

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2378

H.P. 1698

House of Representatives, February 24, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Joint Select Committee on Corrections suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative ANTHONY of South Portland.

Cosponsored by Representative KETTERER of Madison, Representative RICHARDS of Hampden and Senator GAUVREAU of Androscoggin.

STATE OF MAINE

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

An Act to Eliminate Mandatory Minimum Sentences.

(AFTER DEADLINE)



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

2
4 Sec. 1. 14 MRSA §7559 is repealed and the following enacted
in its place:

6 **§7559. Imprisonment for nonpayment**

8 Failure to pay a penalty imposed under section 7556 or 7557
10 is a Class E crime.

12 Sec. 2. 17 MRSA §1603 is amended to read:

14 **§1603. Uttering fraudulent receipts**

16 Whoever fraudulently makes or utters a receipt or other
written evidence of the delivery or deposit of any grain, flour,
18 pork, wool or other goods, wares or merchandise in any warehouse,
mill, store or other building, when the quantity specified
20 therein had not, in fact, been delivered or deposited in such
building; or so makes or utters any receipt or other written
22 evidence of the delivery or deposit with him that person of any
bonds or other securities or evidences of debt, when the same
24 have not, in fact, been so delivered and deposited, ~~shall be~~
~~punished by imprisonment for not less than one year nor more than~~
10-years commits a Class B crime.

26 Sec. 3. 17 MRSA §§1751 and 1754 are amended to read:

28 **§1751. Fraudulent destruction of vessels**

30 Whoever in any county willfully casts away, burns, sinks or
32 otherwise destroys a vessel, with intent to injure or defraud any
owner thereof, the owner of any property on board, or any insurer
34 of either, ~~shall be punished by imprisonment for any term of not~~
~~less than 5 years~~ commits a Class A crime. If he that person
36 lades, equips or fits out any vessel, or aids in so doing,
intending that the ~~same shall~~ vessel must be destroyed in the
38 manner and with the intent aforesaid, ~~he shall~~ that person must
be punished by a fine of not more than \$5,000 or by imprisonment
40 for not more than 20 years.

42 **§1754. Aiding sailors to desert**

44 Whoever entices or persuades or attempts to entice or
46 persuade, or aids, assists or attempts to aid or assist, a member
of the crew of any vessel arriving in or about to sail from a
port in this State to leave or desert such vessel before the
48 expiration of his the crew member's term of service therein shall
~~be punished by a fine of not more than \$100, and by imprisonment~~
50 ~~for not less than 30 days nor more than 6 months~~ commits a Class

2 E crime. District Courts shall have original jurisdiction in all
cases arising under this section.

4 **Sec. 4. 17 MRSA §§2742 and 2744** are amended to read:

6 **§2742. -- penalties**

8 ~~Whoever keeps or maintains such nuisance shall be punished~~
9 ~~by a fine of not less than \$200 nor more than \$1,000, and in~~
10 ~~addition thereto by imprisonment for not less than 60 days nor~~
11 ~~more than 11 months, and in default of payment of said fine shall~~
12 ~~be imprisoned for an additional term of not less than 60 days nor~~
13 ~~more than 11 months~~ commits a Class E crime. Default in payment
14 of a fine imposed under this section is a separate Class E crime.

16 **§2744. Liability of building owner**

18 ~~Whoever knowingly lets any building or tenement owned by him~~
19 ~~that person, or under his that person's control, for any purpose~~
20 ~~named in section 2741, or knowingly permits the same or part~~
21 ~~thereof to be so used, or who, after being notified in writing of~~
22 ~~such illegal use by an officer or citizen of the county in which~~
23 ~~the building or tenement is located, omits to take all proper~~
24 ~~measures either to abate said nuisance or, failing therein, to~~
25 ~~eject therefrom the person or persons maintaining such nuisance~~
26 ~~is guilty of aiding in the maintenance of a nuisance and shall be~~
27 ~~punished by a fine of not less than \$200 nor more than \$1,000,~~
28 ~~and in addition thereto by imprisonment for not less than 60 days~~
29 ~~nor more than 11 months, and in default of payment of said fine~~
30 ~~shall be imprisoned for an additional term of not less than 60~~
31 ~~days nor more than 11 months~~ aids in the maintenance of a
32 nuisance, which is a Class E crime. Default in payment of a fine
33 imposed under this section is a separate Class E crime.

34 **Sec. 5. 17 MRSA §2923, sub-§3,** as enacted by PL 1977, c. 628,
36 §1, is amended to read:

38 **3. Penalty.** ~~Dissemination of sexually explicit materials is~~
39 ~~a Class C crime, except that any person convicted of this crime~~
40 ~~shall be sentenced by imprisonment for not less than 2 years. If~~
41 ~~the State pleads and proves a prior conviction under this~~
42 ~~section, then the crime is a Class B crime, except that any~~
43 ~~person convicted of this 2nd crime shall be sentenced by~~
44 ~~imprisonment for not less than 5 years. The court shall not~~
45 ~~suspend either minimum term of imprisonment unless it sets forth~~
46 ~~in detail, in writing, the reasons for suspending the sentence.~~
47 ~~The court shall consider the nature and circumstances of the~~
48 ~~crime, the physical and mental well being of the minor, the~~
~~history and character of the defendant, and shall only suspend~~

2 ~~the minimum term if it is of the opinion that the exceptional~~
~~features of the case justify the imposition of another sentence.~~

4 **Sec. 6. 17-A MRSA §1252, sub-§5**, as amended by PL 1979, c.
6 701, §30, is repealed.

8 **Sec. 7. 17-A MRSA §1252, sub-§5-A**, as enacted by PL 1987, c.
10 535, §7, is repealed.

12 **Sec. 8. 17-A MRSA §1263, sub-§1, ¶B**, as amended by PL 1989, c.
14 728, §2, is further amended to read:

16 B. The conviction is for a Class A, Class B or Class C
18 crime, excluding the following:

20 (1) Sections 755, 756 and 757; and

22 (2) Any sentence controlled by section 1252,
24 subsections subsection 4 and 5, unless the defendant is
26 sentenced to a term of imprisonment with at least 3
28 years unsuspended, with the last year of the
unsuspended portion to be served with intensive
supervision, provided that the conditions of subsection
2 are also met. The defendant may be sentenced to
imprisonment with intensive supervision under this
subparagraph regardless of whether the defendant
petitions the court or otherwise agrees to imprisonment
with intensive supervision;

30 **Sec. 9. 19 MRSA §661** is amended to read:

32 **§661. False swearing as perjury**

34 Whoever falsely and corruptly swears or affirms to any facts
36 required by this chapter ~~is guilty of~~ commits perjury and ~~shall~~
~~be punished by imprisonment for not less than 2 years nor more~~
~~than 10 years~~ under Title 17-A, section 451.

38 **Sec. 10. 22 MRSA §47**, as amended by PL 1987, c. 774, §1, is
40 further amended to read:

42 **§47. Penalties and jurisdiction; certificate of commissioner as**
44 **evidence**

46 Whoever hinders, obstructs or interferes with any officer,
inspector or duly authorized agent of the department while in the
48 performance of his the officer's, inspector's or agent's duties
~~shall be punished by a fine of not less than \$5 nor more than~~
~~\$50, or by imprisonment for not less than 10 days nor more than~~
50 ~~30 days~~ commits a Class E crime. Any person who violates any

2 order, rule or regulation of the department made for the
3 protection of life or health under law ~~shall be punished by a~~
4 ~~fine of not less than \$20 nor more than \$200, for each offense~~
5 commits a Class E crime unless otherwise provided in this Title.
6 Whoever violates any provision of this Title or willfully fails,
7 neglects or refuses to perform any of the duties imposed upon him
8 ~~that person by this Title shall be punished by a fine of not more~~
9 ~~than \$500 or by imprisonment for not more than 6 months~~ commits a
10 Class E crime, unless specific penalties are elsewhere provided
11 for. Any certificate of the commissioner in regard to the records
12 of the department shall ~~be~~ is admissible in evidence in all
13 prosecutions under this Title.

14 **Sec. 11. 23 MRSA §6023**, as enacted by PL 1987, c. 141, Pt. A,
15 §4, is amended to read:

16 **§6023. Injuring fences or turning animals into railroad enclosure**
17

18
19 Whoever takes down or intentionally injures any fence
20 erected to protect the line of any railroad or turns any horse,
21 cattle or other animal upon or within the enclosure of that
22 railroad ~~shall be punished by a fine of not less than \$10 nor~~
23 ~~more than \$100 or by imprisonment for not less than 10 days nor~~
24 ~~more than 6 months~~ commits a Class E crime.

25
26 **Sec. 12. 23 MRSA §§7007 and 7010**, as enacted by PL 1987, c.
27 141, Pt. A, §4, are amended to read:

28 **§7007. Penalty for being on track or bridge or entering track**
29 **with team**

30
31
32 Whoever, without right, stands or walks on a railroad track
33 or bridge or passes over such a bridge except by railroad
34 conveyance forfeits not less than \$5 nor more than \$20, to be
35 recovered by complaint. Whoever, without right, enters upon any
36 railroad track with any team, or any vehicle however propelled or
37 drives any team or propels any vehicle upon any railroad track
38 ~~shall be punished by fine of not less than \$50 or by imprisonment~~
39 ~~for not less than 30 days~~ commits a Class E crime.

40 **§7010. Changing switch or lights**
41

42
43 Whoever, without authority, alters, changes or in any manner
44 interferes with any safety switch or switch lights on any
45 railroad ~~shall be punished by a fine of not less than \$100 or by~~
46 ~~imprisonment for not less than 60 days~~ commits a Class E crime.

47
48 **Sec. 13. 24-A MRSA §424, sub-§2**, as enacted by PL 1969, c.
49 132, §11, is amended to read:

50

2 2. Any director, officer, agent or employee of any insurer
3 who subscribes to, makes or concurs in making or publishing, any
4 annual or other statement required by law, knowing the same to
5 contain any material statement which that is false, shall-be
6 ~~punished by a fine of not more than \$5,000 or by imprisonment for
not less than one year, or by both~~ commits a Class D crime.

8 **Sec. 14. 24-A MRSA §4138, last ¶**, as enacted by PL 1969, c.
9 132, §1, is amended to read:

10 Any person who violates any provision of this section or
11 knowingly receives any compensation or commission by or in
12 consequence of such violation, shall-upon-conviction-be-punished
13 by--a--fine--not--less--than--\$100--nor--more--than--\$500,--or--by
14 imprisonment-in-the-county-jail-not-less-than-30-days-nor-more
15 than-11-months,--or-both-fine-and-imprisonment commits a Class E
16 crime and shall is in addition, be liable for a civil penalty in
17 the amount of 3 times the sum received by such violator as
18 compensation or commission, which penalty may be sued for and
19 recovered by any person or society aggrieved for his-or-its that
20 person's or society's own use and benefit in accordance with the
21 provisions of civil practice.

22 **Sec. 15. 24-A MRSA §4143, first ¶**, as enacted by PL 1969, c.
23 132, §1, is amended to read:

24 Any person who willfully makes a false or fraudulent
25 statement in or relating to an application for membership or for
26 the purpose of obtaining money from or a benefit in any society
27 shall-upon-conviction-be-fined-not-less-than-\$100-nor-more-than
28 \$500-or-imprisonment-in-the-county-jail-not-less-than-30-days-nor
29 more-than-11-months,--or-both commits a Class E crime.

30 **Sec. 16. 25 MRSA §2435** is amended to read:

31 **§2435. Kindling fire with intent to injure another**

32 Whoever with intent to injure another causes a fire to be
33 kindled on-his-own-or-another's-land, whereby the property of any
34 other person is injured or destroyed, shall-be-punished-by-a-fine
35 of-not-less-than-\$20-nor-more-than-\$1,000,--or-by-imprisonment-for
36 not-less-than-3-months-nor-more-than-3-years commits a Class D
37 crime.

38 **Sec. 17. 28-A MRSA §2081, sub-§3**, as repealed and replaced by
39 PL 1989, c. 293, §4, is amended to read:

40 **3. Penalties.** Any person who violates subsection 1,
41 paragraph A or B, commits a Class D crime. Any person who
42 violates subsection 1, paragraph C, commits a Class E crime. In
43
44

2 the case of a person who has one previous conviction of a
violation of subsection 1, paragraph A or B, within a 6-year
4 period, the fine shall may not be ~~not~~ less than \$500, which
penalty shall may not be suspended. In the case of a person who
6 has 2 or more previous convictions of a violation of subsection
1, paragraph A or B, within a 6-year period, the fine shall may
8 not be ~~not~~ less than \$1,000 and ~~the sentence shall include a~~
~~period of incarceration of not less than 6 months, which penalty~~
~~shall not be suspended.~~ In the case of a person who has no
10 previous conviction of subsection 1, paragraph A or B, within a
6-year period, the fine shall may not be less than \$500, which
12 penalty shall may not be suspended if that person is convicted of
a violation of subsection 1, paragraph A or B, involving a minor
14 less than 14 years old.

16 **Sec. 18. 32 MRSA §§1093 and 1094**, as enacted by PL 1967, c.
544, §80, are amended to read:

18 **§1093. Fraudulent sale or alteration of diplomas**

20
22 Whoever sells or offers to sell a diploma conferring a
dental degree or a certificate granted pursuant to the laws of
24 this State, or who procures such certificate or diploma with
intent that it shall be used as evidence of the right to practice
dentistry by a person other than the one upon whom the diploma or
26 certificate was conferred, or who with fraudulent intent alters
such diploma or certificate, or uses or attempts to use the same
28 when altered, or whoever attempts to bribe a member of the board
by the offer or use of money or other pecuniary reward or by
30 other undue influence ~~shall be punished by a fine of not less~~
~~than \$200 nor more than \$500, or by imprisonment for not less~~
32 ~~than 30 days nor more than 60 days, or by both~~ commits a Class E
crime. ~~A subsequent conviction shall be punished by the maximum~~
34 ~~penalties prescribed in this section.~~

36 **§1094. Penalties**

38
40 Whoever violates any provision of this chapter, for the
violation of which no penalty has been prescribed, shall ~~be~~
~~punished by a fine of not less than \$50 nor more than \$500, or by~~
42 ~~imprisonment for not less than 10 days nor more than 30 days, or~~
~~by both~~ commits a Class E crime. ~~A subsequent conviction shall~~
~~be punished by the maximum penalties prescribed in this section.~~
44 The several prosecuting officers of this State, on notice from
any member of the board, shall institute prosecutions for
46 offenses under this chapter.

48 **Sec. 19. 32 MRSA §2106**, as amended by PL 1973, c. 567, §20,
is further amended to read:

50

§2106. Violations; penalties

2
3 It shall ~~be is~~ a misdemeanor crime for any person, including
4 any corporation, association or individual to:

6 1. **Fraudulent diploma or record.** Sell or fraudulently
7 obtain or furnish any nursing diploma, license, renewal or record
8 or aid or abet therein; or

10 2. **Fraudulent license.** Practice nursing as defined by this
11 chapter under cover of any diploma, license or record illegally
12 or fraudulently obtained or signed or issued unlawfully or under
13 fraudulent representation; or

14 3. **Practice without license.** Practice professional nursing
15 or practical nursing as defined by this chapter unless duly
16 licensed to do so under this chapter; or

18 4. **Implying license.** Use in connection with ~~his-or-her~~ the
19 person's name any designation tending to imply that ~~he-or-she~~ the
20 person is a licensed registered nurse or a licensed practical
21 nurse unless duly licensed so to practice under this chapter; or

24 5. **License suspended or revoked.** Practice professional
25 nursing or practical nursing during the time ~~his-or-her~~ the
26 person's license issued under this chapter shall ~~be is~~ suspended
27 or revoked; or

28 6. **Violation of chapter.** Otherwise violate any provisions
29 of this chapter.

32 ~~Such misdemeanor shall be punishable by a fine of not more~~
33 ~~than \$100 for a first offense, or by imprisonment of not more~~
34 ~~than 10 days. Each subsequent offense shall be punishable by a~~
35 ~~fine of not more than \$200, or by imprisonment of not less than~~
36 ~~10 days nor more than 30 days, or by both. A person who violates~~
37 ~~this section commits a Class E crime.~~

38 The District Court shall ~~have~~ has original and concurrent
39 jurisdiction with the Superior Court over all prosecutions for
40 violation of this chapter. All fines and forfeitures collected
41 under this chapter shall must accrue to the county where the
42 offense is prosecuted. It shall ~~be is~~ necessary to prove in any
43 prosecution or hearing under this section only a single act
44 prohibited by law or a single holding out or an attempt without
45 proving a general course of conduct, in order to constitute a
46 violation. Such ~~misdemeanors shall be~~ crimes are prosecuted by
47 the district attorney.

2 **Sec. 20. 32 MRSA §2598**, as enacted by PL 1973, c. 374, §1, is
amended to read:

4 **§2598. Penalty**

6 Any person who attempts to practice osteopathic medicine
without proper license or certificate or who ~~holds himself or~~
8 ~~herself out to the public under circumstances as to induce~~
induces the belief that said person is legally engaged in the
10 practice of osteopathic medicine without having fully complied
with all requirements of law ~~shall be deemed guilty of a~~
12 ~~misdemeanor and upon conviction thereof shall be punished by a~~
fine of not less than \$50 nor more than \$500, or by imprisonment
14 ~~for not less than 30 days, nor for not more than 11 months, or by~~
both such fine and imprisonment commits a Class E crime; provided
16 that nothing in this chapter shall may be construed to prohibit
any lawfully qualified osteopathic physician in any other state
18 meeting a registered osteopathic physician in this State for
consultation.

20 **Sec. 21. 32 MRSA §3270, 2nd ¶**, as enacted by PL 1971, c. 591,
22 §1, is amended to read:

24 Whoever, not being duly registered by said board, practices
medicine or surgery or any branch thereof, or ~~holds himself out~~
26 purports to practice medicine or surgery or any branch thereof in
any of the ways aforesaid, or who uses the title "Doctor" or the
28 letters "Dr." or the letters "M.D." in connection with his that
person's name, contrary to this section, ~~shall be punished by a~~
30 ~~fine of not less than \$100 nor more than \$500 for each offense,~~
or by imprisonment for 3 months, or by both commits a Class E
32 crime. The prefixing of the title "Doctor" or the letters "Dr."
or the appending of the letters "M.D." by any person to his that
34 person's name or the use of the title of doctor or physician in
any way by any person not duly registered as described ~~shall be~~
36 is prima facie evidence that said person is ~~holding himself out~~
purporting to practice medicine or surgery contrary to this
38 section, provided that nothing contained in this section shall
prevent prevents any person who has received the doctor's degree
40 from any reputable college or university, other than the degree
of "Doctor of Medicine" from prefixing the letters "Dr." to his
42 that person's name, if he that person is not engaged, and does
not engage, in the practice of medicine or surgery or the
44 treatment of any disease or human ailment. Nothing in this
chapter shall may be so construed as to affect or prevent the
46 practice of the religious tenets of any church in the
ministration to the sick or suffering by mental or spiritual
48 means.

50 **Sec. 22. 37-B MRSA §§1005 and 1006**, as enacted by PL 1983, c.
460, §3, are amended to read:

- 2 3. Fraudulent destruction of vessels;
- 4 4. Aiding sailors to desert;
- 6 5. Keeping or maintaining a nuisance;
- 8 6. Knowingly letting a building be used for a nuisance;
- 10 7. Dissemination of sexually explicit materials;
- 12 8. Committing a Class A, B or C crime with the use of a
firearm against a person;
- 14 9. Aggravated drug trafficking or furnishing;
- 16 10. Falsely swearing or affirming to any facts required by
18 the divorce laws;
- 20 11. Interfering with agents of the Department of Human
Services in performance of their duties;
- 22 12. Injuring fences or turning animals into a railroad
24 enclosure;
- 26 13. Being on a railroad track or bridge or entering a
railroad track with a team;
- 28 14. Changing railroad switches or lights;
- 30 15. An insurer that files a false annual statement;
- 32 16. Misrepresenting or falsely stating information about
34 fraternal benefit society insurance contracts;
- 36 17. Making a false statement to a fraternal benefit society;
- 38 18. Kindling a fire with the intent to injure another;
- 40 19. A 3rd or subsequent offense of procuring, furnishing,
giving or delivering liquor to a minor;
- 42 20. Fraudulently selling or altering dentist diplomas;
- 44 21. Any other violation of the laws regulating dentists and
46 dental hygienists;
- 48 22. Any violation of the laws regulating nurses and the
practice of nursing;
- 50

2 23. Practicing osteopathic medicine without the proper
license;

4 24. Practicing medicine without proper registration;

6 25. Intentionally interfering with property, believing that
the interference will hinder or delay preparation or defense of
8 the United States or any state; and

10 26. Intentionally causing defects or failing to note
defects on inspection, believing that the defect will hinder or
12 delay preparation or defense of the United States or any state.

14 This bill does not amend the minimum mandatory penalties
for: hunting, fishing and trapping violations; operating under
16 the influence; operating after suspension; sexual exploitation of
a minor; and murder.