shall
32 be considered by the court at the time of sentenc-
33 ing, along with all other appropriate factors.

34 6. The prosecutory attorney or victim witness
35 advocate or any other designated person may appear on
36 behalf of the victim and inform the court of the
37 victim's statement at the time of sentencing.

38 7. In all cases, the court shall encourage the
39 victim's participation in the sentencing procedure.
40 The court shall in all cases involving a Class A, B
41 or C crime provide for a reasonable period of time

1 between the finding of guilt of a defendant and the
2 imposition of sentence to notify the victim of the
3 conviction and to provide the victim with the oppor-
4 tunity to address the court. The prosecuting attor-
5 ney may affirmatively waive this right or represent
6 the victim's position.

7 Sec. 3. 17-A MRSA §1323, as enacted by PL 1977,
8 c. 455, §3, is repealed and the following enacted in
9 its place:

10 §1323. Mandatory consideration of restitution

11 1. When the defendant has been convicted of any
12 crime or civil infraction, every judge shall at the
13 time of sentence determine the extent of a victim's
14 financial loss, and shall order a defendant to pay
15 full restitution for this financial loss as a part of
16 a sentence or as a special condition of probation or
17 as part of a condition for the suspension of a fine
18 or a sentence.

19 2. The court shall whenever possible make direct
20 inquiry of the prosecutory attorney, police officer
21 or victim to determine the extent of the victim's
22 financial loss.

23 3. In any case that the court determines that
24 restitution should not be imposed in accordance with
25 the criteria set forth in section 1325, the court
26 shall in writing state the reasons for not imposing
27 restitution.

28 Sec. 4. 17-A MRSA §1330 is enacted to read:

29 §1330. Work release and restitution

30 1. Any defendant who has been sentenced to a
31 period of imprisonment may be released pursuant to a
32 work program administered under Title 34, including
33 county jail prisoners released for employment, pro-
34 viding that that inmate agrees that a minimum of 50%
35 of the inmate's gross wages shall be applied to pay
36 restitution to the victim or victims of that inmate.

37 2. The institution to which the inmate is sen-
38 tenced shall be responsible to collect that restitu-

1 tion and forward the restitution to the victim or to
2 the District Attorney of the prosecutorial district
3 from which the inmate was sentenced for disbursement
4 to the appropriate victim.

5 3. The institution requesting the work release
6 program for an inmate shall have the responsibility
7 of determining the extent of the victim's financial
8 loss if restitution has not been ordered by the court
9 as part of the defendant's sentence. The institution
10 shall directly contact the victim to determine the
11 extent of any loss if no court order has been entered
12 on the record. Any inmate who refuses to pay resti-
13 tution to his victim shall not be released on work
14 release.

15 4. Any inmate, in any institution, shall be
16 encouraged to participate in projects or programs
17 that generate income to the inmate, or the inmate's
18 family or the inmate's victim.

19 5. Any inmate who is able to generate income,
20 from whatever source while he is an inmate, shall be
21 required to pay 50% of that income to the victim or
22 victims of his crime, as the income accrues until the
23 victim is completely compensated for his entire
24 financial loss. Any inmate who refuses to pay resti-
25 tution to his victim under this section shall not be
26 released on work release.

27 6. The institution in which the inmate is held
28 will be held responsible to collect that restitution
29 on behalf of victims and to either forward the resti-
30 tution directly to the victim or to the District
31 Attorney of the prosecutorial district from which the
32 defendant was sentenced.

33 Sec. 5. 30 MRSA §1130 is enacted to read:

34 §1130. Victim and witness advocates

35 Each county is encouraged to establish within the
36 office of their respective District Attorney a victim
37 and witness program to assist and support the victims
38 and witnesses of criminal offenses in the prosecution
39 of criminal offenses. Each county is encouraged to
40 hire, train and provide support staff to a qualified

1 person or persons who shall be called a victim and
2 witness advocate. The victim and witness advocate
3 shall work under the direct supervision and control
4 of the District Attorney of the prosecutorial dis-
5 trict in which this county is located.

6 The victim and witness advocate shall, under the
7 supervision of the District Attorney, have the
8 responsibility of consulting with the victim or vic-
9 tims of serious crimes or in appropriate cases the
10 victims' family to obtain the views of the victims
11 concerning all aspects of the criminal justice system
12 and particularly the prosecution of the criminal
13 cases in which they are involved, and all potential
14 plea bargaining or related considerations, trial pre-
15 paration, sentencing alternative and the preparation
16 and submission of victim impact statements, and the
17 compilation of restitution assessments establishing
18 the economic loss of victims.

19 STATEMENT OF FACT

20 This bill is intended to act as an omnibus vic-
21 tims' rights bill.

22 The bill addresses particular problems that vic-
23 tims of crime encounter during and after the prose-
24 cution of criminal cases.

25 Section 1 recognizes the needs of victims to be
26 secure from possible intimidation by defendants.
27 Title 17-A, section 454 extends the protection of law
28 presently afforded to witnesses and informants, and
29 further improves a mandatory period of incarceration
30 for any defendant who attempts to tamper or intimi-
31 date a crime victim.

32 Section 2 establishes a victim's right to be
33 heard in court at the time of the defendant's sen-
34 tence. It is expected that the victim's participa-
35 tion in the sentencing procedure will foster more
36 confidence in the criminal justice system, and will
37 also provide judges with more accurate information
38 and more effective sentences.

1 Section 3 requires judges to consider restitution
2 in every criminal case for crime victims. A very
3 important part of this bill requires judges to state
4 written reasons for not imposing restitution.

5 Section 4 requires inmates to make restitution as
6 a condition of any work release program or participa-
7 tion in an income generating activity while he is
8 confined in an institution. This portion of the bill
9 attacks the problem of a potential "novelty king"
10 obtaining a sizable income while his victim continues
11 to suffer economic loss.

12 Section 5 encourages the establishment of victim
13 and witness programs in District Attorney offices by
14 county government. The effectiveness of victim and
15 witness programs on a national level and in this
16 State is recognized by all law enforcement agencies
17 as an effect measure in assisting crime victims.

18

1271020983