

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

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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.

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STATE OF MAINE

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

---

**An Act to Eliminate Mandatory Minimum Sentences.**

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(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4       Sec. 1. 14 MRSA §7559 is repealed and the following enacted  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  
evidence of the delivery or deposit with him that person of any  
22       bonds or other securities or evidences of debt, when the same  
have not, in fact, been so delivered and deposited, ~~shall be~~  
24       ~~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,  
35 §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  
41 **§7010. Changing switch or lights**

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

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.