

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

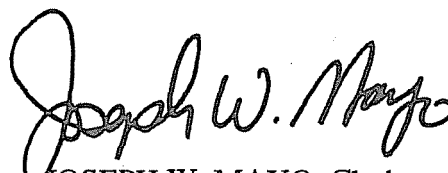
No. 1281

H.P. 952

House of Representatives, April 15, 1993

**An Act Related to Sentencing for Aggravated Trafficking and Furnishing
Scheduled Drugs.**

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative DiPIETRO of South Portland.
Cosponsored by Representatives: CARON of Biddeford, DUTREMBLE of Biddeford,
PLOURDE of Biddeford, VIGUE of Winslow.

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

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4 Sec. 1. 17-A MRSA §1252, sub-§5-A, as enacted by PL 1987, c.
535, §7, is amended to read:

6 5-A. ~~Notwithstanding~~ Except as provided by subsection 5-B
7 and notwithstanding any other provision of this Code, for a
8 person convicted of violating section 1105:

10 A. Except as otherwise provided in paragraphs B and C, the
11 minimum sentence of imprisonment, which shall ~~may~~ not be
12 suspended, shall ~~be~~ is as follows: When the sentencing class
13 is Class A, the minimum term of imprisonment shall ~~be~~ is 4
14 years; when the sentencing class is Class B, the minimum
15 term of imprisonment shall ~~be~~ is 2 years; and, with the
16 exception of trafficking or furnishing marijuana under
17 section 1105, when the sentencing class is Class C, the
18 minimum term of imprisonment shall ~~be~~ is one year;

20 B. The court may impose a sentence other than a minimum
21 unsuspended term of imprisonment set forth in paragraph A,
22 if:

24 (1) The court finds by substantial evidence that:

26 (a) Imposition of a minimum unsuspended term of
27 imprisonment under paragraph A will result in
28 substantial injustice to the defendant. In making
29 this determination, the court shall consider,
30 among other considerations, whether the defendant
31 did not know and reasonably should not have known
32 that the victim was under 18 years of age;

34 (b) Failure to impose a minimum unsuspended term
35 of imprisonment under paragraph A will not have an
36 adverse effect on public safety; and

38 (c) Failure to impose a minimum unsuspended term
39 of imprisonment under paragraph A will not
40 appreciably impair the effect of paragraph A in
41 deterring others from violating section 1105; and

42 (2) The court finds that:

44 (a) The defendant has no prior criminal history;
45 and

48 (b) The defendant is an appropriate candidate for
49 an intensive supervision program, but would be
50 ineligible to participate under a sentence imposed
under paragraph A; or

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(c) The defendant's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under paragraph A would frustrate the general purposes of sentencing set forth in section 1151.

If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and

C. If the court imposes a sentence under paragraph B, the minimum sentence of imprisonment, which shall ~~may~~ not be suspended, shall ~~be~~ is as follows: When the sentencing class is Class A, the minimum term of imprisonment shall ~~be~~ is 9 months; when the sentencing is Class B, the minimum term of imprisonment shall ~~be~~ is 6 months; and with the exception of trafficking or furnishing marijuana under section 1105, when the sentencing class is Class C, the minimum term of imprisonment shall ~~be~~ is 3 months.

Sec. 2. 17-A MRSA §1252, sub-§5-B is enacted to read:

5-B. Upon written motion of the Attorney General, the Attorney General's designee or the district attorney stating that a person convicted of violating section 1105 has provided substantial assistance in the investigation or prosecution of another person who has committed a criminal offense, the court may depart from the minimum unsuspended terms of imprisonment otherwise required by this section and may impose any lawful sentence authorized by section 1152. The sentence imposed by the court upon motion of the prosecuting attorney must be determined by the court for reasons stated on the record, which must include, but are not limited to, consideration of the following:

A. The court's evaluation of the significance and usefulness of the defendant's substantial assistance, taking into consideration the State's evaluation of the assistance rendered;

B. The truthfulness, completeness and reliability of any information or testimony provided by the defendant;

C. The nature and extent of the defendant's substantial assistance;

D. Any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from the defendant's substantial assistance; and

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E. The timeliness of the defendant's substantial assistance.

Upon written motion of the prosecuting attorney certifying under oath that the public release of any written information submitted to the court regarding the defendant's substantial assistance may jeopardize an existing criminal prosecution or investigation, the court may seal and impound from public access all such written information related to the defendant's assistance, together with the prosecutor's motions, for a period not to exceed 6 months.

STATEMENT OF FACT

The purpose of this bill is to encourage the cooperation of defendants who are convicted of aggravated trafficking or furnishing scheduled drugs by allowing a court, upon written motion of a prosecutor, to depart from statutorily set minimum terms of imprisonment to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed a criminal offense.