

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1347

H.P. 950

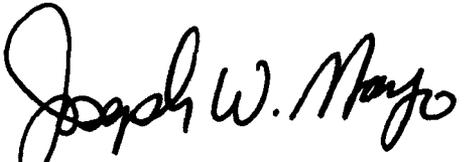
House of Representatives, February 16, 1999

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

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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.

  
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2           **Sec. 1. 15 MRSA §757**, as repealed and replaced by PL 1981, c.  
4 679, §1, is repealed.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  
20 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.

22           2. If the name and date of birth of the person charged with  
24 the current principal offense are the same as those of the person  
26 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  
34 not required by--Title--15,--section--757--do--not--apply--to--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  
44 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,  
50 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  
concerning a conviction or adjudication, the court shall grant a  
4 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  
for sentencing enhancement, including the definition of  
12 sentencing enhancement, from the Maine Revised Statutes, Title  
15, section 757 to a new section 9-A of the Criminal Code, Title  
14 17-A. Second, it transfers the issue of identity from Title 15,  
section 757 to a new section 9-A of the Criminal Code, Title  
16 17-A. Third, it repeals the remaining procedural portions of  
Title 15, section 757 and directs, in the new section 9-A of the  
18 Criminal Code, Title 17-A, that the manner of alleging a prior  
conviction in a charging instrument and conditions for using that  
20 prior conviction at trial be as the Supreme Judicial Court  
provides by rule.

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