

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1219

H.P. 853

House of Representatives, March 21, 1991

Submitted by the Department of Attorney General pursuant to Joint Rule 24.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

Cosponsored by Senator GAUVREAU of Androscoggin, Senator MILLS of Oxford and Representative MAYO of Thomaston.

STATE OF MAINE

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

An Act Concerning Witnesses and the Integrity of the Judicial Process.



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

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Sec. 1. 15 MRSA §1313, as amended by PL 1979, c. 663, §105, is repealed.

Sec. 2. 17-A MRSA §758 is enacted to read:

§758. Witness failure to appear or testify

1. A person is guilty of failure to appear or to testify as a witness if:

A. Having been subpoenaed as a witness in an official proceeding, the person fails to appear or to produce documents or objects as required by subpoena or by the court; or

B. Having been ordered to do so by the court, refuses to testify.

2. It is an affirmative defense that the witness' failure to appear, failure to testify or failure to produce documents or objects resulted from just cause. Neither a general nor a specific fear or belief of retaliation held by a witness may be raised as a defense to a violation of this section unless the witness informed the court or the office of the attorney for the State of the nature, scope and source of the fear or belief before the violation. A fear or belief of self-incrimination is not a defense to a charge of failure to appear. A fear or belief of self-incrimination is not a defense to a subsequent charge of failure to testify unless the person appeared at the official proceeding and asserted the privilege against self-incrimination.

3. When the official proceeding involves a charge of murder, the offense of failure to appear or to testify is a Class B crime. When the official proceeding involves a charged offense punishable by imprisonment for one year or more, a violation of this section is a Class C crime. In any other official proceeding, failure to appear or to testify is a Class E crime.

4. For purposes of this section an official proceeding has the same meaning as specified in section 451, subsection 5, paragraph A.

Sec. 3. 17-A MRSA §1252, sub-§4-A is enacted to read:

4-A. If the State pleads and proves that an individual who committed any crime did so with the intent to retaliate for participation by any person in any official proceeding as defined in section 451, subsection 5, paragraph A, the sentencing class for such crime is one class higher than it would otherwise be. In Class A crimes and murder, retaliation should be considered an

2 aggravating factor by the court exercising sentencing
3 discretion. As used in this subsection, "participation in an
4 official proceeding" includes obeying a subpoena or court order,
5 providing information that was used in an official proceeding or
6 that leads to testimony or evidence used in an official
7 proceeding and includes information used in an application for a
8 search warrant or warrant of arrest.

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12 **STATEMENT OF FACT**

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14 Under the Maine Revised Statutes, Title 15, section 1313, a
15 witness who refuses to appear at trial commits a Class E crime.
16 A witness who appears but who refuses to testify is subject to
17 contempt of court, which is an inherent power of the court not
18 dependent on the gravity of the underlying proceeding.

19
20 This bill recreates the current statutory penalty scheme
21 when the failure to appear occurs in the trial of minor offenses
22 and provides that failure to testify is a Class E crime. It
23 increases the punishment category when the failure to appear or
24 refusal to testify occurs in murder cases or in other felony
25 trials. It also broadens the penalty to include defense
26 witnesses, to whom the current statutory provision does not apply.

27
28 Under current law, postproceeding crimes designed to
29 intimidate those who have participated are treated no differently
30 than random criminal acts. This bill provides additional
31 protection to those who have actually cooperated or participated
32 in such official proceedings or who are thought to have
cooperated.