

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1360

6  
7 H.P. 1035

House of Representatives, March 29, 1983

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

10 EDWIN H. PERT, Clerk

Presented by Representative Soule of Westport.

Cosponsor: Representative Crouse of Washburn.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Amend Various Provisions of  
18 the Maine Criminal Code.  
19

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

22 Sec. 1. 17-A MRSA §15, sub-§1, ¶A, as amended by  
23 PL 1979, c. 677, §§2 and 18, is further amended to  
24 read:

25 A. Any person who he has probable cause to  
26 believe has committed or is committing:

27 (1) Murder;

28 (2) Any Class A, Class B or Class C crime;

29 (3) Assault while hunting;

1 (4) Any offense defined in chapter 45;

2 (5) Assault, if the officer reasonably  
3 believes that the person may cause injury to  
4 others unless immediately arrested;

5 (5-A) Assault, criminal threatening,  
6 terrorizing or reckless conduct, if the  
7 officer reasonably believes that the person  
8 and the victim are family or household mem-  
9 bers, as defined in Title 15, section 301  
10 ~~This subparagraph is repealed on November 17,~~  
11 ~~1983;~~

12 (6) Theft as defined in section 357, when  
13 the value of the services is \$1,000 or less,  
14 if the officer reasonably believes that the  
15 person will not be apprehended unless  
16 immediately arrested;

17 (7) Forgery, if the officer reasonably  
18 believes that the person will not be appre-  
19 hended unless immediately arrested; or

20 (8) Negotiating a worthless instrument, if  
21 the officer reasonably believes that the  
22 person will not be apprehended unless  
23 immediately arrested; and

24 Sec. 2. 17-A MRSA §201, sub-§1-A is enacted to  
25 read:

26 1-A. For purposes of subsection 1, paragraph B,  
27 "conduct which manifests a depraved indifference to  
28 the value of human life" has the following meaning:

29 A. A person engages in conduct which manifests a  
30 depraved indifference to the value of human life  
31 when:

32 (1) Either he knows that there is a very  
33 high degree of risk that his conduct will  
34 cause death or serious bodily injury, or a  
35 reasonable and prudent person in his situa-  
36 tion would know of that risk; and

1                   (2) His conduct, when viewed in light of  
2                   the totality of the circumstances, reflects  
3                   that an indifference to the value of human  
4                   life that it would be generally regarded by  
5                   mankind as depraved.

6                   As used in subparagraph (2) "totality of the circum-  
7                   stances" means the nature and purpose of the actor's  
8                   conduct, the circumstances known to the actor and the  
9                   circumstances which would have been apparent to a  
10                   reasonable and prudent person in the actor's situa-  
11                   tion. "Depraved" means outrageous, revolting,  
12                   savage, brutal or shocking, readily demonstrating an  
13                   almost total lack of concern or appreciation for the  
14                   value of human life.

15                   Sec. 3. 17-A MRSA §452, sub-§2-A, as enacted by  
16                   PL 1981, c. 317, §15, is amended to read:

17                   2-A. In a prosecution under subsection 1, para-  
18                   graph A, evidence that the allegedly false testimony  
19                   or statement in the prior official proceeding or  
20                   before a notary or other person authorized to admin-  
21                   ister oaths was contradicted by evidence in that pro-  
22                   ceeding may not be a sufficient basis by itself to  
23                   sustain a conviction for false swearing.

24                   Sec. 4. 17-A MRSA §802, sub-§1, ¶B, as enacted  
25                   by PL 1975, c. 499, §1, is amended to read:

26                   B. On his own property or the property of  
27                   another

28                   (1) with the intent to enable any person to  
29                   collect insurance proceeds for the loss  
30                   caused by the fire or explosion; or

31                   (2) in conscious disregard of a substantial  
32                   risk that his conduct will endanger any  
33                   person or damage or destroy the property of  
34                   another which recklessly endangers any  
35                   person or the property of another.

36                   Sec. 5. 17-A MRSA §1206, sub-§5, as repealed and  
37                   replaced by PL 1977, c. 510, §73, is amended to read:

1           5. When the alleged violation constitutes a  
2 crime for which the person on probation has not been  
3 convicted, the court may revoke probation if it finds  
4 by a preponderance of the evidence that the person on  
5 probation committed the crime. If the person is  
6 subsequently convicted of the crime, or any other  
7 crime or crimes arising out of the same conduct, sen-  
8 tencing shall be subject to the requirements of  
9 section ~~1155~~ 1256. If concurrent terms of imprison-  
10 ment are imposed and the terms do not commence on the  
11 same date, any time served as a result of the proba-  
12 tion revocation shall be deducted from the time the  
13 person is required to serve as a result of the new  
14 conviction.

15           Sec. 6. 17-A MRSA §1206, sub-§6, as repealed and  
16 replaced by PL 1977, c. 510, §73, is repealed.

17           Sec. 7. 17-A MRSA §1206, sub-§7, as amended by  
18 PL 1979, c. 512, §42, is further amended to read:

19           7. If a person on probation is convicted of a  
20 new crime during the period of probation, the court  
21 may sentence him for such crime and revoke probation.  
22 If the person has been sentenced for the new crime  
23 and probation revocation proceedings are subsequently  
24 commenced, the court which conducts the revocation  
25 hearing may revoke probation. Sentencing for the  
26 multiple offenses shall be subject to section ~~1155~~  
27 1256. If concurrent terms of imprisonment are imposed  
28 and the terms do not commence on the same date, any  
29 time served as a result of the new conviction shall  
30 be deducted from the time the person is required to  
31 serve as a result of the probation revocation.

32           Sec. 8. 17-A MRSA §1206, sub-§7-A, as enacted by  
33 PL 1979, c. 512, §43, is amended to read:

34           7-A. Upon revocation of probation pursuant to  
35 ~~subsections~~ subsection 5, 6 or 7, the court may  
36 ~~impose all of the sentence which was suspended when~~  
37 ~~probation was granted or it may impose a portion~~  
38 ~~thereof vacate, in whole or in part, the suspension~~  
39 ~~of execution as to imprisonment or fine specified~~  
40 ~~when probation was granted, considering the nature of~~  
41 ~~the violation and the reasons for granting probation.~~  
42 The remaining portion of the sentence for which sus-

1 pension of execution is not imposed vacated upon the  
2 revocation of probation shall remain suspended and  
3 subject to revocation at a later date. During the  
4 service of the that portion of the sentence imposed  
5 for which the suspension of execution was vacated  
6 upon revocation, the running of the period of proba-  
7 tion shall be interrupted and shall resume again upon  
8 release. The court may nevertheless revoke probation  
9 and impose vacate the suspension of execution as to  
10 the remainder of the suspended sentence or a portion  
11 thereof for any criminal conduct committed during the  
12 service of the that portion imposed of the sentence  
13 for which the suspension of execution was vacated  
14 upon revocation.

15           Sec. 9. 17-A MRSA §1206, sub-§8, as enacted by  
16 PL 1977, c. 510, §73, is amended to read:

17           8. Whenever a person is detained in any state or  
18 county institution pending a probation revocation  
19 proceeding, such period of detention shall be  
20 deducted from the time the person is required to  
21 serve under the sentence imposed that portion of the  
22 sentence for which the suspension of execution was  
23 vacated as a result of the probation revocation.

24           Sec. 10. 17-A MRSA §1253, sub-§2, as amended by  
25 PL 1977, c. 671, §31, is further amended to read:

26           2. When a person sentenced to imprisonment has  
27 previously been detained to await trial, in any state  
28 or county institution, or local lock-up, for the con-  
29 duct for which such the sentence is imposed, such the  
30 period of detention shall be deducted from the time  
31 he is required to be imprisoned under such that sen-  
32 tence. The attorney representing the State shall fur-  
33 nish the court, at the time of sentence, a statement  
34 showing the length of such that detention, and the  
35 statement shall be attached to the official records  
36 of the commitment.

37 When a person sentenced to imprisonment is detained  
38 at a county jail or other place of detention by  
39 virtue of that commitment either to await transporta-  
40 tion to the place of imprisonment specified by the  
41 sentence of the court, or pursuant to court order,  
42 the period of detention shall be deducted from the

1 time he is required to be imprisoned under that sen-  
2 tence. The sheriff or other person upon whom the  
3 legal duty is imposed to deliver that sentenced  
4 person, shall, at the time of the delivery, furnish  
5 to the department a statement showing the length of  
6 that detention. In addition, the transporter shall,  
7 without needless delay, furnish to the sentencing  
8 court the same statement and that statement shall be  
9 attached to the official records of the commitment.

10

#### STATEMENT OF FACT

11 Section 1 corrects an inconsistency created when  
12 the "sunset provision" to "An Act Concerning Abuse  
13 Between Family or Household Members," namely, Title  
14 19, section, 770-A, as reallocated by Public Law  
15 1981, chapter 470, Part A, section 46, was repealed  
16 by Public Law 1982, chapter 554.

17 Section 2 defines "conduct which manifests a  
18 depraved indifference to the value of human life" as  
19 set forth in Title 17-A, section 201, subsection 1,  
20 paragraph B and as construed by the Maine Law Court  
21 in State v. Joy, 452 A.2d 408, 409-12 (Me. 1982);  
22 State v. Crocker, 435 A.2d 58, 62-8 (Me. 1981); State  
23 v. Lagasse, 410 A.2d 537, 540 (Me. 1980); State v.  
24 Goodall, 407 A.2d 268, 288 n. 18 (Me. 1979); and  
25 State v. Woodbury, 403 A.2d 1166, 1171-72 (Me. 1979).

26 Section 4 corrects an inconsistency created when  
27 the Maine Criminal Code definition of "recklessly"  
28 was amended as to form by Public Law 1977, chapter  
29 510, sections 20 and 21. State v. Barrett, 408 A.2d  
30 1273, 1278-79 (Me. 1979).

31 Sections 5 and 6 correct an inconsistency created  
32 when Title 17-A, section 1155 was reallocated to  
33 Title 17-A, section 1256 by Public Law 1981, chapter  
34 324, sections 29 and 34.

35 Section 7 eliminates the 2nd sentence of Title  
36 17-A, section 1206, subsection 6 as unnecessary in  
37 light of Title 17-A, section 1206, subsection 7-A.

38 Sections 8 and 9 eliminate the use of the term,  
39 "impose" and forms thereof-i.e. "imposed," relative

1 to the vacating of all or a portion of a suspension  
2 following revocation of probation pursuant to Title  
3 17-A, section 1206, subsections 7-A and 8. The use  
4 of the term "impose" in the context of a probation  
5 revocation as reflected in subsections 7-A and 8 is  
6 at best confusing and, at worst, erroneous. As a  
7 technical matter, following the revocation of proba-  
8 tion, a court simply rescinds a preexisting suspen-  
9 sion order; it does not at that point in time  
10 "impose" a sentence. This is so because the actual  
11 imposition of sentence, as a matter of law, occurred  
12 at an earlier point in time, to wit, at the time the  
13 person was adjudicated guilty of the offense for  
14 which he was convicted. (Title 17-A, sections 1201  
15 to 1204; M.R.Crim.P. 32). By stating that a court  
16 "imposes" a sentence upon revocation of probation,  
17 certain persons may be misled into assuming that  
18 they thereby possess a renewed right of access to  
19 appellate review of sentence pursuant to Title 15,  
20 sections 2141 to 2144 and M.R.Crim.P. 40.

21 Section 10 corrects an omission relative to Title  
22 17-A, section 1253. Presently, section 1253 address-  
23 es calculation of the period of imprisonment once  
24 execution has commenced, subsections 1, 3, 3-A, 3-B,  
25 4 and 5, and calculation of the period of imprison-  
26 ment prior to a sentence being imposed, subsection 2.  
27 Unlike one of its statutory precursors namely, Title  
28 15, section 1701-A, repealed by Public Law 1975,  
29 chapter 499, section 2, no consideration is given to  
30 calculation of the period of imprisonment following a  
31 sentence but prior to the actual commencement thereof  
32 in section 1253. The omission was not by design, no  
33 form of "dead-time" being contemplated by the Maine  
34 Criminal Code. Section 10 amends section 1253 spe-  
35 cifically to address post-sentence detention result-  
36 ing either because immediate transportation to the  
37 place of imprisonment specified by the sentence of  
38 the court does not take place or because transporta-  
39 tion is delayed pursuant to a court order-e.g., pend-  
40 ing court action on an application for bail pending  
41 appeal.