

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1347

H.P. 950

House of Representatives, February 16, 1999

**An Act Addressing an Allegation of Prior Conviction When the Sentence
Is Enhanced.**

Reported by Representative POVICH for the Criminal Law Advisory Commission pursuant to Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Joint Standing Committee on Criminal Justice suggested and printing ordered under Joint Rule 218.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

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

2 **Sec. 1. 15 MRSA §757**, as repealed and replaced by PL 1981, c.
4 679, §1, is repealed.

6 **Sec. 2. 17-A MRSA §9-A** is enacted to read:

8 **9-A. Allegation of prior conviction when sentence enhanced**

10 1. Except as otherwise provided by law, a prior conviction
12 must be specially alleged if the sentencing provision of a crime
14 requires that a present sentence be enhanced because the person
16 has been previously convicted of a specified crime. For the
18 purpose of this section, a sentence is enhanced only if the
 maximum sentence that may be imposed is increased or a mandatory
 minimum nonsuspendable sentence must be imposed. The Supreme
 Judicial Court shall provide by rule the manner of alleging the
 prior conviction in a charging instrument and conditions for
 using that prior conviction at trial.

20 2. If the name and date of birth of the person charged with
22 the current principal offense are the same as those of the person
24 who has been convicted of the prior offense, it is presumed that
 the person charged with the current principal offense is the same
 person as that person convicted of the prior offense.

28 **Sec. 3. 29-A MRSA §2412-A, sub-§3, last ¶**, as amended by PL
30 1995, c. 645, Pt. B. §19, is further amended to read:

32 A separate reading of the allegation and a separate trial as are
 not required by--Title--15,--section--757--de--net--apply--te--a
 proceeding under this subsection.

36 **Sec. 4. 29-A MRSA §2433, sub-§1**, as enacted by PL 1993, c.
38 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

40 1. Permissible considerations. Notwithstanding the
42 provisions of Title 15 17-A, section 757 9-A, in determining the
 appropriate sentence, the court shall consider whether the
 defendant operated with a passenger under 16 years of age, the
 record of convictions for criminal traffic offenses,
 adjudications of traffic infractions or suspensions of license
 for failure to submit to a test.

46 In determining the appropriate sentence, the court may rely on
48 oral representations based on records maintained by the courts,
 the State Bureau of Identification or the Secretary of State,
 including telecommunications of records maintained by the
 Secretary of State.

2 If the defendant disputes the accuracy of a representation
4 concerning a conviction or adjudication, the court shall grant a
continuance to determine the accuracy of the record.

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SUMMARY

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10 This bill does 3 things. First, it transfers the basic
allegation requirement relating to a prior conviction to be used
12 for sentencing enhancement, including the definition of
sentencing enhancement, from the Maine Revised Statutes, Title
14 15, section 757 to a new section 9-A of the Criminal Code, Title
16 17-A. Second, it transfers the issue of identity from Title 15,
17 section 757 to a new section 9-A of the Criminal Code, Title
18 17-A. Third, it repeals the remaining procedural portions of
Title 15, section 757 and directs, in the new section 9-A of the
Criminal Code, Title 17-A, that the manner of alleging a prior
20 conviction in a charging instrument and conditions for using that
prior conviction at trial be as the Supreme Judicial Court
provides by rule.

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