

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1508

H.P. 1035

House of Representatives, April 16, 1991

Submitted by the Department of the 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.

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STATE OF MAINE

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

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**An Act to Clarify the Scope of Review Obtainable by the State When the  
Defendant Has Appealed to the Law Court in a Criminal Case.**

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

4 15 MRSA §2115-A, sub-§3, as amended by PL 1979, c. 541, Pt.  
B, §22, is further amended to read:

6 3. **When defendant appeals.** When the defendant appeals from  
a judgment of conviction, it is not necessary for the State to  
8 appeal. It may argue that error in the proceedings at trial in  
fact supports the judgment. The State may also establish that  
10 error harmful to it was committed prior to trial or in the trial  
12 resulting in the conviction from which the defendant has  
14 appealed, which error should be corrected in the event that the  
16 law court reverses on a claim of error by the defendant and  
remands the case for a new trial. If the case is so reversed and  
remanded, the law court shall also order correction of the error  
established by the State.

18  
20 **STATEMENT OF FACT**

22 The Maine Revised Statutes, Title 15, section 2115-A,  
subsection 3 currently speaks only in terms of errors committed  
24 "at trial" or "in the trial." The commonly recognized treatise  
on Maine Criminal Law indicates that a court would likely find  
26 that the State is not authorized to challenge harmful error  
committed prior to trial. Cluchey & Seitzinger, Maine Criminal  
28 Practice, §37B.5. This bill clarifies that when the defendant  
appeals from a judgment of conviction, the State may challenge  
30 any pretrial court determination that constitutes harmful error  
without having to cross-appeal and any error harmful to it  
32 committed during the trial itself. Since the defendant is free  
to raise harmful pretrial error in the defendant's appeal to the  
34 law court, it is appropriate to allow the State the same  
opportunity to challenge any harmful pretrial court orders,  
36 including those that could have been appealed by the State prior  
to trial under Title 15, section 2115-A, subsection 1.