

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 630, L.D. 782)

2 FIRST REGULAR SESSION  
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE  
5

6 Legislative Document

No. 1578

8 H.P. 1192

House of Representatives, May 10, 1983

9 Reported by the Majority from the Committee on Judiciary and printed  
10 under Joint Rule 2.

11 Original bill presented by Representative McGowan of Pittsfield.  
Cosponsored by Representative Joyce of Portland, Speaker Martin of Eagle  
Lake and Representative Joseph of Waterville.

EDWIN H. PERT, Clerk

12  
13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-THREE  
17

18 AN ACT Relating to Victims' Bill of  
19 Rights.  
20

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

23 Sec. 1. 17-A MRSA §454, as repealed and replaced  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

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

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

31 A. He induces or otherwise causes, or attempts  
32 to induce or cause, a witness or informant or  
33 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 is not privileged to withhold;~~

5 B. He uses force, violence or intimidation, or  
6 he promises, offers or gives any pecuniary bene-  
7 fit with the intent to induce a witness ~~or,~~  
8 informant or victim:

9 (1) To ~~withheld~~ withhold any testimony,  
10 information or evidence;

11 (2) To absent himself from any criminal  
12 proceeding or criminal investigation; or

13 (3) To absent himself from any other pro-  
14 ceeding or investigation to which he has  
15 been summoned by legal process; or

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

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

24 3. "Victim" means a person who suffers bodily  
25 injury, death or economic loss as a result of a crime  
26 or the good faith effort of any person to prevent a  
27 crime.

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

29 §1257. Victim's right to participate in sentence

30 1. Prosecutor; right to be heard. In any case  
31 where a defendant has been convicted of any crime  
32 either upon his plea or after trial, the prosecutor  
33 shall have the right to be heard at the time of sen-  
34 tence. The prosecutor may recommend a specific sen-  
35 tence or other disposition.

1           2. Victim; right to be heard. In any case where  
2 a defendant has been convicted of a crime and a  
3 victim of the crime is present in the courtroom at  
4 the time of sentencing, the victim upon his request  
5 shall have the right to address the court. If the  
6 victim is unable or unwilling to appear in the court-  
7 room, he may submit a written statement to the court  
8 which shall become part of the record. The prose-  
9 cutor may inform the court of the victim's statement,  
10 if any, at the time of sentencing. The court shall  
11 consider any statements made by the prosecutor or  
12 victim, along with all other appropriate factors, in  
13 determining the sentence.

14           3. Notification of victim. To encourage victim  
15 participation in sentencing, the prosecutor shall,  
16 whenever practicable, notify any victim of the time  
17 and place of sentencing.

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

21           §1323. Mandatory consideration of restitution

22           1. Inquiry as to victim's financial loss. The  
23 court shall, whenever practicable, inquire of a  
24 prosecutor, police officer or victim with respect to  
25 the extent of the victim's financial loss, and shall  
26 order restitution where appropriate.

27           2. Reasons for not imposing restitution. In any  
28 case where the court determines that restitution  
29 should not be imposed in accordance with the criteria  
30 set forth in section 1325, the court shall state in  
31 open court or in writing the reasons for not imposing  
32 restitution.

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

34           §1330. Work program release; restitution

35           1. Work program; payment of restitution. Any  
36 defendant who has been sentenced to a period of  
37 imprisonment may be released pursuant to a work pro-  
38 gram administered under Title 34, including county  
39 jail prisoners released for employment. The institu-

1 tion in which the inmate is incarcerated shall pro-  
2 pose to the court a plan of restitution from the pro-  
3 ceeds of work release where appropriate, which shall  
4 include a definite percentage of gross wages to be  
5 paid as restitution that is not less than 25%. No  
6 inmate may be released under this section unless he  
7 consents to the plan, and any plan may be terminated  
8 by the court for refusal to pay. No plan under this  
9 section may become effective without the approval of  
10 the court. The institution in which the inmate is  
11 incarcerated shall collect and disburse to any victim  
12 that portion of the inmate's wages approved for pay-  
13 ment as restitution.

14 2. Payment of restitution from other  
15 sources. Any inmate, other than one addressed by  
16 subsection 1, who is able to generate income, from  
17 whatever source, shall pay 25% of that income to any  
18 victim if the court has ordered that restitution be  
19 paid.

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

21 §1130. Victim and witness support

22 Each county is encouraged to establish a victim  
23 and witness support program to assist the victims and  
24 witnesses of criminal offenses in the prosecution  
25 thereof. Each county is further encouraged to hire,  
26 train and provide support staff to a qualified person  
27 or persons to carry out the victim and witness sup-  
28 port program. Any program established under this  
29 section shall be administered by the District Attor-  
30 ney for the prosecutorial district in which the  
31 county is located.

32 STATEMENT OF FACT

33 Section 1 deletes from the provision of the Maine  
34 Criminal Code which makes tampering with a witness,  
35 informant and, as added by this new draft, victim a  
36 crime, a requirement that the person tampering know  
37 that the informant or witness is not privileged to  
38 withhold the information. Section 1 also deletes  
39 provisions in the original bill which provided a  
40 mandatory minimum prison term for someone convicted  
41 of tampering with a victim.

1           Section 2 formalizes what currently is the informal  
2 practice, in most criminal cases, concerning the  
3 victim's ability to be heard when a convicted defendant  
4 is sentenced.

5           Section 3 again formalizes what is the current  
6 practice of most judges in investigating the possibility  
7 of restitution, and requires that, when  
8 restitution is not ordered, the judge state the  
9 reasons for this decision in open court.

10          Section 4 again formalizes a practice of deducting  
11 restitution from inmates' income generating activities.  
12 This new draft changes the minimum percentage of income  
13 to be deducted for restitution from  
14 50%, provided in the original bill, to 25%.

15          Section 5 of this new draft basically maintains  
16 the first paragraph of section 5 of the original  
17 bill, and eliminates the 2nd. That paragraph prescribed  
18 what responsibilities a victim and witness advocate  
19 would have, if such a program were established in a  
20 county. This new draft, instead, leaves the detailed  
21 design of the program in a particular  
22 county to that county.

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