

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1318

S.P. 438

In Senate, April 22, 1987

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative PARADIS of Augusta, Senator BLACK of Cumberland.

STATE OF MAINE

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

AN ACT to Modify Certain Sections of the
Maine Criminal Code.

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3

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

6 Sec. 1. 17-A MRSA §2, sub-§23, as amended by PL
7 1975, c. 740, §11, is further amended to read:

8 23. "Serious bodily injury" means a bodily in-
9 jury which creates a substantial risk of death or
10 which causes serious, permanent disfigurement or loss
11 or substantial impairment of the function of any
12 bodily member or organ, or extended convalescence
13 necessary for recovery of physical health. Any frac-
14 ture of a bone or the nose constitutes serious bodily
15 injury.

1 **Sec. 2.** 17-A M RSA §253, sub-§2, ¶F, as repealed
2 and replaced by PL 1985, c. 737, Pt. A, §41, is
3 amended to read:

4 F. The other person, not his spouse, has not in
5 fact attained his 18th birthday and is a student
6 enrolled in a private or public elementary, sec-
7 ondary or special education school, facility or
8 institution and the actor is a teacher, employee
9 or other official having instructional, supervi-
10 sory or disciplinary authority over the student;
11 or

12 **Sec. 3.** 17-A M RSA §253, sub-§2, ¶G, as enacted
13 by PL 1985, c. 495, §7, is amended to read:

14 G. The other person, not his spouse, has not at-
15 tained his 18th birthday and is a resident in or
16 attending a private or public nursery school,
17 children's home, day-care facility, residential
18 child-care facility, drug treatment center, camp
19 or similar school, facility or institution regu-
20 larly providing care or services for children,
21 and the actor is a teacher, employee or other
22 person having instructional, supervisory or dis-
23 ciplinary authority over that other person; or

24 **Sec. 4.** 17-A M RSA §253, sub-§2, ¶H is enacted to
25 read:

26 H. The actor is a psychiatrist or psychologist
27 and the other person is a patient of the actor.

28 **Sec. 5.** 17-A M RSA §253, sub-§5, as amended by PL
29 1985, c. 495, §7, is further amended to read:

30 5. Violation of subsection 2, paragraph A, C or
31 E is a Class B crime. Violation of subsection 2,
32 paragraph B, D, F or G or H is a Class C crime.

33 **Sec. 6.** 17-A M RSA §702, sub-§1, ¶A, as enacted
34 by PL 1975, c. 499, §1, is amended to read:

35 A. Part of an issue of money, stamps, securi-
36 ties, checks or other valuable instruments issued
37 by a government or governmental instrumentality;

1 Sec. 7. 17-A MRSA §803, sub-§2, as enacted by PL
2 1975, c. 499, §1, is amended to read:

3 2. As used in this section, "catastrophe" means
4 death or serious bodily injury to 10 or more people
5 or substantial damage to 5 or more structures, as de-
6 fined in section 801 2, subsection 24.

7 Sec. 8. 17-A MRSA §853-A, sub-§2, as amended by
8 PL 1981, c. 245, §1, is further amended to read:

9 2. Engaging in prostitution is a Class E crime
10 except that it is subject only to the penalties pro-
11 vided in section 1301, ~~unless the defendant has not~~
12 ~~attained his 18th birthday, in which case the dispo-~~
13 ~~sition provided in Title 15, section 3314 is~~
14 applicable.

15 Sec. 9. 17-A MRSA §1107, sub-§2, ¶¶A and B, as
16 repealed and replaced by PL 1977, c. 694, §6, are
17 amended to read:

18 A. A Class C crime if the drug is heroin
19 (diacetylmorphine) or cocaine;

20 B. A Class D crime if the drug is a schedule W
21 drug other than heroin (diacetylmorphine),
22 cocaine or a schedule X drug; or

23 Sec. 10. 17-A MRSA §1201, sub-§1, as amended by
24 PL 1977, c. 510, §68, is further amended to read:

25 1. A person who has been convicted of any a
26 crime may be sentenced to a ~~suspended term of impris-~~
27 ~~onment with probation or to a suspended fine with~~
28 ~~probation or to an~~ section 1152 sentencing alterna-
29 tive which includes a period of probation or to the
30 sentencing alternative of unconditional discharge,
31 unless:

32 A. The conviction is for murder;

33 B. The statute which the person is convicted of
34 violating expressly provides that the fine and
35 imprisonment penalties it authorizes may not be
36 suspended, in which case the convicted person

1 shall be sentenced to the imprisonment and re-
2 quired to pay the fine authorized therein;

3 C. The court finds that there is an undue risk
4 that during the period of probation the convicted
5 person would commit another crime; or

6 D. The court finds that such a sentence would
7 diminish the gravity of the crime for which he
8 was convicted.

9 Sec. 11. 17-A MRSA §1204, sub-§1, as repealed
10 and replaced by PL 1977, c. 671, §28, is amended to
11 read:

12 1. ~~If the court imposes a suspended sentence--of~~
13 ~~imprisonment--with probation or a suspended fine with~~
14 ~~section 1152 sentencing alternative which includes a~~
15 ~~period of probation, it shall attach such conditions~~
16 ~~of probation, as authorized by this section, as it~~
17 ~~deems to be reasonable and appropriate to assist the~~
18 ~~convicted person to lead a law-abiding life, provided~~
19 ~~that in every case it shall be a condition of proba-~~
20 ~~tion that the convicted person refrain from criminal~~
21 ~~conduct.~~

22 Sec. 12. 17-A MRSA §1252-A is enacted to read:

23 §1252-A. Sentencing; deductions

24 1. Sentencing alternative. If a court imposes a
25 section 1152 sentencing alternative which includes a
26 term of imprisonment, in setting the appropriate
27 length of such term, as well as any unsuspended por-
28 tion of that term, if any, the court shall take into
29 consideration the potential impact of the deductions
30 for good time, along with all other appropriate fac-
31 tors.

32 2. Deductions. Unless otherwise specifically
33 provided by law, deductions for good time and merito-
34 rious good time shall be calculated in accordance
35 with the laws in effect on the date the offense was
36 committed. When a judgment of conviction involving a
37 term of imprisonment is vacated or a sentence involv-
38 ing a term of imprisonment is revised or reviewed and
39 a new sentence involving a term of imprisonment is

1 thereafter imposed for the same offense, calculation
2 of good time and meritorious good time shall be in
3 accordance with the laws which governed such calcula-
4 tion on the sentence previously imposed.

5 Sec. 13. 17-A MRSA §1253, sub-§3-C is enacted to
6 read:

7 3-C. Calculating deductions. For the purpose of
8 calculating deductions under subsections 3 and 3-B
9 for partial months, the following shall control:

10 As to subsection 3:

11 <u>Days of partial month</u>	12 <u>Maximum good time</u> <u>credit available</u>
13 0 - 7 days	0
14 8 - 15 days	1
15 16 - 23 days	2
16 24 - 30 days	3

17 As to subsection 3-B:

18 <u>Days of partial month</u>	19 <u>Maximum good time credit</u> <u>available</u>
20 0 - 2 days	0
21 3 - 5 days	1
22 6 - 8 days	2
23 9 - 11 days	3
24 12 - 14 days	4
25 15 - 17 days	5
26 18 - 20 days	6
27 21 - 23 days	7
28 24 - 26 days	8
29 27 - 29 days	9
30 30 days	10

31 Sec. 14. 17-A MRSA §1256, sub-§6, as enacted by
32 PL 1981, c. 324, §34, is amended to read:

33 6. If it is discovered subsequent to the imposi-
34 tion of a sentence of imprisonment that the sentenc-
35 ing court was unaware of a previously imposed sen-
36 tence of imprisonment which is not fully discharged,
37 the court shall resentence the defendant and shall

1 specify whether the sentences are to be served con-
2 currently or consecutively. The court shall not
3 resentence the defendant if the sentences are re-
4 ~~quired-to-be-served-consecutively-pursuant-to-subsec-~~
5 ~~tion-1~~ consecutive as a matter of law.

6 STATEMENT OF FACT

7 This bill amends the definition of serious bodily
8 injury, the Maine Revised Statutes, Title 17-A, sec-
9 tion 2, subsection 23, so that a fracture of a bone
10 or the nose by another is by definition serious bodi-
11 ly injury.

12 Title 17-A, section 253, subsection 2, paragraph
13 H, makes it a crime for a psychiatrist or a psycholo-
14 gist to engage in either sexual intercourse or a sex-
15 ual act with a person who is currently the
16 psychiatrist's or psychologist's patient. It is not
17 intended to prohibit this conduct once the profes-
18 sional relationship is at an end.

19 Title 17-A, section 253, subsection 5, is amended
20 to include sentencing provisions for a violation of
21 Title 17-A, section 253, subsection 2, paragraph H.

22 The purpose in amending Title 17-A, section 702,
23 subsection 1, paragraph A, is to clarify that a gov-
24 ernment check is a valuable instrument issued by the
25 government and should be treated like money or
26 stamps.

27 Title 17-A, section 803, subsection 2, makes ref-
28 erence to a definition of the term "structure" in
29 former Title 17-A, section 801, subsection 4, re-
30 pealed by Public Law 1977, chapter 510, section 66.
31 This change seeks to correct the inconsistency in Ti-
32 tle 17-A, section 803, subsection 2, by deleting the
33 reference to former section 801, subsection 4, and
34 inserting a reference to Title 17-A, section 2, sub-
35 section 24, as enacted by Public Law 1977, chapter
36 510, section 12, which presently defines the term
37 "structure."

1 The last sentence of Title 17-A, section 853-A,
2 subsection 2, is deleted because the Maine Criminal
3 Code has no jurisdiction over juveniles.

4 The purpose of amending Title 17-A, section 1107,
5 subsection 2, paragraphs A and B, is to elevate pos-
6 session of cocaine from a Class D crime to a Class C
7 crime. This change reflects the need for stiffer pen-
8 alties because of the increased use of cocaine in
9 Maine.

10 Sections 10 and 11 of the bill. Since a growing
11 number of sentencing alternatives include probation,
12 any attempt to specify each of them is bound to be
13 cumbersome, rapidly outdated and inaccurate. The lan-
14 guage of this section adequately cites the pertinent
15 provision.

16 Section 12. At the present time, there exist dif-
17 fering points of view as to whether, at the time of
18 imposing a term of imprisonment, deductions for good
19 time should be taken into consideration by a court in
20 determining the appropriate length of the total term
21 of imprisonment, as well as the unsuspended portion,
22 if a split sentence is imposed. The absence of a uni-
23 form approach necessarily creates an undesirable dis-
24 parateness in the term of imprisonment imposed. Title
25 17-A, section 1252-A, subsection 1, ends the debate
26 by imposing an affirmative duty upon the sentencing
27 court to take the deduction for regular good time in-
28 to consideration. Although the concomitant meritor-
29 ous good time provision also applies to the sentence,
30 because the actual accumulation of meritorious good
31 time is much more difficult to project and of a sig-
32 nificantly lesser impact than that of regular good
33 time, the sentencing court is not required to attempt
34 to take meritorious good time into account. The actu-
35 al accumulation of meritorious good time and other
36 deductions, pursuant to Title 30, section 1806, de-
37 ductions for jail inmates participating in public
38 works projects, depends upon such factors as the
39 availability of appropriate positions, discretionary
40 acts of the head of the institution, that is, assign-
41 ing inmates to available positions, and an inmate's
42 actual performance weeks, months or years after impo-
43 sition of sentence. In those few sentencing situa-
44 tions which call for knowing precisely the earliest

1 possible release date, under the most favorable of
2 circumstances both within and beyond the control of
3 the court, the defendant and the institution, the
4 sentencing court is, of course, free to consider mer-
5 itorious good time and other deductions which the de-
6 fendant could possibly earn.

7 Title 17-A, section 1252-A, subsection 2, states
8 expressly which of the several good time provisions
9 applies to the sentence which may be imposed for an
10 offense and applies the good time provisions applica-
11 ble to the original sentence to any subsequent
12 resentencing for the same offense. Under most cir-
13 cumstances, the applicable sentencing provisions are
14 those in effect on the date of the offense (Title 1,
15 section 302; State v. Alley, 236 A.2d 66 (Me. 1970);
16 State v. Hardy, 489 A.2d 508 (Me. 1985); but the Leg-
17 isature may have specifically provided otherwise by
18 law for the initial sentencing. In either case, the
19 law which governed the initial sentence will continue
20 to govern every subsequent resentencing or modifica-
21 tion. The Legislature has several times expressly
22 provided that sentencing provisions different than
23 those in effect on the date of the offense shall gov-
24 ern defendants initially sentenced after their effec-
25 tive dates, that is, Public Law 1975, chapter 499,
26 section 1, codified as Title 17-A, section 1, subsec-
27 tion 2; Public Law 1983, chapter 456, section 3, cod-
28 ified as Title 17-A, section 1253, subsection 3. If
29 the new provisions are more onerous, they cannot be
30 imposed on the defendant without his consent. This
31 bill reflects legislative intent and current Maine
32 law, Title 17-A, section 1253, subsection 6-A, that
33 no interim change in the sentencing provisions ap-
34 plies to modification of a sentence previously im-
35 posed, to any resentencing for the same offense, or
36 to the sentence imposed on a prisoner reconvicted for
37 the same conduct.

38 The purpose of Title 17-A, section 1253, subsec-
39 tion 3-C, is to ensure that uniform treatment is ac-
40 corded to all inmates relative to good time deduc-
41 tions awarded for partial months.

1 Section 14. There is no need to return to court
2 for the purpose of making a consecutive sentence
3 which is so by operation of law. In addition to the
4 sentences imposed for escape, etc., those for crimes
5 by prisoners on intensive supervision, Title 17-A,
6 section 1266, and for certain crimes by parolees, Ti-
7 tle 34-A, section 5807, are automatically consecutive
8 by operation of law.

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