

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1147

H.P. 867

House of Representatives, February 22, 2001

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**An Act Creating the New Crime of Aggravated Attempted Murder.**

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Reported by Representative POVICH for the Criminal Law Advisory Commission pursuant to the 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.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

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

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4       **Sec. 1. 17-A MRSA §152, sub-§4**, as amended by PL 1995, c. 422,  
§1, is repealed and the following enacted in its place:

6       4. Criminal attempt is an offense classified as one grade  
7 less serious than the classification of the offense attempted,  
8 except that an attempt to commit a Class E crime is a Class E  
9 crime and an attempt to commit murder is a Class A crime.

10       **Sec. 2. 17-A MRSA §152-A** is enacted to read:

11       **§152-A. Aggravated attempted murder**

12  
13       1. A person is guilty of aggravated attempted murder if  
14 that person commits attempted murder and, at the time of that  
15 person's actions, one or more of the following aggravating  
16 circumstances is in fact present:

17  
18       A. The person's intent to kill was accompanied by  
19 premeditation-in-fact;

20  
21       B. The person, at the time of the crime, intended to cause  
22 multiple deaths;

23  
24       C. The person was previously convicted of criminal homicide  
25 or any other crime involving the use of deadly force against  
26 a person;

27  
28       D. The attempted murder was accompanied by torture, sexual  
29 assault or other extreme cruelty inflicted upon the victim;

30  
31       E. The attempted murder was committed in a penal  
32 institution by an inmate of that institution against another  
33 inmate or against prison personnel;

34  
35       F. The attempted murder was committed against a law  
36 enforcement officer while the officer was acting in  
37 performance of that officer's duties; or

38  
39       G. The attempted murder was committed against a hostage.

40  
41       2. Aggravated attempted murder is a Class A crime except  
42 that, notwithstanding section 1252, subsection 2, the sentence  
43 for aggravated attempted murder is imprisonment for life or a  
44 definite period of imprisonment for any term of years. The  
45 existence of an aggravating circumstance serves only as a  
46 precondition for the court to consider a life sentence.  
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## SUMMARY

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6 This bill repeals the current special sentencing scheme for  
the Class A crime of attempted murder and creates a new Class A  
8 crime of aggravated attempted murder, the authorized punishment  
for which is imprisonment for life or for any term of years.  
10 Imposition of a life sentence for aggravated attempted murder is  
governed by the law applicable to the imposition of a life  
12 sentence for murder under the Maine Revised Statutes, Title 17-A,  
section 1251. The existence of an aggravating circumstance  
allows the court to consider whether to impose a life sentence.  
14 Unlike the punishment authorized for murder, there is no  
mandatory minimum term of imprisonment if the court chooses to  
16 impose a definite period of years. Further, unlike murder under  
Title 17-A, section 1201, the person guilty of aggravated  
18 attempted murder is eligible for a sentence alternative that  
includes a period of probation.

20

22 The purpose of this bill is to return sentencing for the  
crime of attempted murder to that authorized for Class A crimes  
generally and to respond to the fact that the current special  
24 penalty provision for attempted murder allowing for the  
imposition of a life sentence "with proper findings" appears to  
26 be unconstitutional in light of Apprendi v. New Jersey, 120 S.  
Ct. 2348 (2000)(the aggravating circumstances not being alleged,  
28 submitted to a jury or proved beyond a reasonable doubt) by  
creating the new crime of aggravated attempted murder.