

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1740

H.P. 1280

House of Representatives, March 22, 2001

**An Act to Implement Recommendations of the MCJUSTIS Board
Pursuant to the Study Required by Resolve 1997, Chapter 105.**

Reported by Representative POVICH for the Maine Criminal Justice Information System Policy Board pursuant to Resolve 1997, chapter 105, section 4.

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:

2
4 **Sec. 1. 17-A MRSA §2, sub-§9, ¶D**, as repealed and replaced by PL 1977, c. 510, §10, is amended to read:

6 D. For purposes of this subsection, proof that a thing is
8 presented in a covered or open manner as a dangerous weapon
10 shall--be--presumed--to--be gives rise to a permissible
inference under the Maine Rules of Evidence, Rule 303 that
it, in fact, is a dangerous weapon.

12 **Sec. 2. 17-A MRSA §7, sub-§3**, as amended by PL 1979, c. 512,
14 §18, is further amended to read:

16 3. When the crime is homicide, a person may be convicted
18 under the laws of this State if either the death of the victim or
20 the bodily impact causing death occurred within the State or had
22 a territorial relationship to the State. ~~If Proof that~~ the body
24 of a homicide victim is found within this State, ~~it is presumed~~
26 gives rise to a permissible inference under the Maine Rules of
Evidence, Rule 303 that such death or impact occurred within the
State. When the crime is theft, a person may be convicted under
the laws of this State if he that person obtained property of
another, as defined in chapter 15, section 352, outside of this
State and brought the property into the State.

28 **Sec. 3. 17-A MRSA §9-A, sub-§2**, as enacted by PL 1999, c. 196,
§2, is amended to read:

30 2. ~~If Proof that~~ the name and date of birth of the person
32 charged with the current principal offense are the same as those
34 of the person who has been convicted of the prior offense, ~~it is~~
36 presumed gives rise to a permissible inference under the Maine
Rules of Evidence, Rule 303 that the person charged with the
current principal offense is the same person as that person
convicted of the prior offense.

38 **Sec. 4. 17-A MRSA §9-A, sub-§§3 and 4** are enacted to read:

40 3. Prior convictions may be considered for purposes of
42 enhancing a present sentence if the date of each prior conviction
44 precedes the commission of the offense being enhanced by no more
46 than 10 years, except as otherwise provided by law. More than
one prior conviction may have occurred on the same day. The date
of conviction is deemed to be the date that the sentence is
imposed, even though an appeal was taken.

48 4. Proof of the date stated in a complaint, information,
50 indictment or other formal charging instrument gives rise to a
permissible inference under the Maine Rules of Evidence, Rule 303

2 that such a date is the date the offense was committed,
3 notwithstanding the use of the words "on or about" or the
4 equivalent. The convictions of 2 or more prior offenses that
5 were committed within a 3-day period are considered a single
6 conviction for purposes of this section.

7 **Sec. 5. 17-A MRSA §151**, as amended by PL 1977, c. 510, §§29
8 to 31, is further amended to read:

10 **§151. Criminal conspiracy**

12 1. A person is guilty of criminal conspiracy if, with the
13 intent that conduct be performed which, that in fact, would
14 constitute a crime or crimes, he the actor agrees with one or
15 more others to engage in or cause the performance of such the
16 conduct, and the most serious crime that is the object of the
17 conspiracy is:

18 A. Murder. Violation of this paragraph is a Class A crime;

20 B. A Class A crime. Violation of this paragraph is a Class
21 B crime;

22 C. A Class B crime. Violation of this paragraph is a Class
23 C crime;

24 D. A Class C crime. Violation of this paragraph is a Class
25 D crime; or

26 E. A Class D or Class E crime. Violation of this paragraph
27 is a Class E crime.

28 2. If ~~a person~~ the actor knows that one with whom he the
29 actor agrees has agreed or will agree with a 3rd person to effect
30 the same objective, ~~he shall be~~ the actor is deemed to have
31 agreed with the 3rd person, whether or not ~~he~~ the actor knows the
32 identity of the 3rd person.

33 3. A person who conspires to commit more than one crime is
34 guilty of only one conspiracy if the crimes are the object of the
35 same agreement or continuous conspiratorial relationship.

36 4. ~~No~~ A person may not be convicted of criminal conspiracy
37 ~~to commit a crime~~ unless it is alleged and proved that he the
38 actor, or one with whom he the actor conspired, took a
39 substantial step toward commission of the crime. A substantial
40 step is any conduct which, under the circumstances in which it
41 occurs, is strongly corroborative of the firmness of the actor's
42 intent to complete commission of the crime; provided that speech
43 alone may not constitute a substantial step.

2 5. Accomplice liability for crimes committed in furtherance
of the criminal conspiracy is to be determined by the provisions
4 of ~~chapter-3~~, section 57.

6 6. For the purpose of determining the period of limitations
under ~~chapter-1~~, section 8, the following provisions govern.

8
10 A. A criminal conspiracy shall--be is deemed to continue
until the criminal conduct ~~which~~ that is its object is
12 performed, or the agreement that it be performed is
frustrated or is abandoned by the ~~defendant~~ actor and by
14 those with whom he the actor conspired. For purposes of
this subsection, the object of the criminal conspiracy
16 includes escape from the scene of the crime, distribution of
the fruits of the crime, and measures, other than silence,
18 for concealing the commission of the crime or the identity
of its perpetrators.

20 B. If a person abandons the agreement, the criminal
conspiracy terminates as to ~~him~~ the actor only when:

22 (1) ~~he~~ The actor informs a law enforcement officer of
24 the existence of the criminal conspiracy and of ~~his~~ the
actor's participation therein; or

26 (2) ~~he~~ The actor advises those with whom he the actor
28 conspired of ~~his~~ the actor's abandonment. ~~The defendant~~
~~shall--prove--his--conduct--under--subparagraph--2--by--a~~
30 ~~preponderance--of--the--evidence.~~ Abandonment is an
affirmative defense.

32
34 7. It is ~~no~~ not a defense to prosecution under this section
that the another person with whom the ~~defendant~~ actor is alleged
36 to have conspired has been acquitted, has not been prosecuted or
convicted, has been convicted of a different offense, is not
38 subject to prosecution as a result of immaturity, or is immune
from or otherwise not subject to prosecution.

40 8. It is a defense to prosecution under this section that,
42 had the objective of the criminal conspiracy been achieved, the
~~defendant~~ actor would have been immune from liability under the
44 law defining the offense, or as an accomplice under ~~chapter-3~~,
section 57.

46 ~~9.--Conspiracy-is-an-offense-classified-as-one-grade-less~~
~~serious-than-the-classification-of-the-most-serious-crime-which~~
48 ~~is-its-object,-except-that-conspiracy-to-commit-is-a-Class-A~~
~~crime.---If-the-most-serious-crime-is-a-Class-E-crime,-the~~
50 ~~conspiracy-is-a-Class-E-crime.~~

2 **Sec. 6. 17-A MRSA §152**, as amended by PL 1995, c. 422, §1, is
4 further amended to read:

6 **§152. Criminal attempt**

8 1. A person is guilty of criminal attempt if, acting with
10 the kind of culpability required for the commission of the crime,
12 and with the intent to complete the commission of the crime, he
14 the person engages in conduct which, that in fact, constitutes a
substantial step toward its commission. ~~A substantial step is any~~
conduct which goes beyond mere preparation and is strongly
corroborative of the firmness of the actor's intent to complete
the commission of the crime, and the crime is:

16 A. Murder. Violation of this paragraph is a Class A crime;

18 B. A Class A crime. Violation of this paragraph is a Class
20 B crime;

22 C. A Class B crime. Violation of this paragraph is a Class
24 C crime;

26 D. A Class C crime. Violation of this paragraph is a Class
28 D crime; or

30 E. A Class D crime or Class E crime. Violation of this
32 paragraph is a Class E crime.

34 A substantial step is any conduct that goes beyond mere
36 preparation and is strongly corroborative of the firmness of the
38 actor's intent to complete the commission of the crime.

40 2. It is ~~ne~~ not a defense to a prosecution under this
42 section that it was impossible to commit the crime which that
44 defendant person attempted, provided that it would have been
46 committed had the factual and legal attendant circumstances
specified in the definition of the crime been as the defendant
person believed them to be.

48 3. A person who engages in conduct intending to aid another
50 to commit a crime is guilty of criminal attempt if the conduct
would establish ~~his~~ the person's complicity under ~~chapter--3,~~
section 57 were the crime committed by the other person, even if
the other person is not guilty of committing or attempting the
crime.

 3-A. An indictment, information or complaint, or count
thereof, charging the commission of a crime under chapters 9
through 45, or a crime outside this code ~~shall be~~ is deemed to

charge the commission of the attempt to commit that crime and shall may not be deemed duplicitous thereby.

~~4. -- Criminal attempt is an offense classified as one grade less serious than the classification of the offense attempted, except that an attempt to commit a Class E crime is a Class E crime, and an attempt to commit murder is a Class A crime. The sentence for attempted murder is as authorized for a Class A crime if the court finds that the person engaged in the conduct constituting the substantial step while under the influence of extreme anger or extreme fear brought about by adequate provocation. Adequate provocation has the same meaning as in section 201, subsection 4. Absent that finding by the court, the sentence for attempted murder is as authorized for a Class A crime except that, notwithstanding section 1252, subsection 2, paragraph A, the court is authorized to set a definite period of imprisonment of any term of years or, with proper findings, life. The special penalty provision of life imprisonment may be imposed only if the court finds one or more of the following aggravating circumstances is in fact present:~~

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

~~B. -- The person, at the time of the crime, intended to cause multiple deaths;~~

~~C. -- The person was previously convicted of criminal homicide or any other crime involving the use of deadly force against a person;~~

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

~~E. -- The attempted murder was committed in a penal institution by an inmate of that institution against another inmate or against prison personnel;~~

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

~~G. -- The attempted murder was committed against a hostage.~~

5. The sentence for attempted murder is as authorized for a Class A crime if the court finds that the person engaged in the conduct constituting the substantial step while under the influence of extreme anger or extreme fear brought about by adequate provocation. "Adequate provocation" has the same meaning as in section 201, subsection 4. Absent that finding by

2 the court, the sentence for attempted murder is as authorized for
3 a Class A crime except that, notwithstanding section 1252,
4 subsection 2, paragraph A, the court is authorized to set a
5 definite period of imprisonment of any term of years or with
6 proper findings life. The special penalty provision of life
7 imprisonment may be imposed only if the court finds one or more
8 of the following aggravating circumstances are in fact present:

9 A. The person's intent to kill was accompanied by
10 premeditation-in-fact;

11 B. The person, at the time of the crime, intended to cause
12 multiple deaths;

13 C. The person was previously convicted of criminal homicide
14 or any other crime involving the use of deadly force against
15 another person;

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

18 E. The attempted murder was committed in a penal
19 institution by an inmate of that institution against another
20 inmate or against prison personnel;

21 F. The attempted murder was committed against a law
22 enforcement officer while the officer was acting in the
23 performance of that officer's duties; or

24 G. The attempted murder was committed against a hostage.

25 **Sec. 7. 17-A MRSA §153**, as amended by PL 1977, c. 510, §§35
26 to 37, is further amended to read:

27 **§153. Criminal solicitation**

28 1. A person is guilty of solicitation-if-he-commands-or
29 attempts--to--induce--another--person--to--commit--murder--or--a
30 particular-Class-A-or-Class-B-crime,--whether--as--principal--or
31 accomplice,--with--the--intent--to--cause--the--commission--of--the--crime,
32 and--under--circumstances--which--the--actor--believes--make--it--probable
33 that--the--crime--will--take--place. criminal solicitation if the
34 person, with the intent to cause the commission of the crime, and
35 under circumstances that the person believes make it probable
36 that the crime will take place, commands or attempts to induce
37 another person, whether as principal or accomplice, to:

38 A. Commit murder. Violation of this paragraph is a Class A
39 crime;

2 B. Commit a Class A crime. Violation of this paragraph is
3 a Class B crime; or

4 C. Commit a Class B crime. Violation of this paragraph is
5 a Class C crime.

6
7 2. It is a defense to prosecution under this section that,
8 if the criminal object were achieved, the defendant person would
9 not be guilty of a crime under the law defining the crime or as
10 an accomplice under ~~chapter 3,~~ section 57.

11 3. It is ~~no~~ not a defense to a prosecution under this
12 section that the person solicited could not be guilty of the
13 crime because of lack of responsibility or culpability,
14 immaturity, or other incapacity or defense.

15 ~~4. Solicitation is an offense classified as one grade less~~
16 ~~serious than the classification of the crime solicited, except~~
17 ~~that solicitation to commit murder is a Class A crime.~~

18 **Sec. 8. 17-A MRSA §201**, as amended by PL 1985, c. 416, is
19 further amended to read:

20
21 **§201. Murder**

22 1. A person is guilty of murder if the person:

23 A. ~~He intentionally~~ Intentionally or knowingly causes the
24 death of another human being;

25 B. ~~He engages~~ Engages in conduct which that manifests a
26 depraved indifference to the value of human life and which
27 that in fact causes the death of another human being; or

28 C. ~~He--intentionally~~ Intentionally or knowingly causes
29 another human being to commit suicide by the use of force,
30 duress or deception.

31 **1-A.** For purposes of subsection 1, paragraph B, when the
32 crime of depraved indifference murder is charged, the crime of
33 criminally negligent manslaughter ~~shall--be~~ is deemed to be
34 charged.

35 2. The sentence for murder ~~shall--be~~ is as authorized in
36 chapter 51.

37 3. It is an affirmative defense to a prosecution under
38 subsection 1, paragraph A, that the ~~aeter~~ person causes the death
39 while under the influence of extreme anger or extreme fear
40 brought about by adequate provocation.

2 4. For purposes of subsection 3, provocation is adequate
if:

4 A. It is not induced by the actor person; and

6 B. It is reasonable for the actor person to react to the
8 provocation with extreme anger or extreme fear, provided
10 that evidence demonstrating only that the actor person has a
12 tendency towards extreme anger or extreme fear ~~shall~~ is not
 be sufficient, in and of itself, to establish the
 reasonableness of ~~his~~ the person's reaction.

14 5. Nothing contained in subsection 3 may constitute a
16 defense to a prosecution for, or preclude conviction of,
 manslaughter or any other crime.

18 **Sec. 9. 17-A MRSA §203**, as amended by PL 1997, c. 34, §1, is
20 further amended to read:

22 **§203. Manslaughter**

24 1. A person is guilty of manslaughter if that person:

26 A. Recklessly, or with criminal negligence, causes the
 death of another human being. Violation of this paragraph
28 is a Class A crime;

30 B. Intentionally or knowingly causes the death of another
32 human being under circumstances ~~which~~ that do not constitute
34 murder because the person causes the death while under the
36 influence of extreme anger or extreme fear brought about by
38 adequate provocation. Adequate provocation has the same
40 meaning as in section 201, subsection 4. The fact that the
 person causes the death while under the influence of extreme
 anger or extreme fear brought about by adequate provocation
 constitutes a mitigating circumstance reducing murder to
 manslaughter and need not be proved in any prosecution
 initiated under this subsection. Violation of this
 paragraph is a Class A crime; or

42 C. Has direct and personal management or control of any
44 employment, place of employment or other employee, and
46 intentionally or knowingly violates any occupational safety
 or health standard of this State or the Federal Government,
48 and that violation in fact causes the death of an employee
 and that death is a reasonably foreseeable consequence of
 the violation. This paragraph does not apply to:

2 (1) Any person who performs a public function either
3 on a volunteer basis or for minimal compensation for
4 services rendered; or

6 (2) Any public employee responding to or acting at a
7 life-threatening situation who is forced to make and
8 does make a judgment reasonably calculated to save the
9 life of a human being.

10 Violation of this paragraph is a Class C crime.

12 ~~3. Manslaughter is a Class A crime except that~~

14 ~~B. Violation of subsection 1, paragraph C is a Class C
15 crime.~~

16 **Sec. 10. 17-A MRSA §207**, as amended by PL 1985, c. 495, §4,
18 is repealed and the following enacted in its place:

20 **§207. Assault**

22 1. A person is guilty of assault if:

24 A. The person intentionally, knowingly or recklessly causes
26 bodily injury or offensive physical contact to another
person. Violation of this paragraph is a Class D crime; or

28 B. The person has attained at least 18 years of age and
30 intentionally, knowingly or recklessly causes bodily injury
to another person who is less than 6 years of age.
32 Violation of this paragraph is a Class C crime.

34 **Sec. 11. 17-A MRSA §210**, as amended by PL 1999, c. 433, §1,
is further amended to read:

36 **§210. Terrorizing**

38 1. A person is guilty of terrorizing if that person
40 communicates to any person a threat to commit or to cause to be
committed a crime of violence dangerous to human life, against
42 the person to whom the communication is made or another, and the
natural and probable consequence of such a threat, whether or not
44 such consequence in fact occurs, is:

46 A. To place the person to whom the threat is communicated
or the person threatened in reasonable fear that the crime
48 will be committed. Violation of this paragraph is a Class D
crime; or

2 B. To cause evacuation of a building, place of assembly or
3 facility of public transport or to cause the occupants of a
4 building to be moved to or required to remain in a
5 designated secured area. Violation of this paragraph is a
6 Class C crime.

7 ~~2.---Violation-of-subsection-1,-paragraph-A,-is-a-Class-D
8 crime.-Violation-of-subsection-1,-paragraph-B,-is-a-Class-C-crime.~~

10 **Sec. 12. 17-A MRSA §210-A, sub-§1**, as enacted by PL 1995, c.
11 668, §3, is amended to read:

12 1. A person is guilty of stalking if:

13 A. The ~~person~~ actor intentionally or knowingly engages in a
14 course of conduct directed at another ~~a~~ specific person that
15 would in fact cause both a reasonable person and that other
16 specific person:

17 (1) To suffer intimidation or serious inconvenience,
18 annoyance or alarm;

19 (2) To fear bodily injury or to fear bodily injury to
20 a member of that person's immediate family; or

21 (3) To fear death or to fear the death of a member of
22 that person's immediate family~~,-and.~~

23 Violation of this paragraph is a Class D crime. The court
24 shall impose a sentencing alternative involving a term of
25 imprisonment of at least 60 days, of which 48 hours may not
26 be suspended, and may order the person to attend an abuser
27 education program approved by the court;

28 ~~B.---The-person's-course-of-conduct-in-fact-causes-the-other
29 specific-person:~~

30 (1)~~---To-suffer-intimidation-or-serious-inconvenience,
31 annoyance-or-alarm;~~

32 (2)~~---To-fear-bodily-injury-or-to-fear-bodily-injury-to
33 a-member-of-that-person's-immediate-family,-or~~

34 (3)~~---To-fear-death-or-to-fear-the-death-of-a-member-of
35 that-person's-immediate-family.~~

36 C. The actor violates paragraph A and has 2 or more prior
37 convictions and the actor intentionally or knowingly engages
38 in a course of conduct directed at a specific person that

2 would in fact cause both a reasonable person and that
3 specific person:

4 (1) To suffer intimidation or serious inconvenience,
5 annoyance or alarm;

6 (2) To fear bodily injury or to fear bodily injury to
7 a member of that person's immediate family; or

8 (3) To fear death or to fear the death of a member of
9 that person's immediate family.

10 Violation of this paragraph is a Class C crime. The court
11 shall impose a sentencing alternative involving a term of
12 imprisonment of at least 6 months, of which 14 days may not
13 be suspended, and may order the person to attend an abuser
14 education program approved by the court.

15 For the purposes of this paragraph, "prior conviction" means
16 a conviction for a violation of this section; Title 5,
17 section 4659; Title 15, section 321; former Title 19,
18 section 769; Title 19-A, section 4011; any other temporary,
19 emergency, interim or final protective order; an order of a
20 tribal court of the Passamaquoddy Tribe or the Penobscot
21 Nation; any similar order issued by any court of the United
22 States or of any other state, territory, commonwealth or
23 tribe; or a court-approved consent agreement. Section 9-A
24 governs the use of prior convictions when determining a
25 sentence.

26 **Sec. 13. 17-A MRSA §210-A, sub-§3, as amended by PL 1999, c.**
27 **510, §4, is repealed.**

28 **Sec. 14. 17-A MRSA §253, sub-§1, ¶¶A and B, as repealed and**
29 **replaced by PL 1989, c. 401, Pt. A, §4, are amended to read:**

30 A. The other person submits as a result of compulsion, as
31 defined in section 251, subsection 1, paragraph E.
32 Violation of this paragraph is a Class A crime; or

33 B. The other person, not the actor's spouse, has not in
34 fact attained the age of 14 years. Violation of this
35 paragraph is a Class A crime.

36 **Sec. 15. 17-A MRSA §253, sub-§2, ¶¶A to G, as repealed and**
37 **replaced by PL 1989, c. 401, Pt. A, §4, are amended to read:**

38 A. The actor has substantially impaired the other person's
39 power to appraise or control the other person's sexual acts
40 by administering or employing drugs, intoxicants or other
41 substances.

2 similar means. Violation of this paragraph is a Class B
3 crime;

4 B. The actor compels or induces the other person to engage
5 in the sexual act by any threat. Violation of this
6 paragraph is a Class B crime;

8 C. The other person suffers from mental disability that is
9 reasonably apparent or known to the actor, and which in fact
10 renders the other person substantially incapable of
11 appraising the nature of the contact involved or of
12 understanding that the person has the right to deny or
13 withdraw consent. Violation of this paragraph is a Class B
14 crime;

16 D. The other person is unconscious or otherwise physically
17 incapable of resisting and has not consented to the sexual
18 act. Violation of this paragraph is a Class B crime;

20 E. The other person, not the actor's spouse, is in official
21 custody as a probationer or a parolee, or is detained in a
22 hospital, prison or other institution, and the actor has
23 supervisory or disciplinary authority over the other
24 person. Violation of this paragraph is a Class B crime;

26 F. The other person, not the actor's spouse, has not in
27 fact attained the age of 18 years and is a student enrolled
28 in a private or public elementary, secondary or special
29 education school, facility or institution and the actor is a
30 teacher, employee or other official having instructional,
31 supervisory or disciplinary authority over the student.
32 Violation of this paragraph is a Class C crime;

34 G. The other person, not the actor's spouse, has not
35 attained the age of 18 years and is a resident in or
36 attending a children's home, day care facility, residential
37 child care facility, drug treatment center, camp or similar
38 school, facility or institution regularly providing care or
39 services for children, and the actor is a teacher, employee
40 or other person having instructional, supervisory or
41 disciplinary authority over the other person. Violation of
42 this paragraph is a Class C crime;

44 **Sec. 16. 17-A MRSA §253, sub-§2, ¶¶H and I,** as amended by PL
45 1993, c. 687, §1, are further amended to read:

46 H. The other person has not in fact attained the age of 18
47 years and the actor is a parent, stepparent, foster parent,
48 guardian or other similar person responsible for the

2 long-term care and welfare of that other person. Violation
3 of this paragraph is a Class B crime;

4 I. The actor is a psychiatrist, a psychologist or licensed
5 as a social worker or purports to be a psychiatrist, a
6 psychologist or licensed as a social worker to the other
7 person and the other person, not the actor's spouse, is a
8 patient or client for mental health therapy of the actor.
9 As used in this paragraph, "mental health therapy" means
10 psychotherapy or other treatment modalities intended to
11 change behavior, emotions or attitudes, which therapy is
12 based upon an intimate relationship involving trust and
13 dependency with a substantial potential for vulnerability
14 and abuse. Violation of this paragraph is a Class C crime;
15 or

16 **Sec. 17. 17-A MRSA §253, sub-§2, ¶J**, as enacted by PL 1993, c.
17 687, §2 and amended by PL 1995, c. 560, Pt. K, §82 and affected
18 by §83, is further amended to read:

19 J. The actor owns, operates or is an employee of an
20 organization, program or residence that is operated,
21 administered, licensed or funded by the Department of Mental
22 Health, Mental Retardation and Substance Abuse Services or
23 the Department of Human Services and the other person, not
24 the actor's spouse, receives services from the organization,
25 program or residence and the organization, program or
26 residence recognizes that the other person as a person with
27 mental retardation. It is an affirmative defense to
28 prosecution under this paragraph that the actor receives
29 services for mental retardation or is a person with mental
30 retardation as defined in Title 34-B, section 5001,
31 subsection 3. Violation of this paragraph is a Class C
32 crime.

33 **Sec. 18. 17-A MRSA §253, sub-§4**, as repealed and replaced by
34 PL 1989, c. 401, Pt. A, §4, is repealed.

35 **Sec. 19. 17-A MRSA §253, sub-§5**, as amended by PL 1993, c.
36 687, §3, is repealed.

37 **Sec. 20. 17-A MRSA §253, sub-§6**, as amended by PL 1995, c.
38 429, §1, is further amended to read:

39 6. In using a sentencing alternative involving a term of
40 imprisonment for ~~any natural~~ a person convicted of violating this
41 section, a court shall, in determining the maximum period of
42 incarceration as the 2nd step in the sentencing process, treat
43 each prior Maine conviction for a violation of this section as an
44 aggravating sentencing factor.

- 2 A. When the sentencing class for a prior conviction under
4 this section is Class A, the court shall enhance the basic
6 period of incarceration by a minimum of 4 years of
8 imprisonment.
- 10 B. When the sentencing class for a prior conviction under
12 this section is Class B, the court shall enhance the basic
14 period of incarceration by a minimum of 2 years of
16 imprisonment.
- 18 C. When the sentencing class for a prior conviction under
20 this section is Class C, the court shall enhance the basic
22 period of incarceration by a minimum of one year of
24 imprisonment.

26 In arriving at the final sentence as the 3rd step in the
28 sentencing process, the court may not suspend that portion of the
30 maximum term of incarceration based on a prior conviction.

32 **Sec. 21. 17-A MRSA §254**, as amended by PL 1997, c. 460, §§2
34 and 3, is further amended to read:

36 **§254. Sexual abuse of minors**

38 1. A person is guilty of sexual abuse of a minor if:

40 ~~A. Having attained the age of 19 years, the~~ The person
42 engages in a sexual act with another person, not the actor's
44 spouse, who ~~has attained the age of 14 years of age but has~~
46 ~~not attained the age of 16 years, provided that is either 14~~
48 ~~or 15 years of age and the actor is at least 5 years older~~
50 ~~than the other person. Violation of this paragraph is a~~
Class D crime; or

A-1. The person violates paragraph A and the actor knows
that the other person is related to the actor within the 2nd
degree of consanguinity. Violation of this paragraph is a
Class C crime;

A-2. The person violates paragraph A and the actor is at
least 10 years older than the other person. Violation of
this paragraph is a Class C crime;

~~C. Having attained the age of~~ The person is at least 21
~~years, the person of age and engages in a sexual act with~~
~~another person, not the actor's spouse, who has attained the~~
~~age of 16 years but not the age of 18 years, is either 16 or~~
~~17 years of age and is a student enrolled in a private or~~
~~public elementary, secondary or special education school,~~

2 facility or institution and the actor is a teacher, employee
or other official in the school district, school union,
4 educational unit, school, facility or institution in which
the student is enrolled. Violation of this paragraph is a
Class E crime;

6
8 D. The person violates paragraph C and the actor knows that
the student is related to the actor within the 2nd degree of
consanguinity. Violation of this paragraph is a Class D
10 crime; or

12 E. The person violates paragraph C and the actor is at
least 10 years older than the student. Violation of this
14 paragraph is a Class D crime.

16 2. It is a defense to a prosecution under subsection 1,
paragraph paragraphs A, A-1 and A-2, that the actor reasonably
18 believed the other person ~~to have attained his 16th birthday~~ is
at least 16 years of age.

20
22 ~~3. Violation of subsection 1, paragraph A is a Class D
crime; and violation of subsection 1, paragraph C is a Class E
crime; except that the sentencing class for a violation of
24 subsection 1 is one class higher if the State pleads and proves:~~

26 ~~A. The actor was more than 10 years older than the other
person; or~~

28 ~~B. The actor knew the other person was related to the actor
30 within the 2nd degree of consanguinity.~~

32 4. As used in this section, "related to the actor within
the 2nd degree of consanguinity" has the meaning set forth in
34 section 556.

36 Sec. 22. 17-A MRSA §255, as amended by PL 1997, c. 460, §4,
is repealed.

38 Sec. 23. 17-A MRSA §255-A is enacted to read:

40 **§255. Unlawful sexual contact**

42
44 1. A person is guilty of unlawful sexual contact if the
actor intentionally subjects another person to any sexual contact
and:

46
48 A. The other person has not expressly or impliedly
acquiesced in the sexual contact. Violation of this
50 paragraph is a Class D crime;

2 B. The other person has not expressly or impliedly
4 acquiesced in the sexual contact and the sexual contact
includes penetration. Violation of this paragraph is a Class
C crime;

6 C. The other person is unconscious or otherwise physically
8 incapable of resisting and has not consented to the sexual
contact. Violation of this paragraph is a Class D crime;

10 D. The other person is unconscious or otherwise physically
12 incapable of resisting and has not consented to the sexual
contact and the sexual contact includes penetration.
14 Violation of this paragraph is a Class C crime;

16 E. The other person, not the actor's spouse, is in fact
18 less than 14 years of age and the actor is at least 3 years
older. Violation of this paragraph is a Class C crime;

20 F. The other person, not the actor's spouse, is in fact
22 less than 14 years of age and the actor is at least 3 years
older and the sexual contact includes penetration.
Violation of this paragraph is a Class B crime;

24 G. The other person suffers from a mental disability that
26 is reasonably apparent or known to the actor that in fact
renders the other person substantially incapable of
28 appraising the nature of the contact involved or of
understanding that the other person has the right to deny or
30 withdraw consent. Violation of this paragraph is a Class D
crime;

32 H. The other person suffers from a mental disability that
34 is reasonably apparent or known to the actor that in fact
renders the other person substantially incapable of
36 appraising the nature of the contact involved or of
understanding that the other person has the right to deny or
38 withdraw consent and the sexual contact includes
penetration. Violation of this paragraph is a Class C crime;

40 I. The other person, not the actor's spouse, is in official
42 custody as a probationer or parolee or is detained in a
hospital, prison or other institution and the actor has
44 supervisory or disciplinary authority over the other
person. Violation of this paragraph is a Class D crime;

46 J. The other person, not the actor's spouse, is in official
48 custody as a probationer or parolee or is detained in a
hospital, prison or other institution and the actor has
supervisory or disciplinary authority over the other person

2 and the sexual contact includes penetration. Violation of
3 this paragraph is a Class C crime;

4 K. The other person, not the actor's spouse, is in fact
5 less than 18 years of age and is a student enrolled in a
6 private or public elementary, secondary or special education
7 school, facility or institution and the actor is a teacher,
8 employee or other official having instructional, supervisory
9 or disciplinary authority over the student. Violation of
10 this paragraph is a Class D crime;

11 L. The other person, not the actor's spouse, is in fact
12 less than 18 years of age and is a student enrolled in a
13 private or public elementary, secondary or special education
14 school, facility or institution and the actor is a teacher,
15 employee or other official having instructional, supervisory
16 or disciplinary authority over the student and the sexual
17 contact includes penetration. Violation of this paragraph
18 is a Class C crime;

19 M. The other person is in fact less than 18 years of age
20 and the actor is a parent, stepparent, foster parent,
21 guardian or other similar person responsible for the
22 long-term general care and welfare of that other person.
23 Violation of this paragraph is a Class C crime;

24 N. The other person is in fact less than 18 years of age
25 and the actor is a parent, stepparent, foster parent,
26 guardian or other similar person responsible for the
27 long-term general care and welfare of that other person and
28 the sexual contact includes penetration. Violation of this
29 paragraph is a Class B crime;

30 O. The other person submits as a result of compulsion.
31 Violation of this paragraph is a Class C crime;

32 P. The other person submits as a result of compulsion and
33 the sexual contact includes penetration. Violation of this
34 paragraph is a Class B crime;

35 Q. The actor owns, operates or is an employee of an
36 organization, program or residence that is operated,
37 administered, licensed or funded by the Department of Mental
38 Health, Mental Retardation and Substance Abuse Services or
39 the Department of Human Services and the other person, not
40 the actor's spouse, receives services from the organization,
41 program or residence and the organization, program or
42 residence recognizes that other person as a person with
43 mental retardation. It is an affirmative defense to
44 prosecution under this paragraph that the actor receives
45 services from the organization, program or residence.
46 It is an affirmative defense to prosecution under this
47 paragraph that the actor receives services from the organization,
48 program or residence.
49 It is an affirmative defense to prosecution under this
50 paragraph that the actor receives services from the organization,
 program or residence.

2 services for mental retardation or is a person with mental
3 retardation as defined in Title 34-B, section 5001,
4 subsection 3. Violation of this paragraph is a Class D
5 crime;

6 R. The actor owns, operates or is an employee of an
7 organization, program or residence that is operated,
8 administered, licensed or funded by the Department of Mental
9 Health, Mental Retardation and Substance Abuse Services or
10 the Department of Human Services and the other person, not
11 the actor's spouse, receives services from the organization,
12 program or residence and the organization, program or
13 residence recognizes that other person as a person with
14 mental retardation and the sexual contact includes
15 penetration. It is an affirmative defense to prosecution
16 under this paragraph that the actor receives services for
17 mental retardation or is a person with mental retardation as
18 defined in Title 34-B, section 5001, subsection 3.
19 Violation of this paragraph is a Class C crime;

20 S. The other person, not the actor's spouse, is in fact
21 less than 18 years of age and is a student enrolled in a
22 private or public elementary, secondary or special education
23 school, facility or institution and the actor, who is at
24 least 21 years of age, is a teacher, employee or other
25 official in the school district, school union, educational
26 unit, school, facility or institution in which the student
27 is enrolled. Violation of this paragraph is a Class E
28 crime; or

29 T. The other person, not the actor's spouse, is in fact
30 less than 18 years of age and is a student enrolled in a
31 private or public elementary, secondary or special education
32 school, facility or institution and the actor, who is at
33 least 21 years of age, is a teacher, employee or other
34 official in the school district, school union, educational
35 unit, school, facility or institution in which the student
36 is enrolled and the sexual contact includes penetration.
37 Violation of this paragraph is a Class D crime.

38 **Sec. 24. 17-A MRSA §259, sub-§1, as enacted by PL 1999, c.**
39 **349, §3, is repealed.**

40 **Sec. 25. 17-A MRSA §259, sub-§1-A is enacted to read:**

41 1-A. A person is guilty of soliciting a child by a computer
42 to commit a prohibited act if:

43 A. The actor:

44

- 2 (1) Uses a computer knowingly to solicit, entice,
 persuade or compel another person to meet with the
 actor;
- 4
- 6 (2) Is at least 16 years of age;
- 8 (3) Knows or believes that the other person is less
 than 14 years of age; and
- 10 (4) Is at least 3 years older than the expressed age
 of the other person; and

12 B. The actor has the intent to engage in any one of the
 14 following prohibited acts with the other person:

- 16 (1) A sexual act as defined in section 251, subsection
 1, paragraph C;
- 18 (2) Sexual contact as defined in section 251,
 subsection 1, paragraph D; or
- 20 (3) Sexual exploitation of a minor pursuant to Title
 17, section 2922.

24 **Sec. 26. 17-A MRSA §301, sub-§§1 and 2, as enacted by PL 1975,**
 26 **c. 499, §1, are amended to read:**

28 1. A person is guilty of kidnapping if either:

30 A. ~~He~~ The actor knowingly restrains another person with the
 32 intent to:

- 34 (1) ~~held--him~~ Hold the other person for ransom or
 reward;
- 36 (2) ~~use--him~~ Use the other person as a shield or
 hostage;
- 38 (3) ~~inflict~~ Inflict bodily injury upon ~~him~~ the other
 person or subject ~~him~~ the other person to conduct
 defined as criminal in chapter 11;
- 42 (4) ~~terrorize-him~~ Terrorize the other person or a 3rd
 person;
- 44 (5) ~~facilitate~~ Facilitate the commission of another
 crime by any person or flight thereafter; or
- 46 (6) ~~interfere~~ Interfere with the performance of any
 governmental or political function; or

- 2 B. ~~He~~ The actor knowingly restrains another person:
- 4 (1) ~~under~~ Under circumstances which, in fact, expose
6 ~~such the~~ the other person to risk of serious bodily injury;
8 or
- 8 (2) ~~by~~ By secreting and holding ~~him~~ the other person
10 in a place where he ~~the other person~~ is not likely to
be found.

12 2. "Restrain" means to restrict substantially the movements
of another person without ~~his~~ the other person's consent or other
14 lawful authority by:

- 16 A. Removing ~~him~~ the other person from ~~his~~ the other
18 person's residence, place of business, or from a school; or
- 20 B. Moving ~~him~~ the other person a substantial distance from
the vicinity where he ~~the other person~~ is found; or
- 22 C. Confining ~~him~~ the other person for a substantial period
24 either in the place where the restriction commences or in a
place to which he ~~the other person~~ has been moved.

26 **Sec. 27. 17-A MRSA §302**, as amended by PL 1995, c. 689, §1,
is repealed and the following enacted in its place:

28 **§302. Criminal restraint**

- 30 **1. A person is guilty of criminal restraint if:**
- 32 **A. Knowing the actor has no legal right to do so, the actor**
34 **intentionally or knowingly takes, retains or entices another**
36 **person who:**
- 38 (1) Is less than 14 years of age. Violation of this
subparagraph is a Class D crime;
- 40 (2) Is incompetent. Violation of this subparagraph
42 is a Class D crime;
- 44 (3) Is either 14, 15 or 16 years of age from the
46 custody of the other person's parent, guardian or other
48 lawful custodian, with the intent to hold the other
person permanently or for a prolonged period and the
actor is at least 18 years of age. Violation of this
subparagraph is a Class D crime; or

2 (4) Is in fact less than 8 years of age. Violation of
3 this subparagraph is a Class C crime; or

4 B. The actor:

6 (1) Knowingly restrains another person. Violation of
7 this subparagraph is a Class D crime; or

8 (2) Knowingly restrains another person who is in fact
9 less than 8 years of age. Violation of this
10 subparagraph is a Class C crime.

11 As used in this paragraph, "restrain" has the same meaning
12 as in section 301, subsection 2.

13 2. It is a defense to a prosecution under this section that
14 the actor is the parent of the other person taken, retained,
15 enticed or restrained. Consent by the person taken, retained or
16 enticed is not a defense to a prosecution under subsection 1,
17 paragraph A.

18 **Sec. 28. 17-A MRSA §352, sub-§1, ¶F**, as enacted by PL 1975, c.
19 499, §1, is amended to read:

20 F. Trade secrets, meaning the whole or any portion of any
21 scientific or technical information, design, process,
22 procedure, formula or invention which the owner thereof
23 intends to be available only to persons selected by ~~him~~ the
24 owner.

25 **Sec. 29. 17-A MRSA §352, sub-§2**, as enacted by PL 1975, c.
26 499, §1, is repealed and the following enacted in its place:

27 2. "Obtain" means:

28 A. In relation to property, to bring about, in or out of
29 this State, a transfer of possession or of some other
30 legally recognized interest in property, whether to the
31 obtainer or another;

32 B. In relation to labor or services, to secure performance
33 of labor or services; and

34 C. In relation to a trade secret, to make any facsimile,
35 replica, photograph or other reproduction.

36 **Sec. 30. 17-A MRSA §352, sub-§3, ¶A**, as enacted by PL 1975, c.
37 499, §1, is amended to read:

38

2 A. To withhold property permanently or for so extended a
3 period or to use under such circumstances that a substantial
4 portion of its economic value, or the use and benefit
thereof of the property, would be lost; or

6 **Sec. 31. 17-A MRSA §352, sub-§4**, as amended by PL 1975, c.
740, §53, is further amended to read:

8
9
10 4. "Property of another" includes property in which any
11 person or government other than the actor has an interest ~~which~~
12 that the actor is not privileged to infringe, regardless of the
13 fact that the actor also has an interest in the property and
14 regardless of the fact that the other person might be precluded
15 from civil recovery because the property was used in an unlawful
16 transaction or was subject to ~~forfeiture~~ forfeiture as
17 contraband. Property in the possession of the actor ~~shall~~ may not
18 be deemed property of another who has only a security interest
19 therein, even if legal title is in the creditor pursuant to a
20 conditional sales contract or other security agreement.

21
22 **Sec. 32. 17-A MRSA §352, sub-§5**, as amended by PL 1995, c.
224, §2, is further amended to read:

23 5. The meaning of "value" ~~shall~~ must be determined
24 according to the following.

25
26
27 A. Except as otherwise provided in this subsection, value
28 means the market value of the property or services at the
29 time and place of the crime, or if such cannot be
30 satisfactorily ascertained, the cost of replacement of the
31 property or services within a reasonable time after the
32 crime.

33
34 B. The value of a written instrument ~~which~~ that does not
35 have a readily ascertainable market value ~~shall~~, in the case
36 of an instrument such as a check, draft or promissory note
37 ~~be, is~~ deemed the amount due or collectible ~~thereon on the~~
38 instrument, and ~~shall~~, in the case of any other instrument
39 ~~which~~ that creates, releases, discharges or otherwise
40 affects any valuable legal right, privilege or obligation
41 ~~be, is~~ deemed the greatest amount of economic loss ~~which~~
42 that the owner of the instrument might reasonably suffer by
43 virtue of the loss of the instrument.

44
45 C. The value of a trade secret ~~which~~ that does not have a
46 readily ascertainable market value ~~shall--be~~ is deemed any
47 reasonable value representing the damage to the owner
48 suffered by reason of losing an advantage over those who do
49 not know of or use the trade secret.
50

2 D. If the value of property or services cannot be
4 ascertained beyond a reasonable doubt pursuant to the
6 standards set forth above, the trier of fact may find the
value to be not less than a certain amount, and if no such
minimum value can be thus ascertained, the value is deemed
to be an amount less than \$1,000.

8 E. Amounts of value involved in thefts committed pursuant
10 to one scheme or course of conduct, whether from the same
12 person or several persons, may be aggregated to charge a
14 single theft of appropriate class or grade. Subject to the
16 requirement that the conduct of the defense shall may not be
18 prejudiced by lack of fair notice or by surprise, the court
may at any time order that a single aggregated count be
considered as separate thefts. Ne An aggregated count of
theft shall may not be deemed duplicitous because of such an
order and ne an election shall may not be required.
Prosecution may be brought in any venue in which one of the
thefts whieh that have been aggregated was committed.

20 F. The ~~defendant's~~ actor's culpability as to value is not
22 an essential requisite of liability, unless otherwise
24 expressly provided.

26 **Sec. 33. 17-A MRSA §353**, as enacted by PL 1975, c. 499, §1,
is repealed and the following enacted in its place:

28 **§353. Theft by unauthorized taking or transfer**

30 1. A person is guilty of theft if:

32 A. The person obtains or exercises unauthorized control
34 over the property of another with intent to deprive the
other person of the property. Violation of this paragraph
is a Class E crime; or

36 B. The person violates paragraph A and:

38 (1) The value of the property is more than \$10,000.
40 Violation of this subparagraph is a Class B crime;

42 (2) The property stolen is a firearm or an explosive
44 device. Violation of this subparagraph is a Class B
crime;

46 (3) The person is armed with a dangerous weapon at the
48 time of the offense. Violation of this subparagraph is
a Class B crime;

2 (4) The value of the property is more than \$2,000 but
3 not more than \$10,000. Violation of this subparagraph
4 is a Class C crime;

5 (5) The value of the property is more than \$1,000 but
6 not more than \$2,000. Violation of this subparagraph
7 is a Class D crime; or

8 (6) The person has 2 prior Maine convictions for any
9 combination of the following: theft; any violation of
10 section 401 in which the crime intended to be committed
11 inside the structure is theft; any violation of section
12 651; any violation of section 702, 703 or 708; or
13 attempts thereat. Section 9-A governs the use of prior
14 convictions when determining a sentence. Violation of
15 this subparagraph is a Class C crime.

16 2. As used in this section, "exercises unauthorized
17 control" includes but is not limited to conduct formerly defined
18 or known as common law larceny by trespassory taking, larceny by
19 conversion, larceny by bailee and embezzlement.

20 **Sec. 34. 17-A MRSA §354**, as amended by PL 1999, c. 455, §1,
21 is repealed and the following enacted in its place:

22 **§354. Theft by deception**

23 1. A person is guilty of theft if:

24 A. The person obtains or exercises control over property of
25 another as a result of deception and with intent to deprive
26 the other person of the property. Violation of this
27 paragraph is a Class E crime; or

28 B. The person violates paragraph A and:

29 (1) The value of the property is more than \$10,000.
30 Violation of this subparagraph is a Class B crime;

31 (2) The property stolen is a firearm or an explosive
32 device. Violation of this subparagraph is a Class B
33 crime;

34 (3) The person is armed with a dangerous weapon at the
35 time of the offense. Violation of this subparagraph is
36 a Class B crime;

37 (4) The value of the property is more than \$2,000 but
38 not more than \$10,000. Violation of this subparagraph
39 is a Class C crime;

2 (5) The value of the property is more than \$1,000 but
4 not more than \$2,000. Violation of this subparagraph
 is a Class D crime; or

6 (6) The person has 2 prior Maine convictions for any
8 combination of the following: theft; any violation of
10 section 401 in which the crime intended to be committed
12 inside the structure is theft; any violation of section
14 651; any violation of section 702, 703 or 708. attempts
 thereat. Section 9-A governs the use of prior
 convictions when determining a sentence. Violation of
 this subparagraph is a Class C crime.

16 2. For purposes of this section, deception occurs when a
 person intentionally:

18 A. Creates or reinforces an impression that is false and
20 that the person does not believe to be true, including false
22 impressions as to identity, law, value, knowledge, opinion,
24 intention or other state of mind; except that an intention
 not to perform a promise, or knowledge that a promise will
 not be performed, may not be inferred from the fact alone
 that the promise was not performed;

26 B. Fails to correct an impression that is false and that
28 the person does not believe to be true and that:

30 (1) The person had previously created or reinforced; or

32 (2) The person knows to be influencing another whose
34 property is involved and to whom the person stands in a
 fiduciary or confidential relationship;

36 C. Prevents another from acquiring information that is
 relevant to the disposition of the property involved; or

38 D. Fails to disclose a known lien, adverse claim or other
40 legal impediment to the enjoyment of property that the
42 person transfers or encumbers in consideration for the
 property obtained, whether such impediment is or is not
 valid, or is or is not a matter of official record.

44 3. It is not a defense to a prosecution under this section
46 that the deception related to a matter that was of no pecuniary
 significance or that the person deceived acted unreasonably in
 relying on the deception.

48 Sec. 35. 17-A MRSAs §354-A, sub-§1, as enacted by PL 1997, c.
50 779, §1, is repealed and the following enacted in its place:

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1. A person is guilty of theft if:

A. The person obtains or exercises control over property of another as a result of insurance deception and with an intent to deprive the other person of the property. Violation of this paragraph is a Class E crime; or

B. The person violates paragraph A and:

(1) The value of the property is more than \$10,000. Violation of this subparagraph is a Class B crime;

(2) The property stolen is a firearm or an explosive device. Violation of this subparagraph is a Class B crime;

(3) The person is armed with a dangerous weapon at the time of the offense. Violation of this subparagraph is a Class B crime;

(4) The value of the property is more than \$2,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;

(5) The value of the property is more than \$1,000 but not more than \$2,000. Violation of this subparagraph is a Class D crime; or

(6) The person has 2 prior Maine convictions for any combination of the following: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts thereat. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.

Sec. 36. 17-A MRSA §354-A, sub-§3, as enacted by PL 1997, c. 779, §1, is amended to read:

3. It is ~~no~~ not a defense to a prosecution under this section that the deception related to a matter that was of no pecuniary significance or that the person deceived acted unreasonably in relying on the deception.

Sec. 37. 17-A MRSA §355, sub-§1, as enacted by PL 1975, c. 499, §1, is amended to read:

1. A person is guilty of theft if he the person obtains or exercises control over the property of another as a result of extortion and with ~~the-intention~~ intent to deprive ~~him--thereof~~ the other person of the property.

Sec. 38. 17-A MRSA §355, sub-§2, ¶B, as enacted by PL 1975, c. 499, §1, is amended to read:

B. Do any other act which that would not in itself substantially benefit ~~him~~ the person but which that would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

Sec. 39. 17-A MRSA §355, sub-§3 is enacted to read:

3. Violation of this section is a Class C crime.

Sec. 40. 17-A MRSA §356, as repealed and replaced by PL 1981, c. 529, §1, is repealed.

Sec. 41. 17-A MRSA §356-A is enacted to read:

§356-A. Theft of lost, mislaid or mistakenly delivered property

1. A person is guilty of theft if:

A. The person obtains or exercises control over the property of another that the person knows to have been lost or mislaid or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property and, with the intent to deprive the owner of the property at any time subsequent to acquiring it, the person fails to take reasonable measures to return it. Violation of this paragraph is a Class E crime; or

B. The person violates paragraph A and:

(1) The value of the property is more than \$10,000. Violation of this subparagraph is a Class B crime;

(2) The property stolen is a firearm or an explosive device. Violation of this subparagraph is a Class B crime;

(3) The person is armed with a dangerous weapon at the time of the offense. Violation of this subparagraph is a Class B crime;

2 (4) The value of the property is more than \$2,000 but
3 not more than \$10,000. Violation of this subparagraph
4 is a Class C crime;

5 (5) The value of the property is more than \$1,000 but
6 not more than \$2,000. Violation of this subparagraph
7 is a Class D crime; or

8 (6) The person has 2 prior Maine convictions for any
9 combination of the following: theft; any violation of
10 section 401 in which the crime intended to be committed
11 inside the structure is theft; any violation of section
12 651; any violation of section 702, 703 or 708; or
13 attempts thereat. Section 9-A governs the use of prior
14 convictions when determining a sentence. Violation of
15 this subparagraph is a Class C crime.

16
17 **Sec. 42. 17-A MRSA §357, as amended by PL 1999, c. 657, §8,**
18 **is repealed and the following enacted in its place:**

19 **§357. Theft of services**

20 **1. A person is guilty of theft if:**

21 **A. The person obtains services by deception, threat, force**
22 **or any other means designed to avoid the due payment for the**
23 **services that the person knows are available only for**
24 **compensation. Violation of this paragraph is a Class E**
25 **crime; or**

26 **B. The person violates paragraph A and:**

27 **(1) The value of the services is more than \$10,000.**
28 **Violation of this subparagraph is a Class B crime;**

29 **(2) The person is armed with a dangerous weapon at the**
30 **time of the offense. Violation of this subparagraph is**
31 **a Class B crime;**

32 **(3) The value of the services is more than \$2,000 but**
33 **not more than \$10,000. Violation of this subparagraph**
34 **is a Class C crime;**

35 **(4) The value of the services is more than \$1,000 but**
36 **not more than \$2,000. Violation of this subparagraph**
37 **is a Class D crime; or**

38 **(5) The person has 2 prior Maine convictions for any**
39 **combination of the following: theft; any violation of**
40 **section 401 in which the crime intended to be committed**
41 **inside the structure is theft; any violation of section**
42 **651; any violation of section 702, 703 or 708; or**
43 **attempts thereat. Section 9-A governs the use of prior**
44 **convictions when determining a sentence. Violation of**
45 **this subparagraph is a Class C crime.**

2 inside the structure is theft; any violation of section
4 651; any violation of section 702, 703 or 708; or
6 attempts thereat. Section 9-A governs the use of prior
 convictions when determining a sentence. Violation of
 this subparagraph is a Class C crime.

8 2. A person is guilty of theft if:

10 A. Having control over the disposition of services of
12 another, to which the person knows the person is not
14 entitled, the person diverts such services to the person's
 own benefit or to the benefit of some other person who the
 person knows is not entitled to the services. Violation of
 this paragraph is a Class E crime; or

16 B. The person violates paragraph A and:

18 (1) The value of the services is more than \$10,000.
20 Violation of this subparagraph is a Class B crime;

22 (2) That person is armed with a dangerous weapon at
24 the time of the offense. Violation of this
 subparagraph is a Class B crime;

26 (3) The value of the services is more than \$2,000 but
28 not more than \$10,000. Violation of this subparagraph
 is a Class C crime;

30 (4) The value of the services is more than \$1,000 but
32 not more than \$2,000. Violation of this subparagraph
 is a Class D crime; or

34 (5) The person has 2 prior Maine convictions for any
36 combination of the following: theft; any violation of
38 section 401 in which the crime intended to be committed
40 inside the structure is theft; any violation of section
 651; any violation of section 702, 703 or 708; or
 attempts thereat. Section 9-A governs the use of prior
 convictions when determining a sentence. Violation of
 this subparagraph is a Class C crime.

42 3. As used in this section:

44 A. "Deception" has the same meaning as in section 354;

46 B. "Services" includes, but is not limited to, labor;
48 professional service; public utility service; transportation
50 service; ski-lift service; restaurant, hotel, motel, tourist
 cabin, rooming house and like accommodations; the supplying
 of equipment, tools, vehicles or trailers for temporary use;

2 telephone, cellular telephone, telegraph, cable television
3 or computer service; gas, electricity, water or steam;
4 admission to entertainment, exhibitions, sporting events or
5 other events; or other services for which a charge is made;
6 and

7 C. "Threat" is deemed to occur under the circumstances
8 described in section 355, subsection 2.

10 4. When compensation for service is ordinarily paid
11 immediately upon the rendering of such service, as in the case of
12 hotels, restaurants, ski lifts, garages or sporting events,
13 nonpayment prior to use or enjoyment, refusal to pay or
14 absconding without payment or offer to pay gives rise to a
15 permissible inference under the Maine Rules of Evidence, Rule 303
16 that the service was obtained by deception.

18 5. Proof that utility services or electricity services have
19 been improperly diverted or that devices belonging to the utility
20 or electricity service provider and installed for the delivery,
21 regulation or measurement of utility services or electricity
22 services have been interfered with gives rise to a permissible
23 inference under the Maine Rules of Evidence, Rule 303 that the
24 person to whom the utility service or electricity service is
25 being delivered or diverted knowingly created or caused to be
26 created the improper diversion or interference with the devices
27 of the utility or electricity service provider.

28 This inference does not apply unless the person to whom the
29 utility service or electricity service is being delivered has
30 been furnished the service for at least 30 days.

31 For purposes of this subsection, "electricity service" means
32 electric billing and metering services, as defined in Title 35-A,
33 section 3201, subsection 8, and the service of a competitive
34 electricity provider, as defined in Title 35-A, section 3201,
35 subsection 5.

37 **Sec. 43. 17-A MRSA §358, sub-§1, as enacted by PL 1975, c.**
38 **499, §1, is repealed and the following enacted in its place:**

40 1. A person is guilty of theft if:

41 A. The person obtains property from anyone or personal
42 services from an employee upon agreement, or subject to a
43 known legal obligation, to make a specified payment or other
44 disposition to a 3rd person or to a fund administered by
45 that person, whether from that property or its proceeds or
46 from that person's own property to be reserved in an
47 equivalent or agreed amount, if that person intentionally or
48 49

2 recklessly fails to make the required payment or disposition
3 and deals with the property obtained or withheld as that
4 person's own. Violation of this paragraph is a Class E
5 crime; or

6 B. The person violates paragraph A and:

8 (1) The value of the property is more than \$10,000.
9 Violation of this subparagraph is a Class B crime;

10 (2) The property stolen is a firearm or an explosive
11 device. Violation of this subparagraph is a Class B
12 crime;

13 (3) The person is armed with a dangerous weapon at the
14 time of the offense. Violation of this subparagraph is
15 a Class B crime;

16 (4) The value of the property is more than \$2,000 and
17 the person is a payroll processor. Violation of this
18 paragraph is a Class B crime;

19 (5) The value of the property is more than \$2,000 but
20 not more than \$10,000. Violation of this subparagraph
21 is a Class C crime;

22 (6) The value of the property is more than \$1,000 but
23 not more than \$2,000. Violation of this subparagraph
24 is a Class D crime;

25 (7) The value of the property is more than \$1,000 but
26 not more than \$2,000 and the person is a payroll
27 processor. Violation of this subparagraph is a Class C
28 crime;

29 (8) The person is a payroll processor and has 2 prior
30 Maine convictions for any combination of the
31 following: theft; any violation of section 401 in
32 which the crime intended to be committed inside the
33 structure is theft; any violation of section 651; any
34 violation of section 702, 703 or 708; or attempts
35 thereat. Section 9-A governs the use of prior
36 convictions when determining a sentence. Violation of
37 this subparagraph is a Class B crime; or

38 (9) The person has 2 prior Maine convictions for any
39 combination of the following: theft; any violation of
40 section 401 in which the crime intended to be committed
41 inside the structure is theft; any violation of section
42 651; any violation of section 702, 703 or 708; or
43 attempts thereat. Section 9-A governs the use of prior
44 convictions when determining a sentence. Violation of
45 this subparagraph is a Class B crime; or

2 attempts thereat. Section 9-A governs the use of prior
3 convictions when determining a sentence. Violation of
4 this subparagraph is a Class C crime.

6 **Sec. 44. 17-A MRSA §358, sub-§3**, as enacted by PL 1975, c.
499, §1, is amended to read:

8 3. An Proof that a person is an officer or employee of the
9 government or of a financial institution ~~is presumed gives rise~~
10 to a permissible inference under the Maine Rules of Evidence,
11 Rule 303 that the person:

12 A. ~~Te-knew~~ Knows of any legal obligation relevant to his
14 the person's liability under this section; and

16 B. ~~Te--have--dealt~~ Dealt with the property as his the
17 person's own if he the person fails to pay or account upon
18 lawful demand, or if an audit reveals a shortage or
19 falsification of his the person's accounts.

20 **Sec. 45. 17-A MRSA §358, sub-§4** is enacted to read:

22 4. "Payroll processor" has the same meaning as in Title 10,
24 section 1495.

26 **Sec. 46. 17-A MRSA §359, sub-§1**, as enacted by PL 1975, c.
499, §1, is repealed and the following enacted in its place:

28 1. A person is guilty of theft if:

30 A. The person receives, retains or disposes of the property
32 of another knowing that it has been stolen, or believing
33 that it has probably been stolen, with the intent to deprive
34 the owner of the property. Violation of this paragraph is a
35 Class E crime; or

36 B. The person violates paragraph A and:

38 (1) The value of the property is more than \$10,000.
40 Violation of this subparagraph is a Class B crime;

42 (2) The property stolen is a firearm or an explosive
43 device. Violation of this subparagraph is a Class B
44 crime;

46 (3) The person is armed with a dangerous weapon at the
47 time of the offense. Violation of this subparagraph is
48 a Class B crime;

2 (4) The value of the property is more than \$2,000 but
4 not more than \$10,000. Violation of this subparagraph
6 is a Class C crime;

8 (5) The value of the property is more than \$1,000 but
10 not more than \$2,000. Violation of this subparagraph
12 is a Class D crime; or.

14 (6) The person has 2 prior Maine convictions for any
16 combination of the following: theft; any violation of
18 section 401 in which the crime intended to be committed
20 inside the structure is theft; any violation of section
22 651; any violation of section 702, 703 or 708; or
24 attempts thereat. Section 9-A governs the use of prior
26 convictions when determining a sentence. Violation of
28 this subparagraph is a Class C crime.

30 **Sec. 47. 17-A MRSA §360, sub-§1, as amended by PL 1999, c.**
32 **262, §1, is further amended to read:**

34 1. A person is guilty of theft if:

36 A. Knowing that he the person does not have the consent of
38 the owner, he the person takes, operates or exercises
40 control over a vehicle, or, knowing that a vehicle has been
42 so wrongfully obtained, he the person rides in such the
44 vehicle;

46 B. Having custody of a vehicle pursuant to an agreement
48 between himself the person and the owner thereof of the
50 vehicle whereby ~~the--acter~~ the person or another is to
perform for compensation a specific service for the owner
involving the maintenance, repair or use of such the
vehicle, he the person intentionally uses or operates the
same, without the consent of the owner, for his the person's
own purposes in a manner constituting a gross deviation from
the agreed purpose; or

 C. Having custody of property pursuant to a rental or lease
agreement with the owner thereof of the property or a
borrower's agreement with a library or museum whereby such
the property is to be returned to the owner at a specified
time and place, the person knowingly fails to comply with
the agreed terms concerning return of such property without
the consent of the owner, for so lengthy a period beyond the
specified time for return as to render the retention or
possession or other failure to return a gross deviation from
the agreement. For purposes of this paragraph, ~~a--gross~~
~~deviation-may-be-presumed-when~~ proof that the person fails
to return the property within 5 days of receiving a written

2 demand from the owner, mailed by certified or registered
3 mail or delivered by hand after the expiration of the rental
4 period to the most current address known to the owner, gives
5 rise to a permissible inference under the Maine Rules of
6 Evidence, Rule 303 of a gross deviation from the agreement.

7 **Sec. 48. 17-A MRSA §360, sub-§3,** as enacted by PL 1975, c.
8 499, §1, is amended to read:

9 3. It is a defense to a prosecution under this section that
10 the ~~actor~~ person reasonably believed that the owner would have
11 consented to ~~his~~ the person's conduct had he the owner known of
12 it.

13 **Sec. 49. 17-A MRSA §360, sub-§4** is enacted to read:

14 **4.** Violation of this section is a Class D crime.

15 **Sec. 50. 17-A MRSA §361,** as amended by PL 1977, c. 671, §25,
16 is repealed and the following enacted in its place:

17 **§361. Affirmative defense of claim of right**

18 It is an affirmative defense to prosecution under this
19 chapter that the defendant acted in good faith under a claim of
20 right to property or services involved, including, in cases of
21 theft of a trade secret, that the defendant rightfully knew the
22 trade secret or that it was available to the defendant from a
23 source other than the owner of the trade secret.

24 **Sec. 51. 17-A MRSA §361-A** is enacted to read:

25 **§361-A. Permissible inferences against accused**

26 **1.** Proof that the defendant was in exclusive possession of
27 property that had recently been taken under circumstances
28 constituting a violation of this chapter, section 405 or of
29 chapter 27 gives rise to a permissible inference under the Maine
30 Rules of Evidence, Rule 303 that the defendant is guilty of the
31 theft or robbery of the property, as the case may be, and proof
32 that the theft or robbery occurred under circumstances
33 constituting a violation of section 401 also gives rise to a
34 permissible inference under the Maine Rules of Evidence, Rule 303
35 that the defendant in exclusive possession of property recently
36 so taken is guilty of the burglary.

37 **2.** Proof that the defendant concealed unpurchased property
38 stored, offered or exposed for sale while the defendant was still
39 on the premises of the place where it was stored, offered or
40 exposed or in a parking lot or public or private way immediately
41 after the property was taken.

2 adjacent thereto gives rise to a permissible inference under the
3 Maine Rules of Evidence, Rule 303 that the defendant obtained or
4 exercised unauthorized control over the property with the intent
5 to deprive the owner thereof.

6
7 **Sec. 52. 17-A MRSA §362**, as amended by PL 1997, c. 495, §2,
8 is repealed.

10 **Sec. 53. 17-A MRSA §401, sub-§1**, as amended by PL 1977, c.
11 510, §50, is repealed and the following enacted in its place:

12 1. A person is guilty of burglary if:

14 A. The person enters or surreptitiously remains in a
15 structure knowing that that person is not licensed or
16 privileged to do so, with the intent to commit a crime
17 therein. Violation of this paragraph is a Class C crime; or

18
19 B. The person violates paragraph A and:

20
21 (1) The person is armed with a firearm, or knows that
22 an accomplice is so armed. Violation of this
23 subparagraph is a Class A crime;

24
25 (2) The person intentionally or recklessly inflicts or
26 attempts to inflict bodily injury on anyone during the
27 commission of the burglary or an attempt to commit the
28 burglary or in immediate flight after the commission or
29 attempt. Violation of this subparagraph is a Class B
30 crime;

31
32 (3) The person is armed with a dangerous weapon other
33 than a firearm or knows that an accomplice is so
34 armed. Violation of this subparagraph is a Class B
35 crime;

36
37 (4) The violation is against a structure that is a
38 dwelling place. Violation of this subparagraph is a
39 Class B crime; or

40
41 (5) At the time of the burglary, the person has 2 or
42 more prior Class A, B or C convictions for any
43 combination of theft; any violation of this section or
44 section 651, 702 or 703; or attempts to commit any of
45 those crimes. Section 9-A governs the use of prior
46 convictions when determining a sentence. Violation of
47 this subparagraph is a Class B crime.

2 **Sec. 54. 17-A MRSA §401, sub-§2**, as amended by PL 1997, c.
477, §1, is repealed.

4 **Sec. 55. 17-A MRSA §401, sub-§3**, as amended by PL 1985, c.
282, §4, is further amended to read:

6 3. A person may be convicted both of burglary and of the
8 crime ~~which he~~ that the person committed or attempted to commit
10 after entering or remaining in the structure, but sentencing for
both crimes ~~shall be~~ is governed by section 1256.

12 **Sec. 56. 17-A MRSA §402, sub-§1**, as amended by PL 1995, c.
529, §1, is further amended to read:

14 1. A person is guilty of criminal trespass if, knowing that
16 that person is not licensed or privileged to do so, that person:

18 A. Enters any dwelling place. Violation of this paragraph
20 is a Class D crime;

22 B. Enters any structure that is locked or barred.
Violation of this paragraph is a Class E crime;

24 C. Enters any place from which that person may lawfully be
26 excluded and that is posted in accordance with subsection 4
28 or in a manner reasonably likely to come to the attention of
intruders or that is fenced or otherwise enclosed in a
manner designed to exclude intruders. Violation of this
paragraph is a Class E crime;

30 D. Remains in any place in defiance of a lawful order to
32 leave that was personally communicated to that person by the
34 owner or another authorized person. Violation of this
paragraph is a Class E crime;

36 E. Enters any place in defiance of a lawful order not to
38 enter that was personally communicated to that person by the
owner or another authorized person. Violation of this
paragraph is a Class E crime; or

40 F. Enters or remains in a cemetery or burial ground at any
42 time between 1/2 hour after sunset and 1/2 hour before
44 sunrise the following day, unless that person enters or
46 remains during hours in which visitors are permitted to
enter or remain by municipal ordinance or, in the case of a
privately owned and operated cemetery, by posting. Violation
of this paragraph is a Class E crime.

48 **Sec. 57. 17-A MRSA §402, sub-§2**, as amended by PL 1989, c.
50 793, is repealed.

2 **Sec. 58. 17-A MRSA §402, sub-§4**, as amended by PL 1999, c.
115, §1, is further amended by amending the first paragraph to
4 read:

6 4. For the purposes of subsection 1, paragraph C, property
is posted if it is marked with signs or paint in compliance with
8 this subsection. Any Proof that any posted sign or paint marking
10 is actually seen by an intruder is presumed to be gives rise to
12 permissible inference under the Maine Rules of Evidence, Rule 303
that such posted sign or paint marking is posted in a manner
reasonably likely to come to the attention of intruders.

14 **Sec. 59. 17-A MRSA §402-A, sub-§1, ¶B**, as enacted by PL 1999,
c. 434, §1, is amended to read:

16 B. At the time of the offense, has 2 prior convictions for
18 burglary in a dwelling place or criminal trespass in a
dwelling place. ~~For purposes of this paragraph, the dates~~
20 ~~of the prior convictions must precede the commission of the~~
~~offense by no more than 10 years. The date of a conviction~~
22 ~~is deemed to be the date that sentence is imposed, even~~
~~though an appeal was taken. The date of a commission of a~~
24 ~~prior offense is presumed to be that stated in the~~
~~complaint, information, indictment or other formal charging~~
26 ~~instrument, notwithstanding the use of the words "on or~~
~~about" or the equivalent. Section 9-A governs the use of~~
28 prior convictions when determining a sentence.

30 **Sec. 60. 17-A MRSA §403, sub-§1, ¶¶A and B**, as enacted by PL
1997, c. 372, §1, are amended to read:

32 A. Possesses or makes any tool, implement, instrument or
34 other article that is adapted, designed or commonly used for
advancing or facilitating crimes involving unlawful entry
36 into property or crimes involving forcible breaking of safes
or other containers or depositories of property, including,
38 but not limited to, an electronic device used as a code
grabber or a master key designed to fit more than one lock,
40 with intent to use such tool, implement, instrument or other
article to commit any such criminal offense. Violation of
42 this paragraph is a Class E crime; or

44 B. Transfers or possesses with the intent to transfer any
device described in paragraph A that that person knows is
46 designed or primarily useful for the commission of a crime
described in paragraph A. Violation of this paragraph is a
48 Class D crime.

2 **Sec. 61. 17-A MRSA §403, sub-§2**, as repealed and replaced by
PL 1997, c. 372, §1, is repealed.

4 **Sec. 62. 17-A MRSA §404, sub-§2**, as enacted by PL 1975, c.
499, §1, is amended to read:

6 2. ~~Upon proof~~ Proof that the defendant was the registered
8 owner of the vehicle, ~~it shall be presumed~~ gives rise to a
10 permissible inference under the Maine Rules of Evidence, Rule 303
that ~~he~~ the defendant was the person who permitted the vehicle to
12 enter or remain on the property.

14 **Sec. 63. 17-A MRSA §454**, as amended by PL 1989, c. 878, Pt.
B, §16, is further amended to read:

16 **§454. Tampering with a witness, informant, juror or victim**

18 1. A person is guilty of tampering with a witness, or
informant ~~or~~ victim if, believing that an official proceeding, as
20 defined in section 451, subsection 5, paragraph A, or an official
criminal investigation is pending or will be instituted, ~~that~~
22 ~~person~~ the actor:

24 A. Induces or otherwise causes, or attempts to induce or
cause, a witness, or informant ~~or~~ victim:

26 (1) To testify or inform falsely; or

28 (2) To withhold any testimony, information or
30 evidence~~;~~.

32 Violation of this paragraph is a Class C crime;

34 B. Uses force, violence or intimidation, or promises,
offers or gives any pecuniary benefit with the intent to
36 induce a witness, or informant ~~or~~ victim:

38 (1) To withhold any testimony, information or evidence;

40 (2) To refrain from attending any a criminal
proceeding or criminal investigation; or

42 (3) To refrain from attending any other proceeding or
44 investigation to which the witness, or informant ~~or~~ victim
has been summoned by legal process~~+-or~~.

46 Violation of this paragraph is a Class C crime; or

48 C. Solicits, accepts or agrees to accept any pecuniary
50 benefit for ~~doing--any--of--the--things~~ committing an act

2 specified in paragraph A, subparagraph (1), or in paragraph
B, subparagraph (1), (2) or (3). Violation of this
paragraph is a Class C crime.

4
6 1-A. A person is guilty of tampering with a juror, if that
person contacts, by any means, a person who is a juror or any
other person the actor believes is in a position to influence a
8 juror and the actor does so with the intention of influencing the
juror in the performance of the juror's duty, the actor:

10
12 A. Contacts by any means a person who is a juror or any
other person that the actor believes is in a position to
14 influence a juror and the actor does so with the intention
of influencing the juror in the performance of the juror's
duty. Violation of this paragraph is a Class C crime; or

16
18 B. Violates paragraph A and the proceeding the juror is
involved in is a criminal proceeding for murder or a Class A
crime. Violation of this paragraph is a Class B crime.

20
22 1-B. A person is guilty of tampering with a victim if,
believing that an official proceeding, as defined in section 451,
24 subsection 5, paragraph A, or an official criminal investigation
is pending or will be instituted, the actor:

26 A. Induces or otherwise causes, or attempts to induce or
cause, a victim:

28 (1) To testify or inform falsely; or

30 (2) To withhold testimony, information or evidence.

32 Violation of this paragraph is a Class B crime;

34 B. Uses force, violence or intimidation, or promises,
36 offers or gives pecuniary benefit with the intent to induce
a victim:

38 (1) To withhold testimony, information or evidence;

40 (2) To refrain from attending a criminal proceeding or
42 criminal investigation; or

44 (3) To refrain from attending any other proceeding or
46 investigation to which the victim has been summoned by
legal process.

48 Violation of this paragraph is a Class B crime; or

2 C. Solicits, accepts or agrees to accept pecuniary benefit
3 for committing an act specified in paragraph A, subparagraph
4 (1), or in paragraph B, subparagraph (1), (2) or (3).

6 Violation of this paragraph is a Class B crime.

8 ~~2. -- Tampering with a witness, informant or juror is a Class~~
9 ~~C crime. -- Tampering with a victim is a Class B crime.~~

10 ~~4. -- Notwithstanding subsection 2, when the most serious~~
11 ~~charge or charges against the defendant include murder or a Class~~
12 ~~A crime, tampering with the victim of any crime charged or a~~
13 ~~juror involved in the criminal proceedings is a Class B crime.~~

14 **Sec. 64. 17-A MRSA §502, sub-§2**, as enacted by PL 1975, c.
15 499, §1, is repealed and the following enacted in its place:

17 2. A person is guilty of failure to disperse if the person
18 knowingly fails to comply with an order made pursuant to
19 subsection 1 and:

21 A. The person is a participant in the course of disorderly
22 conduct. Violation of this paragraph is a Class D crime; or

23 B. The person is in the immediate vicinity of the
24 disorderly conduct. Violation of this paragraph is a Class
25 E crime.

27 **Sec. 65. 17-A MRSA §502, sub-§3**, as enacted by PL 1975, c.
28 499, §1, is repealed.

30 **Sec. 66. 17-A MRSA §506-A, sub-§1**, as amended by PL 1997, c.
31 267, §2 and affected by §3, is repealed and the following enacted
32 in its place:

33 1. A person is guilty of harassment if, without reasonable
34 cause:

35 A. The person engages in any course of conduct with the
36 intent to harass, torment or threaten another person after
37 having been forbidden to do so by any sheriff, deputy
38 sheriff, constable, police officer or justice of the peace
39 or by a court in a protective order issued under Title 5,
40 section 4654 or 4655 or Title 19-A, section 4006 or 4007 or,
41 if the person is an adult in the custody or under the
42 supervision of the Department of Corrections, after having
43 been forbidden to engage in such conduct by the Commissioner
44 of Corrections, the chief administrative officer of the
45 facility, the correctional administrator for the region or
46 the chief administrative officer of the facility.

2 their designees. Violation of this paragraph is a Class E
3 crime; or

4 B. The person violates paragraph A and, at the time of the
5 harassment, the person has 2 or more prior Maine convictions
6 for violations of this section in which the victim was the
7 same person or a member of that victim's immediate family.
8 Section 9-A governs the use of prior convictions when
9 determining a sentence. Violation of this paragraph is a
10 Class C crime.

12 **Sec. 67. 17-A MRSA §506-A, sub-§2,** as amended by PL 1993, c.
13 475, §5, is repealed.

14 **Sec. 68. 17-A MRSA §553, sub-§1,** as enacted by PL 1975, c.
15 499, §1, is amended to read:

18 1. A person is guilty of abandonment of a child if, being a
19 parent, ~~guardian~~ guardian or other person legally charged with the
20 long-term care and custody of a child under ~~the age of~~ 14 years
21 of age, or a person to whom such ~~the long-term~~ care and custody
22 of a child under 14 years of age has been expressly delegated, ~~he~~
23 ~~leaves the child in any place with the intent to abandon him.;~~

24 A. The person leaves the child in a place with the intent
25 to abandon the child. Violation of this paragraph is a
26 Class D crime; or

28 B. The person leaves the child who is less than 6 years of
29 age in a place with the intent to abandon the child.
30 Violation of this paragraph is a Class C crime.

32 **Sec. 69. 17-A MRSA §553, sub-§2,** as amended by PL 1995, c.
33 694, Pt. C, §2 and affected by Pt. E, §2, is repealed.

36 **Sec. 70. 17-A MRSA §556, sub-§1,** as amended by PL 1989, c.
37 401, Pt. A, §7, is repealed and the following enacted in its
38 place:

40 1. A person is guilty of incest if the person is at least
41 18 years of age and:

42 A. Engages in sexual intercourse with another person who
43 the actor knows is related to the actor within the 2nd
44 degree of consanguinity. Violation of this paragraph is a
45 Class D crime; or

48 B. Violates paragraph A and, at the time of the incest, the
49 person has 2 or more prior Maine convictions for violations
50 of this section. Section 9-A governs the use of prior

2 convictions when determining a sentence. Violation of this
3 paragraph is a Class C crime.

4 **Sec. 71. 17-A MRSA §556, sub-§1-C** is enacted to read:

6 1-C. As used in this section, "related to the actor within
7 the 2nd degree of consanguinity" has the following meanings.

8
9 A. When the actor is a woman, it means the other person is
10 her father, grandfather, son, grandson, brother, brother's
11 son, sister's son, father's brother or mother's brother.

12
13 B. When this actor is a man, it means the other person is
14 his mother, grandmother, daughter, granddaughter, sister,
15 brother's daughter, sister's daughter, father's sister or
16 mother's sister.

18 **Sec. 72. 17-A MRSA §556, sub-§2**, as amended by PL 1993, c.
19 451, §3, is repealed.

20 **Sec. 73. 17-A MRSA §651, sub-§1**, as repealed and replaced by
21 PL 1975, c. 740, §73, is amended to read:

24 1. A person is guilty of robbery if he ~~he~~ the person commits
25 or attempts to commit theft and at the time of ~~his~~ the person's
26 actions:

28 A. ~~He~~ The actor recklessly inflicts bodily injury on
29 another. Violation of this paragraph is a Class B crime;

30
31 B. ~~He~~ The actor threatens to use force against any person
32 present with the intent:

34 (1) ~~to~~ To prevent or overcome resistance to the taking
35 of the property, or to the retention of the property
36 immediately after the taking; or

38 (2) ~~to~~ To compel the person in control of the property
39 to give it up or to engage in other conduct ~~which~~ that
40 aids in the taking or carrying away of the property.

42 Violation of this paragraph is a Class B crime;

44 C. ~~He~~ The actor uses physical force on another with the
45 intent enumerated specified in paragraph B, subparagraphs
46 subparagraph (1) or (2). Violation of this paragraph is a
47 Class A crime;

48

2 D. ~~He~~ The actor intentionally inflicts or attempts to
3 inflict bodily injury on another. Violation of this
4 paragraph is a Class A crime; or

6 E. ~~He or an accomplice to his knowledge~~ The actor is armed
7 with a dangerous weapon in the course of a robbery as
8 defined in paragraphs A through D or knows that the
9 accomplice is so armed. Violation of this paragraph is a
10 Class A crime.

12 **Sec. 74. 17-A MRSA §651, sub-§2**, as repealed and replaced by
13 PL 1975, c. 740, §73, is repealed.

14 **Sec. 75. 17-A MRSA §703, sub-§1**, as amended by PL 1975, c.
15 740, §77, is further amended to read:

16 1. A person is guilty of forgery if, with the intent to
17 defraud or deceive another person or government, ~~he~~:

20 A. ~~Falsely~~ The person falsely makes, completes, endorses or
21 alters a written instrument, or knowingly utters or
22 possesses such an instrument. Violation of this paragraph
23 is a Class D crime; or

24 A-1. The person violates paragraph A and:

26 (1) The face value of the written instrument or the
27 aggregate value of the instruments is more than
28 \$10,000. Violation of this subparagraph is a Class B
29 crime;

32 (2) The face value of the written instrument or the
33 aggregate value of the instruments is more than \$2,000
34 but not more than \$10,000. Violation of this
35 subparagraph is a Class C crime; or

36 (3) At the time of the forgery, the person has 2 prior
37 convictions for any combination of the following:
38 theft; violation or attempted violation of this
39 section; any violation or attempted violation of
40 section 401 if the intended crime within the structure
41 is theft; any violation or attempted violation of
42 section 651; or any violation or attempted violation of
43 section 702 or 708. Section 9-A governs the use of
44 prior convictions when determining a sentence.
45 Violation of this subparagraph is a Class C crime;

48 B. ~~Causes~~ The person causes another, by deception, to sign
or execute a written instrument, or utters such an

instrument. Violation of this paragraph is a Class D crime;
or

B-1. The person violates paragraph B and:

(1) The face value of the written instrument or the aggregate value of the instruments is more than \$10,000. Violation of this subparagraph is a Class B crime;

(2) The face value of the written instrument or the aggregate value of the instruments is more than \$2,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime; or

(3) At the time of the forgery, the person has 2 prior convictions for any combination of the following: theft; violation or attempted violation of this section; any violation or attempted violation of section 401 if the intended crime within the structure is theft; any violation or attempted violation of section 651; or any violation or attempted violation of section 702 or 708. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.

Sec. 76. 17-A MRSA §703, sub-§2, as amended by PL 1995, c. 224, §6, is repealed.

Sec. 77. 17-A MRSA §708, sub-§1, as enacted by PL 1975, c. 499, §1, is amended to read:

1. ~~A person is guilty of negotiating a worthless instrument if he intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.;~~

A. The person intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee. Violation of this paragraph is a Class E crime; or

B. The person violates paragraph A and:

(1) The face value of the written instrument or the aggregate value of the instruments is more than \$10,000. Violation of this subparagraph is a Class B crime;

(2) The face value of the written instrument or the aggregate value of the instruments is more than \$2,000

2 but not more than \$10,000. Violation of this
3 subparagraph is a Class C crime;

4 (3) The face value of the negotiable instrument is
5 more than \$1,000 but not more than \$2,000. Violation
6 of this subparagraph is a Class D crime; or

7 (4) At the time of negotiating a worthless instrument,
8 the person has 2 prior convictions for any combination
9 of the following: theft; violation or attempted
10 violation of this section; any violation or attempted
11 violation of section 401 if the intended crime within
12 the structure is theft; any violation or attempted
13 violation of section 651; or any violation or attempted
14 violation of section 702 or 708. Section 9-A governs
15 the use of prior convictions when determining a
16 sentence. Violation of this subparagraph is a Class C
17 crime.

18
19 **Sec. 78. 17-A MRSA §708, sub-§2, as amended by PL 1995, c. 38,**
20 **§1, is further amended to read:**

21
22 **2. ~~It shall be presumed~~ Proof of the following gives rise**
23 **to a permissible inference under the Maine Rules of Evidence,**
24 **Rule 303 that the person issuing or negotiating the instrument**
25 **knew that it would not be honored ~~upon proof that:~~**

26
27 **A. The drawer had no account with the drawee at the time**
28 **the instrument was negotiated; or**

29
30 **B. Payment was refused by the drawee for lack of funds upon**
31 **presentment made within the time frame specified in Title**
32 **11, section 3-1304, and the drawer failed to honor the**
33 **drawer's contract within 5 days after actual receipt of a**
34 **notice of dishonor, as defined in Title 11, section 3-1503,**
35 **provided that this time limit is tolled during one**
36 **subsequent representment of the negotiable instrument.**

37
38 **Sec. 79. 17-A MRSA §708, sub-§2-A, ¶¶A and B, as enacted by PL**
39 **1997, c. 253, §1, are amended to read:**

40
41 **A. ~~It is presumed that the person who issued or negotiated~~**
42 **~~the instrument had no account with the drawee at the time~~**
43 **~~the instrument was issued or negotiated if~~ Proof that there**
44 **is a purported stamp or writing of the drawee, payor bank or**
45 **presenting bank on or accompanying the instrument that**
46 **states "no account," "account closed" or some other**
47 **terminology indicating that the instrument was not honored**
48 **because no account existed gives rise to a permissible**
49 **inference under the Maine Rules of Evidence, Rule 303 that**
50 **the instrument was not honored because no account existed**

2 the person who issued or negotiated the instrument has no
3 account with the drawee at the time the instrument was
4 issued or negotiated.

5 B. ~~It is presumed that the person who issued or negotiated~~
6 ~~the instrument had insufficient funds with the drawee at the~~
7 ~~time the instrument was issued or negotiated.~~ Proof that
8 there is a purported stamp or writing of the drawee, payor
9 bank or presenting bank on or accompanying the instrument
10 that states "insufficient funds," "NSF" or some other
11 terminology indicating that the instrument was not honored
12 due to lack of funds gives rise to a permissible inference
13 under the Maine Rules of Evidence, Rule 303 that the person
14 who issued or negotiated the instrument had insufficient
15 funds with the drawee at the time the instrument was issued
16 or negotiated.

17 **Sec. 80. 17-A MRSA §708, sub-§3-A,** as enacted by PL 1983, c.
18 198, §1, is amended to read:

19 **3-A.** Amounts of face value of negotiable instruments
20 involved in violations of this section committed pursuant to one
21 scheme or course of conduct, whether the instruments were issued
22 or negotiated to the same person or several persons, may be
23 aggregated to charge a single violation of this section of
24 appropriate class. Subject to the requirement that the conduct
25 of the defense shall may not be prejudiced by lack of fair notice
26 or by surprise, the court may at any time order that a single
27 aggregated count be considered as separate violations of this
28 section. Ne An aggregated count of violations of this section
29 may not be deemed duplicitous because of such an order and no
30 election may be required. Prosecution may be brought in any
31 venue in which one of the violations of this section which that
32 have been aggregated was committed.

33 **Sec. 81. 17-A MRSA §708, sub-§4,** as amended by PL 1995, c.
34 224, §7, is repealed.

35 **Sec. 82. 17-A MRSA §752-B. sub-§1,** as enacted by PL 1989, c.
36 446, §2, is amended to read:

37 **1.** A person is guilty of unlawful interference with a law
38 enforcement dog if ~~that~~ the person intentionally or knowingly:

39 **A.** Kills, mutilates or permanently disables any dog which
40 that the person knows or reasonably should have known is
41 certified for law enforcement use. Violation of this
42 paragraph is a Class C crime; or

2 B. Torments, beats, strikes, injures, temporarily disables
or otherwise mistreats any dog ~~which~~ that the person knows
4 or reasonably should have known is certified for law
enforcement use. Violation of this paragraph is a Class D
6 crime.

8 **Sec. 83. 17-A MRSA §752-B, sub-§3**, as enacted by PL 1989, c.
446, §2, is repealed.

10 **Sec. 84. 17-A MRSA §753, sub-§1**, as enacted by PL 1975, c.
12 499, §1, is repealed.

14 **Sec. 85. 17-A MRSA §753, sub-§1-A** is enacted to read:

16 1-A. A person is guilty of hindering apprehension or
prosecution if:

18 A. With the intent to hinder, prevent or delay the
discovery, apprehension, prosecution, conviction or
20 punishment of another person for the commission of a crime
the person:

22 (1) Harbors or conceals the other person;

24 (2) Provides or aids in providing a dangerous weapon,
26 transportation, disguise or other means of avoiding
discovery or apprehension;

28 (3) Conceals, alters or destroys any physical evidence
30 that might aid in the discovery, apprehension or
conviction of the other person;

32 (4) Warns the other person of impending discovery or
34 apprehension, except that this subsection does not
36 apply to a warning given in connection with an effort
to bring another into compliance with the law;

38 (5) Obstructs by force, intimidation or deception
40 anyone from performing an act that might aid in the
discovery, apprehension, prosecution or conviction of
42 the other person; or

44 (6) Aids the other person to safeguard the proceeds of
or to profit from such a crime; and

46 B. One of the following occurs:

48 (1) The person knew of the conduct of the other person
that has in fact resulted in the charge of murder or a
50 Class A crime or that has in fact rendered the other

2 person liable to such a charge. Violation of this
3 subparagraph is a Class B crime;

4 (2) The conduct of the other person has in fact
5 resulted in the charge of murder or a Class A crime or
6 has in fact rendered the other person liable to such a
7 charge. Violation of this subparagraph is a Class C
8 crime;

10 (3) The other person is charged or is liable to be
11 charged with a Class B crime. Violation of this
12 subparagraph is a Class C crime;

14 (4) The other person is charged or is liable to be
15 charged with a Class C crime. Violation of this
16 subparagraph is a Class D crime; or

18 (5) The other person is charged or is liable to be
19 charged with a Class D or E crime. Violation of this
20 subparagraph is a Class E crime.

22 **Sec. 86. 17-A MRSA §753, sub-§2,** as repealed and replaced by
23 PL 1977, c. 510, §60, is repealed.

26 **Sec. 87. 17-A MRSA §753, sub-§2-A,** as enacted by PL 1981, c.
27 317, §23, is amended to read:

28 **2-A.** Hindering apprehension or prosecution when the other
29 person has committed a crime against another jurisdiction shall
30 be is graded as in subsection 2 1. For purposes of this
31 subsection, the classification of the crime of the other
32 jurisdiction shall--be is determined according to the formula
33 contained in section 4-A, subsection 3, as if it were a crime of
34 this jurisdiction outside this Code.

36 **Sec. 88. 17-A MRSA §753, sub-§3,** as enacted by PL 1977, c.
37 510, §61, is amended to read:

40 **3.** As used in subsection 1, "crime" includes juvenile
41 offenses. The sentencing class for hindering the apprehension or
42 prosecution of a juvenile shall--be is determined in the same
43 manner as if the juvenile were a person 18 years of age or ~~ever~~
44 older, provided that if the offense committed by the juvenile
45 would not have been a crime if committed by a person 18 years of
46 age or ~~ever~~ older, hindering ~~apprehension~~ apprehension or
47 prosecution is a Class E crime.

48 **Sec. 89. 17-A MRSA §754, sub-§§1 and 2,** as repealed and
49 replaced by PL 1977, c. 510, §62, are amended to read:

2 if: 1. A person is guilty of obstructing criminal prosecution

4 A. ~~He~~ The person uses force, violence or intimidation, or
6 ~~he~~ the person promises, offers or gives any pecuniary
benefit to another, with the intent to induce the other:

8 (1) To refrain from initiating a criminal prosecution
or juvenile proceeding; or

10 (2) To refrain from continuing with a criminal
12 prosecution or juvenile proceeding ~~which-he~~ that the
other person has initiated; or

14 B. ~~He~~ The person solicits, accepts or agrees to accept any
16 pecuniary benefit in consideration of ~~his~~ doing any of the
things specified in this subsection.

18 2. This section shall ~~shall~~ does not apply to conduct authorized
20 by Title 15, section 891.

22 **Sec. 90. 17-A MRSA §755, sub-§1**, as enacted by PL 1975, c.
499, §1, is repealed and the following enacted in its place:

24 1. A person is guilty of escape if without official
26 permission the person intentionally:

28 A. Leaves official custody or intentionally fails to return
to official custody following temporary leave granted for a
30 specific purpose or a limited period. Violation of this
paragraph is a Class C crime; or

32 B. Violates paragraph A and at the time of the escape the
34 person uses physical force against another person, threatens
to use physical force or is armed with a dangerous weapon.
36 Violation of this paragraph is a Class B crime.

38 **Sec. 91. 17-A MRSA §755, sub-§1-A**, as enacted by PL 1985, c.
821, §1, is repealed and the following enacted in its place:

40 1-A. A person is guilty of escape from intensive
42 supervision imposed pursuant to chapter 52 if without official
permission the person intentionally:

44 A. Fails to appear for work, for school or for a meeting
46 with the person's Intensive Supervision Program officer or
otherwise intentionally violates a curfew, time or travel
48 restriction. Violation of this paragraph is a Class C
crime; or

50

2 B. Violates paragraph A and at the time of the escape the
3 person uses physical force against another person, threatens
4 to use physical force or is armed with a dangerous weapon.
5 Violation of this paragraph is a Class B crime.

6 **Sec. 92. 17-A MRSA §755, sub-§1-B**, as enacted by PL 1991, c.
7 845, §1, is repealed and the following enacted in its place:

8
9 1-B. A person is guilty of escape from supervised community
10 confinement granted pursuant to Title 34-A, section 3036-A if
11 without official permission the person intentionally:

12
13 A. Fails to appear for work, for school or for a meeting
14 with that person's supervising officer or intentionally
15 fails to return to the correctional facility from which
16 transfer was made upon the direction of the Commissioner of
17 Corrections or otherwise intentionally violates a curfew,
18 residence, time or travel restriction. Violation of this
19 paragraph is a Class C crime; or

20
21 B. Violates paragraph A and at the time of the escape the
22 person uses physical force against another person, threatens
23 to use physical force or is armed with a dangerous weapon.
24 Violation of this paragraph is a Class B crime.

25 **Sec. 93. 17-A MRSA §755, sub-§1-C**, as enacted by PL 1993, c.
26 440, §1, is repealed and the following enacted in its place:

27
28 1-C. A person is guilty of escape from furlough or other
29 rehabilitative program authorized under Title 34-A, section 3035
30 if the person intentionally:

31
32 A. Goes to a location other than that permitted by the
33 terms of the leave. Violation of this paragraph is a Class
34 D crime; or

35
36 B. Violates paragraph A and at the time of the escape the
37 person uses physical force against another person, threatens
38 to use physical force or is armed with a dangerous weapon.
39 Violation of this paragraph is a Class B crime.

40
41 **Sec. 94. 17-A MRSA §755, sub-§1-D** is enacted to read:

42
43 1-D. A person is guilty of escape during transport if the
44 person escapes from arrest or escapes from custody while being
45 transported to a jail, police station or any other facility
46 enumerated in subsection 3 pursuant to an arrest, unless at the
47 time of the escape the person uses physical force against another
48 person, threatens to use physical force or is armed with a

2 dangerous weapon. Violation of this subsection is a Class D
3 crime.

4
5 **Sec. 95. 17-A MRSA §755, sub-§3-A,** as amended by PL 1991, c.
6 845, §2, is repealed and the following enacted in its place:

7 **3-A.** The following provisions govern prosecution for escape.

8
9 A. Prosecution for escape or attempted escape from any
10 institution included in subsection 3 must be in the county
11 in which the institution is located.

12
13 B. Prosecution for escape or attempted escape of a person
14 who has been transferred from one institution to another
15 must be in the county in which the institution the person
16 was either transferred from or transferred to is located.

17
18 C. Prosecution for an escape or attempted escape for
19 failure to return to official custody following temporary
20 leave granted for a specific purpose or a limited period
21 must be in the county in which the institution from which
22 the leave was granted is located or in any county to which
23 leave was granted.

24
25 D. Prosecution for escape or attempted escape from
26 intensive supervision must be in the county in which the
27 escape or attempted escape occurred.

28
29 E. Prosecution for escape or attempted escape from
30 supervised community confinement must be in the county in
31 which the institution from which the transfer to supervised
32 community confinement was granted is located or in any
33 county to which the transfer to supervised community
34 confinement was granted.

35
36 Notwithstanding other provisions of this section, in all cases of
37 escape, prosecution may be in the county or division in which the
38 person who has escaped was apprehended.

39
40 **Sec. 96. 17-A MRSA §755, sub-§4.** as amended by PL 1993, c.
41 440, §2, is repealed.

42
43 **Sec. 97. 17-A MRSA §756, sub-§1,** as enacted by PL 1975, c.
44 499, §1, is amended to read:

45
46 **1.** A person is guilty of aiding escape if, with the intent
47 to aid any another person to violate section 755:
48

2 A. ~~He conveys~~ The actor conveys or attempts to convey to
3 such the other person, any contraband. Violation of this
4 paragraph is a Class C crime;

5 A-1. The actor conveys or attempts to convey to the other
6 person contraband that includes a dangerous weapon.
7 Violation of this paragraph is a Class B crime;

8 B. ~~He furnishes~~ The actor furnishes plans, information or
9 other assistance to such the other person. Violation of
10 this paragraph is a Class C crime; or

11 C. ~~Being a person whose~~ The actor whose official duties
12 include maintaining persons in official custody, as defined
13 in section 755, subsection 3, he permits such violation, or
14 an attempt at such violation. Violation of this paragraph
15 is a Class C crime.

16 **Sec. 98. 17-A MRSA §756, sub-§3,** as enacted by PL 1975, c.
17 499, §1, is repealed.

18 **Sec. 99. 17-A MRSA §853-A, sub-§1,** as enacted by PL 1975, c.
19 499, §1, is amended to read:

20 1. A person is guilty of engaging in prostitution if he
21 ~~engages in prostitution as defined in section 851.;~~

22 A. The person engages in prostitution as defined in section
23 851. Violation of this paragraph is a Class E crime, except
24 that the sentencing alternative may include only the
25 penalties provided in section 1301; or

26 B. The person violates paragraph A and, at the time of the
27 offense, the person has one prior conviction for engaging in
28 prostitution. Section 9-A governs the use of prior
29 convictions when determining a sentence, except that, for
30 the purposes of this paragraph, the date of the prior
31 conviction may not precede the commission of the offense by
32 more than 2 years. Violation of this paragraph is a Class D
33 crime.

34 **Sec. 100. 17-A MRSA §853-A, sub-§2,** as amended by PL 1987, c.
35 361, §2, is repealed.

36 **Sec. 101. 17-A MRSA §853-A, sub-§3,** as enacted by PL 1989, c.
37 431, §2, is repealed.

38 **Sec. 102. 17-A MRSA §853-B, sub-§1,** as enacted by PL 1981, c.
39 611, §2, is amended to read:

1. A person is guilty of engaging a prostitute if he
engages ~~a prostitute within the meaning of section 851,~~
~~subsection 1-A.~~

A. The person engages a prostitute within the meaning of
section 851, subsection 1-A. Violation of this paragraph is
a Class E crime, except that the sentencing alternative may
include only the penalties provided in section 1301; or

B. The person violates paragraph A and, at the time of the
offense, the person has one prior conviction for engaging a
prostitute. Section 9-A governs the use of prior
convictions when determining a sentence, except that, for
the purposes of this paragraph, the date of the prior
conviction may not precede the commission of the offense by
more than 2 years. Violation of this paragraph is a Class D
crime.

Sec. 103. 17-A MRSA §853-B, sub-§2, as enacted by PL 1981, c.
611, §2, is repealed.

Sec. 104. 17-A MRSA §853-B, sub-§3, as enacted by PL 1989, c.
431, §3, is repealed.

Sec. 105. 17-A MRSA §854, sub-§1, as amended by PL 1995, c.
72, §2, is further amended to read:

1. A person is guilty of indecent conduct if:

A. In a public place:

(1) The actor engages in a sexual act, as defined in
section 251. Violation of this subparagraph is a Class
E crime; or

(2) The actor knowingly exposes the actor's genitals
under circumstances that, in fact, are likely to cause
affront or alarm. Violation of this subparagraph is a
Class E crime;

(3) The actor violates subparagraph (1) and the actor
has 2 or more prior convictions for violation of this
section or section 256. Section 9-A governs the use of
prior convictions when determining a sentence.
Violation of this subparagraph is a Class D crime; or

(4) The actor violates subparagraph (2) and the actor
has 2 or more prior convictions for violation of this
section or section 256. Section 9-A governs the use of

prior convictions when determining a sentence.
Violation of this subparagraph is a Class D crime;

B. In a private place, the actor exposes the actor's genitals with the ~~intention~~ intent that the actor be seen from a public place or from another private place.
Violation of this paragraph is a Class E crime; or

C. In a private place, the actor exposes the actor's genitals with the ~~intention~~ intent that the actor be seen by another person in that private place under circumstances that the actor knows are likely to cause affront or alarm.
Violation of this paragraph is a Class E crime;

D. The actor violates paragraph B and the actor has 2 or more prior convictions for violation of this section or section 256. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime; or

E. The actor violates paragraph C and the actor has 2 or more prior convictions for violation of this section or section 256. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime.

Sec. 106. 17-A MRSA §854, sub-§3, as amended by PL 1997, c. 256, §1, is repealed.

Sec. 107. 17-A MRSA §905-A, sub-§3, as enacted by PL 1999, c. 190, §3, is amended to read:

3. ~~Open-proof~~ Proof of actual or constructive notice of cancellation, ~~it is presumed~~ gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that a the person who presented a the canceled credit or debit card knew it had been canceled.

Sec. 108. 17-A MRSA §907, sub-§1, as amended by PL 1997, c. 372, §2, is further amended to read:

1. A person is guilty of possession or transfer of theft devices if ~~that person~~:

A. ~~Possesses~~ The person possesses or makes any device, instrument, apparatus or other article that is designed or primarily useful for advancing or facilitating the commission of theft, with the intent to use such device, instrument, apparatus or other article to commit any such

2 criminal offense. Violation of this paragraph is a Class E
3 crime; or

4 B. Transfers The person transfers or possesses with the
5 intent to transfer any device described in paragraph A that
6 the person knows is designed or primarily useful for the
7 commission of theft. Violation of this paragraph is a Class
8 D crime.

10 **Sec. 109. 17-A MRSA §907, sub-§2,** as amended by PL 1997, c.
11 372, §2, is repealed.

12 **Sec. 110. 17-A MRSA §908, sub-§1,** as enacted by PL 1995, c.
13 681, §1, is amended to read:

14 1. A home repair seller is guilty of home repair fraud if
15 ~~that~~ the seller knowingly enters into an agreement or contract,
16 written or oral, with any person for home repair services and the
17 seller, at the time of entering into that agreement or contract:

18

19 A. Intentionally misrepresents a material fact relating to
20 the terms of the agreement or contract or misrepresents a
21 preexisting or existing condition of any portion of the
22 property that is the subject of the home repair services.
23 Violation of this paragraph is a Class D crime;

24

25 B. Intentionally creates or reinforces an impression
26 relating to the terms of the agreement or contract that is
27 false and that the seller does not believe to be true or
28 fails to correct such an impression that the seller had
29 previously created or reinforced. Violation of this
30 paragraph is a Class D crime;

31

32 C. Intentionally promises performance under the terms of
33 the agreement or contract that the seller does not intend to
34 perform or that the seller knows will not be performed.
35 Violation of this paragraph is a Class D crime;

36

37 D. Intentionally uses or employs deception, false pretense
38 or false promise in securing the agreement or contract.
39 Violation of this paragraph is a Class D crime; e#

40

41 E. Knows that the property that is the subject of the home
42 repair services was previously damaged or destroyed by the
43 seller with the intent to obtain the agreement or contract.
44 Violation of this paragraph is a Class D crime;

45

46 F. Violates paragraph A and the person has 2 or more prior
47 Maine convictions for violation of this section. Section

2 9-A governs the use of prior convictions when determining a
sentence. Violation of this paragraph is a Class C crime;

4 G. Violates paragraph B and the person has 2 or more prior
Maine convictions for violation of this section. Section
6 9-A governs the use of prior convictions when determining a
sentence. Violation of this paragraph is a Class C crime;

8
10 H. Violates paragraph C and the person has 2 or more prior
Maine convictions for violation of this section. Section
12 9-A governs the use of prior convictions when determining a
sentence. Violation of this paragraph is a Class C crime; or

14 I. Violates paragraph D and the person has 2 or more prior
Maine convictions for violation of this section. Section
16 9-A governs the use of prior convictions when determining a
sentence. Violation of this paragraph is a Class C crime; or

18
20 J. Violates paragraph E and the person has 2 or more prior
Maine convictions for violation of this section. Section
22 9-A governs the use of prior convictions when determining a
sentence. Violation of this paragraph is a Class C crime.

24 **Sec. 111. 17-A MRSA §908, sub-§4**, as enacted by PL 1995, c.
681, §1, is repealed.

26
28 **Sec. 112. 17-A MRSA §1002-A, sub-§1, ¶¶A, B and C**, as enacted
by PL 1999, c. 163, §1, are amended to read:

30 A. Causes bodily injury to that other person. Violation of
this paragraph is a Class D crime;

32
34 B. That other person is a law enforcement officer in
uniform. Violation of this paragraph is a Class D crime;
36 or

38 C. Causes a reasonable person to suffer intimidation,
annoyance or alarm. Violation of this paragraph is a Class
40 E crime.

42 **Sec. 113. 17-A MRSA §1002-A, sub-§4**, as enacted by PL 1999, c.
163, §1, is amended to read:

44 ~~4. Violation of subsection 1, paragraph A or B is a Class D~~
~~crime. Violation of subsection 1, paragraph C is a Class E~~
46 ~~crime.~~ As part of every judgment of conviction and sentence
48 imposed, every laser pointer that constitutes the basis for
conviction under this section must be forfeited to the State and
the court shall so order, unless another person can satisfy the

2 court prior to the judgment and by a preponderance of the
evidence that such other person had a right to possess the laser
4 pointer, to the exclusion of the defendant, at the time of the
offense.

6 **Sec. 114. 17-A MRSA §1103, sub-§1**, as amended by PL 1993, c.
674, §1, is repealed.

8 **Sec. 115. 17-A MRSA §1103, sub-§§1-A and 1-B** are enacted to
10 read:

12 1-A. Except as provided in subsection 1-B, a person is
14 guilty of unlawful trafficking in a scheduled drug if the person
intentionally or knowingly trafficks in what the person knows or
16 believes to be a scheduled drug, which is in fact a scheduled
drug, and the drug is:

18 A. A schedule W drug. Violation of this paragraph is a
Class B crime;

20 B. A schedule X drug. Violation of this paragraph is a
22 Class C crime;

24 C. Marijuana in a quantity of 20 pounds or more. Violation
26 of this paragraph is a Class B crime;

28 D. Marijuana and the person grows or cultivates 500 or more
plants. Violation of this paragraph is a Class B crime;

30 E. Marijuana in a quantity of more than one pound.
32 Violation of this paragraph is a Class C crime;

34 F. Marijuana and the person grows or cultivates 100 or more
plants. Violation of this paragraph is a Class C crime;

36 G. A schedule Y drug. Violation of this paragraph is a
38 Class D crime; or

40 H. A schedule Z drug. Violation of this paragraph is a
Class D crime.

42 1-B. A person is not guilty of unlawful trafficking in a
44 scheduled drug if the conduct that constitutes the trafficking is
either:

46 A. Expressly authorized by Title 22 or Title 32; or

48 B. Expressly made a civil violation by Title 22.

2 **Sec. 116. 17-A MRSA §1103, sub-§2**, as amended by PL 1999, c.
374, §§2 and 3, is repealed.

4 **Sec. 117. 17-A MRSA §1103, sub-§3**, as amended by PL 1999, c.
790, Pt. A, §§19 and 20, is further amended to read:

6 ~~3. A person is presumed to be unlawfully trafficking in~~
8 ~~scheduled drugs if the person~~ Proof that the person intentionally
or knowingly possesses any scheduled drug that is, in fact of a
10 quantity, state or concentration as provided in this subsection,
12 gives rise to a permissible inference under the Maine Rules of
Evidence, Rule 303 that the person is unlawfully trafficking in
scheduled drugs:

- 14 A. More than one pound of marijuana;
- 16 B. Fourteen grams or more of cocaine or 4 grams or more of
- 18 cocaine in the form of cocaine base;
- 20 D. Lysergic acid diethylamide in any of the following
- 22 quantities, states or concentrations:
- 24 (1) Any compound, mixture, substance or solution in a
- liquid state that contains a detectable quantity of
- 26 lysergic acid diethylamide;
- (2) Fifty or more squares, stamps, tablets or units of
- 28 any compound, mixture or substance containing a
- detectable quantity of lysergic acid diethylamide; or
- 30 (3) Any quantity of any compound, mixture or substance
- 32 that, in the aggregate, contains 2,500 micrograms or
- 34 more of lysergic acid diethylamide; or
- 36 E. Fourteen grams or more of methamphetamine.

38 **Sec. 118. 17-A MRSA §1105**, as amended by PL 1999, c. 531, Pt.
I, §§1 to 5, is repealed.

40 **Sec. 119. 17-A MRSA §§1105-A to 1105-D** are enacted to read:

42 **§1105-A. Aggravated trafficking of scheduled drugs**

44 1. A person is guilty of aggravated trafficking in a
46 scheduled drug if the person violates section 1103 and:

- 48 A. The person trafficks in a scheduled drug with a child
who is in fact less than 18 years of age and the drug is:

2 (1) A schedule W drug. Violation of this subparagraph
3 is a Class A crime;

4 (2) Marijuana in a quantity of 20 pounds or more.
5 Violation of this subparagraph is a Class A crime;

6
7 (3) A schedule X drug. Violation of this subparagraph
8 is a Class B crime;

9
10 (4) Marijuana in a quantity of more than one pound.
11 Violation of this subparagraph is a Class B crime;

12
13 (5) A schedule Y drug. Violation of this subparagraph
14 is a Class C crime; or

15
16 (6) A schedule Z drug. Violation of this subparagraph
17 is a Class C crime;

18
19 B. At the time of the offense, the person has been
20 convicted of an offense under this chapter punishable by a
21 term of imprisonment of more than one year or under any law
22 of the United States, of another state or of a foreign
23 country relating to scheduled drugs, as defined in this
24 chapter, and punishable by a term of imprisonment of more
25 than one year and the drug is:

26
27 (1) A schedule W drug. Violation of this subparagraph
28 is a Class A crime;

29 (2) Marijuana in a quantity of 20 pounds or more.
30 Violation of this subparagraph is a Class A crime;

31 (3) A schedule X drug. Violation of this subparagraph
32 is a Class B crime;

33 (4) Marijuana in a quantity of more than one pound.
34 Violation of this subparagraph is a Class B crime;

35 (5) A schedule Y drug. Violation of this subparagraph
36 is a Class C crime; or

37 (6) A schedule Z drug. Violation of this subparagraph
38 is a Class C crime.

39
40 Section 9-A governs the use of prior convictions when
41 determining a sentence, except that, for the purposes of
42 this paragraph, the date of each prior conviction may
43 precede the commission of the offense being enhanced by more
44 than 10 years;

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C. At the time of the offense:

(1) The person:

(a) Uses a firearm;

(b) Carries a firearm;

(c) In furtherance of the offense, possesses a firearm; or

(d) Is armed with a firearm; and

(2) The drug is:

(a) A schedule W drug. Violation of this division is a Class A Crime;

(b) Marijuana in a quantity of 20 pounds or more. Violation of this division is a Class A crime;

(c) A schedule X drug. Violation of this division is a Class B crime;

(d) Marijuana in a quantity of more than one pound. Violation of this division is a Class B crime;

(e) A schedule Y drug. Violation of this division is a Class C crime; or

(f) A schedule Z drug. Violation of this division is a Class C crime;

D. At the time of the offense, the person trafficks in cocaine in a quantity of 112 grams or more or cocaine in the form of cocaine base in a quantity of 32 grams or more. Violation of this paragraph is a Class A crime;

E. At the time of the offense, the person is on a school bus or within 1,000 feet of the real property comprising a private or public elementary or secondary school and the drug is:

(1) A schedule W drug. Violation of this subparagraph is a Class A crime;

(2) Marijuana in a quantity of 20 pounds or more. Violation of this subparagraph is a Class A crime;

- 2 (3) A schedule X drug. Violation of this subparagraph
3 is a Class B crime;
- 4
- 6 (4) Marijuana in a quantity of more than one pound.
7 Violation of this subparagraph is a Class B crime;
- 8
- 10 (5) A schedule Y drug. Violation of this subparagraph
11 is a Class C crime; or
- 12 (6) A schedule Z drug. Violation of this subparagraph
13 is a Class C crime.

14 For purposes of this paragraph, "school bus" has the same
15 meaning as defined in Title 29-A, section 2301, subsection 5;

16

17 F. At the time of the offense, the person enlists or
18 solicits the aid of or conspires with a child who is in fact
19 less than 18 years of age to traffick in a scheduled drug
20 and the drug is:

- 22 (1) A schedule W drug. Violation of this subparagraph
23 is a Class A crime;
- 24
- 26 (2) Marijuana in a quantity of 20 pounds or more.
27 Violation of this subparagraph is a Class A crime;
- 28 (3) A schedule X drug. Violation of this subparagraph
29 is a Class B crime;
- 30
- 32 (4) Marijuana in a quantity of more than one pound.
33 Violation of this subparagraph is a Class B crime;
- 34 (5) A schedule Y drug. Violation of this subparagraph
35 is a Class C crime; or
- 36
- 38 (6) A schedule Z drug. Violation of this subparagraph
39 is a Class C crime;

40 G. At the time of the offense, the person trafficks in
41 methamphetamine in a quantity of 100 grams or more.
42 Violation of this paragraph is a Class A crime; or

44 H. At the time of the offense, the person trafficks in
45 heroin in a quantity of 6 grams or more or 270 or more
46 individual bags, folds, packages, envelopes or containers of
47 any kind containing heroin. Violation of this paragraph is
48 a Class A crime.

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(4) Is armed with a firearm.

2. Aggravated trafficking in or furnishing a counterfeit drug is a Class B crime.

3. If a person uses a motor vehicle to facilitate the aggravated trafficking in or furnishing of a counterfeit drug, the court may, in addition to other authorized penalties, suspend the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license or permit. The Secretary of State may not reinstate the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.

§1105-C. Aggravated furnishing of scheduled drugs

1. A person is guilty of aggravated furnishing of a scheduled drug if the person violates section 1106 and:

A. The person furnishes a scheduled drug to a child who is in fact less than 18 years of age and the drug is:

- (1) A schedule W drug. Violation of this subparagraph is a Class B crime;
- (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
- (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
- (4) A schedule Z drug. Violation of this subparagraph is a Class C crime;

B. At the time of the offense, the person has been convicted of any offense under this chapter punishable by a term of imprisonment of more than one year or under any law of the United States, of another state or of a foreign country relating to scheduled drugs, as defined in this

2 chapter, and punishable by a term of imprisonment of more
3 than one year and the drug is:

4 (1) A schedule W drug. Violation of this subparagraph
5 is a Class B crime;

6
7 (2) A schedule X drug. Violation of this subparagraph
8 is a Class C crime;

9
10 (3) A schedule Y drug. Violation of this subparagraph
11 is a Class C crime; or

12
13 (4) A schedule Z drug. Violation of this subparagraph
14 is a Class C crime.

15 Section 9-A governs the use of prior convictions when
16 determining a sentence, except that, for the purposes of
17 this paragraph, the date of each prior conviction may
18 precede the commission of the offense being enhanced by more
19 than 10 years;

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22 C. At the time of the offense:

23
24 (1) The person:

25
26 (a) Uses a firearm;

27
28 (b) Carries a firearm;

29
30 (c) In furtherance of the offense, possesses a
31 firearm; or

32
33 (d) Is armed with a firearm; and

34
35 (2) The drug is:

36
37 (a) A schedule W drug. Violation of this
38 division is a Class B crime;

39
40 (b) A schedule X drug. Violation of this
41 division is a Class C crime;

42
43 (c) A schedule Y drug. Violation of this
44 division is a Class C crime; or

45
46 (d) A schedule Z drug. Violation of this
47 division is a Class C crime;

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49 D. At the time of the offense, the person furnishes cocaine
50 in a quantity of 112 grams or more or cocaine in the form of

2 cocaine base in a quantity of 32 grams or more. Violation
3 of this paragraph is a Class B crime;

4 E. At the time of the offense, the person is on a school
5 bus or within 1,000 feet of the real property comprising a
6 private or public elementary or secondary school and the
7 drug is:

8 (1) A schedule W drug. Violation of this subparagraph
9 is a Class B crime;

10 (2) A schedule X drug. Violation of this subparagraph
11 is a Class C crime;

12 (3) A schedule Y drug. Violation of this subparagraph
13 is a Class C crime; or

14 (4) A schedule Z drug. Violation of this subparagraph
15 is a Class C crime.

16 For purposes of this paragraph, "school bus" has the same
17 meaning as defined in Title 29-A, section 2301, subsection 5;

18 F. At the time of the offense, the person enlists or
19 solicits the aid of or conspires with a child who is in fact
20 less than 18 years of age to furnish a scheduled drug and
21 the drug is:

22 (1) A schedule W drug. Violation of this subparagraph
23 is a Class B crime;

24 (2) A schedule X drug. Violation of this subparagraph
25 is a Class C crime;

26 (3) A schedule Y drug. Violation of this subparagraph
27 is a Class C crime; or

28 (4) A schedule Z drug. Violation of this subparagraph
29 is a Class C crime;

30 G. At the time of the offense, the person furnishes
31 methamphetamine in a quantity of 100 grams or more.
32 Violation of this paragraph is a Class B crime; or

33 H. At the time of the offense, the person furnishes heroin
34 in a quantity of 6 grams or more or 270 or more individual
35 bags, folds, packages, envelopes or containers of any kind
36 containing heroin. Violation of this paragraph is a Class B
37 crime.

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2 2. If a person uses a motor vehicle to facilitate the
3 aggravated furnishing of a scheduled drug, the court may, in
4 addition to other authorized penalties, suspend the person's
5 driver's license or permit, privilege to operate a motor vehicle
6 or right to apply for or obtain a license for a period not to
7 exceed 5 years. A suspension may not begin until after any
8 period of incarceration is served. If the court suspends a
9 person's driver's license or permit, privilege to operate a motor
10 vehicle or right to apply for or obtain a license, the court
11 shall notify the Secretary of State of the suspension and the
12 court shall take physical custody of the person's license or
13 permit. The Secretary of State may not reinstate the person's
14 driver's license or permit, privilege to operate a motor vehicle
15 or right to apply for or obtain a license unless the person
16 demonstrates that, after having been released and discharged from
17 any period of incarceration that may have been ordered, the
18 person has served the period of suspension ordered by the court.

19 **§1105-D. Aggravated cultivating of marijuana**

20 1. A person is guilty of aggravated cultivating of
21 marijuana if the person violates section 1117 and:

22 A. At the time of the offense, the person has been
23 convicted of any offense under this chapter punishable by a
24 term of imprisonment of more than one year or under any law
25 of the United States, of another state or of a foreign
26 country relating to scheduled drugs, as defined in this
27 chapter, and punishable by a term of imprisonment of more
28 than one year and the person grows or cultivates:

29 (1) Five hundred or more marijuana plants. Violation
30 of this subparagraph is a Class A crime;

31 (2) One hundred or more but fewer than 500 marijuana
32 plants. Violation of this subparagraph is a Class B
33 crime;

34 (3) More than 5 but fewer than 100 marijuana plants.
35 Violation of this subparagraph is a Class C crime; or

36 (4) Five or fewer marijuana plants. Violation of this
37 subparagraph is a Class D crime.

38 Section 9-A governs the use of prior convictions when
39 determining a sentence, except that, for the purposes of
40 this paragraph, the date of each prior conviction may
41 precede the commission of the offense being enhanced by more
42 than 10 years;

2 B. At the time of the offense:

4 (1) The person:

6 (a) Uses a firearm;

8 (b) Carries a firearm;

10 (c) In furtherance of the offense, possesses a
firearm; or

12 (d) Is armed with a firearm; and

14 (2) The person grows or cultivates:

16 (a) Five hundred or more marijuana plants.
Violation of this division is a Class A crime;

18 (b) One hundred or more but fewer than 500
marijuana plants. Violation of this division is a
Class B crime;

22 (c) More than 5 but fewer than 100 marijuana
plants. Violation of this division is a Class C
crime; or

24 (d) Five or fewer marijuana plants. Violation of
this division is a Class D crime;

30 C. At the time of the offense, the person enlists or
solicits the aid of or conspires with a child who is in fact
less than 18 years of age to cultivate marijuana and the
person grows or cultivates:

34 (1) Five hundred or more marijuana plants. Violation
of this subparagraph is a Class A crime;

38 (2) One hundred or more but fewer than 500 marijuana
plants. Violation of this subparagraph is a Class B
crime;

42 (3) More than 5 but fewer than 100 marijuana plants.
Violation of this subparagraph is a Class C crime; or

44 (4) Five or fewer marijuana plants. Violation of this
subparagraph is a Class D crime; or

48 D. At the time of the offense, the person is within 1,000
feet of the real property comprising a private or public

2 elementary or secondary school and the person grows or
3 cultivates:

4 (1) Five hundred or more marijuana plants. Violation
5 of this subparagraph is a Class A crime;

6 (2) One hundred or more but fewer than 500 marijuana
7 plants. Violation of this subparagraph is a Class B
8 crime;

9 (3) More than 5 but fewer than 100 marijuana plants.
10 Violation of this subparagraph is a Class C crime; or

11 (4) Five or fewer marijuana plants. Violation of this
12 subparagraph is a Class D crime.

13 2. If a person uses a motor vehicle to facilitate the
14 aggravated cultivating of marijuana, the court may, in addition
15 to other authorized penalties, suspend the person's driver's
16 license or permit, privilege to operate a motor vehicle or right
17 to apply for or obtain a license for a period not to exceed 5
18 years. A suspension may not begin until after any period of
19 incarceration is served. If the court suspends a person's
20 driver's license or permit, privilege to operate a motor vehicle
21 or right to apply for or obtain a license, the court shall notify
22 the Secretary of State of the suspension and the court shall take
23 physical custody of the person's license or permit. The
24 Secretary of State may not reinstate the person's driver's
25 license or permit, privilege to operate a motor vehicle or right
26 to apply for or obtain a license unless the person demonstrates
27 that, after having been released and discharged from any period
28 of incarceration that may have been ordered, the person has
29 served the period of suspension ordered by the court.

30 **Sec. 120. 17-A MRSA §1106, sub-§1, as amended by PL 1989, c.**
31 **384, §3, is repealed.**

32 **Sec. 121. 17-A MRSA §1106, sub-§§1-A and 1-B are enacted to**
33 **read:**

34 1-A. Except as provided in subsection 1-B, a person is
35 guilty of unlawful furnishing of a scheduled drug if the person
36 intentionally or knowingly furnishes what the person knows or
37 believes to be a scheduled drug, which is in fact a scheduled
38 drug, and the drug is:

39 A. A schedule W drug. Violation of this paragraph is a
40 Class C crime;

2 B. A schedule X drug. Violation of this paragraph is a Class D crime;

4 C. A schedule Y drug. Violation of this paragraph is a Class D crime; or

6 D. A schedule Z drug. Violation of this paragraph is a Class D crime.

10 1-B. A person is not guilty of unlawful furnishing of a scheduled drug if the conduct that constitutes the furnishing is expressly:

14 A. Authorized by Title 22 or Title 32; or

16 B. Made a civil violation by Title 22.

18 **Sec. 122. 17-A MRSA §1106, sub-§2**, as amended by PL 1989, c. 384, §3, is repealed.

20 **Sec. 123. 17-A MRSA §1106, sub-§3**, as amended by PL 1999, c. 422, §§8 and 9 and c. 531, Pt. I, §§6 and 7, is further amended to read:

24 ~~3. A person is presumed to be unlawfully furnishing scheduled drugs if the person~~ Proof that the person intentionally or knowingly possesses a scheduled drug that is, in fact of a quantity, state or concentration as provided in this subsection, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is unlawfully furnishing that scheduled drug:

32 A. More than 1 1/4 ounces of marijuana;

34 B. Seven grams or more of cocaine or 2 grams or more of cocaine in the form of cocaine base;

36 D. Lysergic acid diethylamide in any of the following quantities or concentrations:

40 (1) Not less than 25 squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or

42 (2) Any quantity of any compound, mixture or substance that, in the aggregate, contains not less than 1,250 micrograms of lysergic acid diethylamide; or

44 E. Seven grams or more of methamphetamine.

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2 **Sec. 124. 17-A MRSA §1106-A, sub-§1**, as enacted by PL 1999, c.
442, §2, is amended to read:

4 1. Quantities of scheduled drugs involved in violations of
6 section 1103, ~~1105~~ 1105-A, 1105-B, 1105-C or 1106 committed
8 pursuant to one scheme or course of conduct and confiscated
10 within a 6-month period may be aggregated to charge a single
12 violation of appropriate class. Subject to the requirement that
14 the conduct of the defense may not be prejudiced by lack of fair
notice or by surprise, the court may at any time order that a
single aggregate count be considered as separate violations. An
aggregate count of violations may not be deemed duplicative
because of such an order and no election may be required.
Prosecution may be brought in any venue in which one of the
violations aggregated was committed.

16 **Sec. 125. 17-A MRSA §1107**, as amended by PL 1999, c. 422,
18 §10, is repealed.

20 **Sec. 126. 17-A MRSA §1107-A** is enacted to read:

22 **§1107-A. Unlawful possession of scheduled drugs**

24 1. Except as provided in subsection 2, a person is guilty
26 of unlawful possession of a scheduled drug if the person
intentionally or knowingly possesses what that person knows or
28 believes to be a scheduled drug, which is in fact a scheduled
drug, and the drug is:

30 A. A schedule W drug, except as provided in paragraphs B
32 and C. Violation of this paragraph is a Class D crime;

34 B. A schedule W drug that is:

36 (1) Heroin (diacetylmorphine);

38 (2) Cocaine in the form of cocaine base and at the
40 time of the offense the person has been convicted of
any offense under this chapter or under any law of the
42 United States, another state or a foreign country
relating to scheduled drugs, as defined in this
44 chapter. For the purposes of this paragraph, a person
has been convicted of an offense on the date the
judgment of conviction was entered by the court; or

46 (3) Methamphetamine.

48 Violation of this paragraph is a Class C crime;

50 C. A schedule W drug that is:

- 2 (1) Cocaine and the quantity possessed is more than 14
3 grams; or
- 4 (2) Cocaine in the form of cocaine base and the
5 quantity possessed is more than 4 grams; or
- 6 (3) Methamphetamine and the quantity possessed is more
7 than 14 grams.

10 Violation of this paragraph is a Class B crime;

12 D. A schedule X drug. Violation of this paragraph is a
13 Class D crime;

16 E. A schedule Y drug. Violation of this paragraph is a
17 Class E crime; or

18 F. A schedule Z drug. Violation of this paragraph is a
19 Class E crime.

22 2. A person is not guilty of unlawful possession of a
23 scheduled drug if the conduct that constitutes the possession is
24 expressly:

26 A. Authorized by Title 22 or Title 32; or

28 B. Made a civil violation by Title 22.

30 **Sec. 127. 17-A MRSA §1108, sub-§§1 and 3,** as repealed and
31 replaced by PL 1979, c. 512, §33, are amended to read:

32 1. A person is guilty of acquiring drugs by deception if,
33 as a result of deception, he the person obtains or exercises
34 control over what he the person knows or believes to be a
35 scheduled drug, and which is, in fact, a scheduled drug, and the
36 drug is:

38 A. A schedule W drug. Violation of this paragraph is a
39 Class C crime;

42 B. A schedule X drug. Violation of this paragraph is a
43 Class C crime;

44 C. A schedule Y drug. Violation of this paragraph is a
45 Class C crime; or

48 D. A schedule Z drug. Violation of this paragraph is a
49 Class D crime.

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2 3. For purposes of this section, information communicated
3 to a physician in an effort to violate this section, including a
4 violation by procuring the administration of a scheduled drug by
deception, shall may not be deemed a privileged communication.

6 **Sec. 128. 17-A MRSA §1108, sub-§4**, as amended by PL 1983, c.
350, is repealed.

8 **Sec. 129. 17-A MRSA §1109, sub-§1**, as enacted by PL 1975, c.
10 499, §1, is repealed and the following enacted in its place:

12 1. A person is guilty of stealing drugs if:

14 A. The person violates section 353, 355 or 356-A;

16 B. The person knows or believes that the subject of the
18 theft is a scheduled drug and it is in fact a scheduled
drug; and

20 C. The theft is from a person authorized to possess or
22 traffick in that scheduled drug.

24 **Sec. 130. 17-A MRSA §1110, sub-§1**, as amended by PL 1997, c.
340, §1, is further amended to read:

26 1. A Except as provided in subsection 1-B, paragraph A, a
28 person is guilty of trafficking in hypodermic apparatuses if the
30 person intentionally or knowingly trafficks in one or more
hypodermic apparatuses,--unless the conduct that constitutes such
trafficking is+. Violation of this subsection is a Class C crime.

32 A.--Expressly authorized by Title 32, section 13787-A.

34 **Sec. 131. 17-A MRSA §1110, sub-§1-A**, as enacted by PL 1997, c.
360, §1, is amended to read:

38 1-A. A Except as provided in subsection 1-B, paragraph B, a
40 person is guilty of furnishing hypodermic apparatuses if the
42 person intentionally or knowingly furnishes 11 or more hypodermic
apparatuses,--unless the conduct that constitutes such furnishing
is--expressly authorized by Title 32, section 2383-B. Violation
of this subsection is a Class D crime.

44 **Sec. 132. 17-A MRSA §1110, sub-§1-B** is enacted to read:

46 1-B. The following exceptions apply.

48 A. A person is not guilty of trafficking in hypodermic
50 apparatuses if the conduct that constitutes the trafficking
is expressly authorized by Title 32, section 13787-A.

2 B. A person is not guilty of furnishing hypodermic
4 apparatuses if the conduct that constitutes the furnishing
 is expressly authorized by Title 22, section 2383-B.

6 **Sec. 133. 17-A MRSA §1111-A, sub-§1, ¶C,** as amended by PL
1981, c. 531, §2, is further amended to read:

8 C. Isomerization devices used or intended for use in
10 increasing the potency of any species of plant ~~which~~ that is
 a scheduled drug;

12 **Sec. 134. 17-A MRSA §1111-A, sub-§3,** as amended by PL 1981, c.
14 531, §4, is further amended to read:

16 3. In determining whether an object is drug paraphernalia,
 a court or other authority ~~should~~ shall consider, in addition to
18 all other logically relevant factors, the following:

20 A. Statements by an owner or by anyone in control of the
 object concerning its use;

22 B. Prior convictions, if any, of an owner, or of anyone in
24 control of the object, under any state or federal law
 relating to any scheduled drug;

26 C. The proximity of the object, in time and space, to a
28 direct violation of this chapter;

30 D. The proximity of the object to scheduled drugs;

32 E. The existence of any residue of scheduled drugs on the
 object;

34 F. Direct or circumstantial evidence of the intent of an
36 owner, or of anyone in control of the object, to deliver it
 to persons whom he the owner knows, or should reasonably
38 know, intend to use the object to facilitate a violation of
 this chapter; the innocence of an owner, or of anyone in
40 control of the object, as to a direct violation of this
 chapter ~~shall~~ may not prevent a finding that the object is
42 intended for use as drug paraphernalia;

44 G. Instructions, oral or written, provided with the object
 concerning its use;

46 H. Descriptive materials accompanying the object which
48 explain or depict its use;

50 I. National and local advertising concerning its use;

- 2 J. The manner in which the object is displayed for sale;
- 4 K. Whether the owner, or anyone in control of the object,
6 is a legitimate supplier of like or related items to the
community, such as a licensed distributor or dealer of
8 tobacco products;
- 10 L. Direct or circumstantial evidence of the ratio of sales
of the object to the total sales of the business enterprise;
- 12 M. The existence and scope of legitimate uses for the
object in the community; and
- 14 N. Expert testimony concerning its use.

16 **Sec. 135. 17-A MRSA §1111-A, sub-§4**, as amended by IB 1999, c.
18 1, §5, is repealed and the following enacted in its place:

20 4. A person is guilty of the sale and use of drug
22 paraphernalia if:

24 A. The person uses drug paraphernalia to plant, propagate,
cultivate, grow, harvest, manufacture, compound, convert,
26 produce, process, prepare, test, analyze, pack, repack,
store, contain, conceal, inject, ingest, inhale or otherwise
28 introduce into the human body a scheduled drug in violation
of this chapter or Title 22, section 2383. Violation of
30 this paragraph is a civil violation for which a forfeiture
of not more than \$200 may be adjudged;

32 B. The person possesses with intent to use drug
paraphernalia to plant, propagate, cultivate, grow, harvest,
34 manufacture, compound, convert, produce, process, prepare,
test, analyze, pack, repack, store, contain, conceal,
36 inject, ingest, inhale or otherwise introduce into the human
body a scheduled drug in violation of this chapter or Title
38 22, section 2383. Violation of this paragraph is a civil
violation for which a forfeiture of not more than \$200 may
40 be adjudged;

42 C. The person trafficks in or furnishes drug paraphernalia
knowing, or under circumstances when one reasonably should
44 know, that it will be used to plant, propagate, cultivate,
grow, harvest, manufacture, compound, convert, produce,
46 process, prepare, test, analyze, pack, repack, store,
contain, conceal, inject, ingest, inhale or otherwise
48 introduce into the human body a scheduled drug in violation
of this chapter or Title 22, section 2383, and the person to

2 whom that person is trafficking or furnishing drug
paraphernalia is:

4 (1) At least 16 years of age. Violation of this
subparagraph is a Class E crime; or

6
8 (2) Less than 16 years of age. Violation of this
subparagraph is a Class D crime; or

10 D. The person places in a newspaper, magazine, handbill or
other publication an advertisement knowing, or under
circumstances when one reasonably should know, that the
purpose of the advertisement, in whole or in part, is to
promote the sale of objects intended for use as drug
paraphernalia. Violation of this paragraph is a Class E
crime.

18 This subsection does not apply to a person who is authorized to
possess marijuana for medical use pursuant to Title 22, section
2383-B, subsection 5 to the extent the drug paraphernalia is
required for that person's medical use of marijuana.

22 **Sec. 136. 17-A MRSA §1111-A, sub-§5**, as enacted by PL 1981, c.
24 266, is repealed.

26 **Sec. 137. 17-A MRSA §1111-A, sub-§6**, as amended by PL 1981, c.
28 531, §5, is repealed.

Sec. 138. 17-A MRSA §1111-A, sub-§§7 and 8, as enacted by PL
30 1981, c. 266, are repealed.

32 **Sec. 139. 17-A MRSA §1111-A, sub-§9**, as enacted by PL 1981, c.
34 266, is amended to read:

36 **9.** ~~Any drug~~ Drug paraphernalia possessed in violation of
38 this section is declared to be contraband and may be seized and
confiscated by the State.

Sec. 140. 17-A MRSA §1112, sub-§1, as amended by PL 1979, c.
40 512, §34, is further amended to read:

42 **1.** A laboratory ~~whieh~~ that receives a drug or substance
44 from a law enforcement officer or agency for analysis as a
scheduled drug shall, if it is capable of so doing, analyze the
46 same as requested, and shall issue a certificate stating the
results of such analysis. Such certificate, when duly signed and
48 sworn to by a person certified as qualified for this purpose by
the Department of Human Services under certification standards
set by that department, ~~shall-be~~ is admissible in evidence in any
50 court of the State ~~of-Maine, and shall-be-prima-facie-evidence~~

2 gives rise to a permissible inference under the Maine Rules of
3 Evidence, Rule 303 that the composition, quality and quantity of
4 the drug or substance are as stated therein, unless with 10 days
5 written notice to the prosecution, the defendant requests that a
6 qualified witness testify as to such composition, quality and
7 quantity.

8 **Sec. 141. 17-A MRSA §1116, sub-§1**, as enacted by PL 1981, c.
9 603, §2, is amended to read:

10 1. A Except as provided in subsection 1-A, a person is
11 guilty of trafficking in or furnishing an imitation scheduled
12 drugs--if--he drug if the person intentionally or knowingly
13 trafficks in or furnishes an imitation scheduled drug,--unless--the
14 conduct--which--constitutes--such--trafficking--or--furnishing--is
15 expressly made a civil violation by Title 22, section 2383-A. to
16 a person who is:

17 A. At least 18 years of age. Violation of this paragraph
18 is a Class E crime; or

19 B. Less than 18 years of age and the person trafficking or
20 furnishing the imitation scheduled drug is at least 18 years
21 of age. Violation of this paragraph is a Class D crime.

22 **Sec. 142. 17-A MRSA §1116, sub-§1-A** is enacted to read:

23 1-A. A person is not guilty of trafficking in or furnishing
24 an imitation scheduled drug if the conduct that constitutes the
25 trafficking or furnishing is expressly made a civil violation by
26 Title 22, section 2383-A.

27 **Sec. 143. 17-A MRSA §1116, sub-§2**, as enacted by PL 1981, c.
28 603, §2, is amended to read:

29 2. A--person--shall--be--presumed--to--be--trafficking--in--or
30 furnishing--imitation--scheduled--drugs--if--he Proof that the person
31 intentionally or knowingly possesses 100 or more tablets,
32 capsules or other dosage units of an imitation scheduled drugs
33 drug gives rise to a permissible inference under the Maine Rules
34 of Evidence, Rule 303 that the person is trafficking in or
35 furnishing imitation scheduled drugs.

36 **Sec. 144. 17-A MRSA §1116, sub-§§3 and 4**, as enacted by PL
37 1981, c. 603, §2, are repealed.

38 **Sec. 145. 17-A MRSA §1116, sub-§4**, as enacted by PL 1981, c.
39 603, §2, is repealed.

2 **Sec. 146. 17-A MRSA §1116, sub-§6**, as enacted by PL 1981, c.
603, §2, is amended to read:

4 **6.** This section shall does not apply to:

6 A. Law enforcement officers acting in the course and
legitimate scope of their employment;

8 B. Persons who manufacture, process, package, distribute or
10 sell imitation scheduled drugs solely for or to licensed
12 medical practitioners for use as placebos in the course of
professional practice or research; and

14 C. Licensed medical practitioners, pharmacists and other
16 persons authorized to dispense or administer scheduled drugs
who are acting in the legitimate performance of their
18 professional licenses.

20 **Sec. 147. 17-A MRSA §1117**, as enacted by PL 1999, c. 374, §5,
is repealed and the following enacted in its place:

22 **§1117. Cultivating marijuana**

24 **1.** A person is guilty of cultivating marijuana if:

26 A. The person intentionally or knowingly grows or
28 cultivates marijuana. Violation of this paragraph is a
Class E crime;

30 B. The person violates paragraph A and the number of
32 marijuana plants is:

34 (1) Five hundred or more. Violation of this
subparagraph is a Class B crime;

36 (2) One hundred or more but fewer than 500. Violation
38 of this subparagraph is a Class C crime; or

40 (3) More than 5 but fewer than 100. Violation of this
subparagraph is a Class E crime.

42 **Sec. 148. 17-A MRSA §1158**, as amended by PL 1995, c. 252, §1,
is further amended to read:

44 **§1158. Forfeiture of firearms**

46 As part of every judgment of conviction and sentence
48 imposed, every firearm that constitutes the basis for conviction
50 under Title 15, section 393 ~~or under~~ section 1105, subsection 1,
~~paragraph C~~ 1105-A, subsection 1, paragraph C; section 1105-B,

2 subsection 1, paragraph C; section 1105-C, subsection 1,
3 paragraph C; or section 1105-D, subsection 1, paragraph B or that
4 is used by the defendant or any accomplice during the commission
5 of any murder or Class A, Class B or Class C crime or any Class D
6 crime defined in chapter 9, 11 or 13 must be forfeited to the
7 State and the court shall so order, unless another person can
8 satisfy the court prior to the judgment and by a preponderance of
9 the evidence that such other person had a right to possess the
10 firearm, to the exclusion of the defendant, at the time of the
11 offense. The Attorney General shall adopt rules in accordance
12 with Title 5, chapter 375, governing the disposition to state,
13 county and municipal agencies of firearms forfeited under this
14 section.

15 **Sec. 149. 17-A MRSA §1252, sub-§4-A,** as enacted by PL 1997, c.
16 460, §5, is amended to read:

17 **4-A.** If the State pleads and proves that, at the time any
18 crime, excluding murder, under chapter 9, 11, 13 or 27 was
19 committed, the defendant had been convicted of 2 or more crimes
20 violating chapter 9, 11, 13 or 27 or essentially similar crimes
21 in other jurisdictions, the sentencing class for the crime is one
22 class higher than it would otherwise be. In the case of a Class
23 A crime, the sentencing class is not increased, but the prior
24 record must be given serious consideration by the court when
25 imposing a sentence. ~~For purposes of this subsection, the dates~~
26 ~~of the prior convictions must precede the commission of the~~
27 ~~offense being enhanced by no more than 10 years, although both~~
28 ~~prior convictions may have occurred on the same date. This~~
29 ~~subsection does not apply if the 2 prior offenses were committed~~
30 ~~within a 3 day period. The date of a conviction is deemed to be~~
31 ~~the date that sentence is imposed, even though an appeal was~~
32 ~~taken. The date an offense was committed is presumed to be the~~
33 ~~date stated in the complaint, information or indictment,~~
34 ~~notwithstanding the use of the words "on or about" or the~~
35 ~~equivalent. Section 9-A governs the use of prior convictions when~~
36 ~~determining a sentence.~~

37 **Sec. 150. 17-A MRSA §1252, sub-§5-A,** as amended by PL 1999, c.
38 374, §6, is further amended to read:

39 **5-A.** Notwithstanding any other provision of this Code, for
40 a person convicted of violating section 1105 1105-A, 1105-B,
41 1105-C or 1105-D:

42 A. Except as otherwise provided in paragraphs B and C, the
43 minimum sentence of imprisonment, which may not be
44 suspended, is as follows: When the sentencing class is Class
45 A, the minimum term of imprisonment is 4 years; when the
46 sentencing class is Class B, the minimum term of

2 imprisonment is 2 years; and, with the exception of
3 ~~trafficking,--furnishing--or--cultivation--of--marijuana~~ a
4 conviction under section 1105 1105-A, 1105-B, 1105-C or
5 1105-D when the drug that is the basis for the charge is
6 marijuana, when the sentencing class is Class C, the minimum
7 term of imprisonment is one year;

8 B. The court may impose a sentence other than a minimum
9 unsuspended term of imprisonment set forth in paragraph A,
10 if:

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

14 (a) Imposition of a minimum unsuspended term of
15 imprisonment under paragraph A will result in
16 substantial injustice to the defendant. In making
17 this determination, the court shall consider,
18 among other considerations, whether the defendant
19 did not know and reasonably should not have known
20 that the victim was less than 18 years of age;

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

26 (c) Failure to impose a minimum unsuspended term
27 of imprisonment under paragraph A will not
28 appreciably impair the effect of paragraph A in
29 deterring others from violating section 1105
30 1105-A, 1105-B, 1105-C or 1105-D; and

32 (2) The court finds that:

34 (a) The defendant has no prior criminal history;
35 and

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

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

48 If the court imposes a sentence under this paragraph, the
49 court shall state in writing its reasons for its findings
50

2 and for imposing a sentence under this paragraph rather than
under paragraph A; and

4 C. If the court imposes a sentence under paragraph B, the
6 minimum sentence of imprisonment, which ~~shall~~ may not be
8 suspended, ~~shall-be~~ is as follows: When the sentencing class
10 is Class A, the minimum term of imprisonment ~~shall-be~~ is 9
12 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,~~
1105-A or 1105-C, when the sentencing class is Class C, the
minimum term of imprisonment ~~shall-be~~ is 3 months.

14 **Sec. 151. 17-A MRSA §1301, sub-§5**, as enacted by PL 1985, c.
16 699, is amended to read:

18 5. Notwithstanding any other provision of this section, any
20 person convicted of a crime under section 1103, ~~1105~~ 1105-A,
1105-B, 1105-C, 1105-D, 1106 or ~~1107~~ 1107-A may be sentenced to
22 pay a fine of an amount equal to the value at the time of the
offense of the scheduled drug or drugs upon which the conviction
is based.

24 When the court imposes a fine under this subsection, the court
26 shall make a finding as to the value of the scheduled drug or
drugs. If the record does not contain sufficient evidence to
28 support a finding, the court may conduct, in connection with its
imposition of a sentence, a hearing on this issue.

30 **Sec. 152. 34-A MRSA §11203, sub-§6, ¶B**, as enacted by PL 1999,
32 c. 437, §2, is amended to read:

34 B. A violation under Title 17-A, section 253, subsection 2,
paragraph E, F, G, H, I or J; Title 17-A, section 254; Title
36 17-A, section ~~255~~ 255-A, subsection 1, paragraph A, ~~E, F, G~~
B, I or, J, K, L, M, N, O, R, S or T; Title 17-A, section
38 256; Title 17-A, section 258; Title 17-A, section 301,
unless the actor is a parent of the victim; Title 17-A,
40 section 302; Title 17-A, section 511, subsection 1,
paragraph D; Title 17-A, section 556; Title 17-A, section
42 852, subsection 1, paragraph B; or Title 17-A, section 855;
or

44 **Sec. 153. 34-A MRSA §11203, sub-§7, ¶A**, as enacted by PL 1999,
46 c. 437, §2, is amended to read:

48 A. A conviction for or an attempt to commit an offense
under Title 17-A, section 253, subsection 1; Title 17-A,
section 253, subsection 2, paragraph A, B, C or D; or Title

17-A, section 255 ~~255-A~~, subsection 1, paragraph B, C, D or ~~E, F, G, H, O or P~~; or

Sec. 154. Effective date. This Act takes effect January 31, 2003.

SUMMARY

This bill is the report of the Maine Criminal Justice Information System, MCJUSTIS, Policy Board pursuant to Resolve 1997, chapter 105, as amended by Public Law 1999, chapter 451, section 5 and Public Law 1999, chapter 790, Part D, section 12.

MCJUSTIS is an information clearinghouse, the purpose of which is to provide access to shared uniform information on criminal defendants and crime data. In order for the information to be uniform and accurate, it must be entered and accessed by all participants in the same way. To ensure that crimes are entered accurately, the statutes defining each crime must be precise and narrow enough to ensure that citing to the specific statutory unit will be the same as describing the elements and class of that exact crime. There must be a one-to-one relationship between each crime and the statutory unit that defines it. This bill revises the Maine Criminal Code to establish that one-to-one relationship for each crime and its unique statutory cite.

The original resolve directed the MCJUSTIS policy board to propose only those substantive changes to the laws that are necessary to result in a unique statutory cite for each crime. In working through each crime in the Maine Criminal Code, the MCJUSTIS policy board, as advised by the Criminal Law Advisory Commission, identified one category of substantive changes that are necessary and several others that it recommends; all are included in this bill.

The category of substantive changes that are necessary relates to how to handle facts about a crime that are not technically elements but are currently used for determining the class of crime for sentencing purposes. The statute currently does not require that such "enhancers" be proved beyond a reasonable doubt by the prosecution. The Law Court has required, however, that the prosecution must prove such facts beyond a reasonable doubt if the facts are to be used to make the underlying crime a higher class than it would otherwise be or would require a specific punishment. This bill incorporates each enhancer into the elements of the crime that it enhances. This results in the statutory requirement that the enhancer be proved

2 beyond a reasonable doubt in order to secure a conviction for
2 that crime at that class.

4 For example, assault is usually a Class D crime. If the
6 victim is under 6 years of age, however, the assault is a Class C
8 crime. This bill revises assault to require the prosecutor to
8 prove beyond a reasonable doubt that the victim is under 6 years
of age in order to secure the Class C conviction.

10 This bill contains changes to the Maine Criminal Code that
12 are substantive and that are proposed to improve the Maine
Criminal Code for consistency or clarity.

14 In addition to formatting changes, this bill makes the
16 following changes to the Maine Criminal Code.

18 1. It rewrites as an element of a crime any fact regarding
20 the crime that is used to establish the class for the crime or
22 the appropriate sentence is rewritten as an element of the
crime. This is a substantive change, although it will make
little difference in how cases are currently prosecuted.

24 2. It revises language, including "presumption," "presumed"
26 and "prima facie" to reflect Supreme Judicial Court rulings and
28 Rule 303 of the Maine Rules of Evidence. The revised language
instead refers to "permissible inference" to ensure that the jury
knows how to use certain proven evidence. This does not reflect
a change in practice, but clarifies the law.

30 3. It provides a definition of being related within the
32 "2nd degree of consanguinity." The term is used in defining both
gross sexual assault and incest.

34 4. It establishes standard language for referring to prior
36 convictions and using prior convictions to affect one class of a
38 newly committed crime. The Maine Revised Statutes, Title 17-A,
40 section 9-A is amended to provide general rules for using prior
42 convictions to enhance a new crime. These general rules are
consistent with most existing provisions concerning the use of
prior convictions, but do represent a substantive change in a few
cases.

44 The general rules included here require considering specific
46 convictions secured within the last 10 years. This is a
substantive change for Title 17-A, sections 506-A and 556.

48 The period for prior convictions is not changed for prostitution
50 crimes, which remain at 2 years, and certain drug crimes, which
do not limit how far back a prior conviction can be used to
enhance the current crime.

2 The general rules provide consistent language dealing with
4 multiple crimes committed within 2 or 3 days. This may result in
6 a substantive change in a limited number of crimes in order to
treat them consistently.

8 5. It inserts the language declaring the class in the same
10 statutory unit that defines the way to commit the crime. When
12 the statute defines more than one way of committing a crime, and
14 those different ways are identified as different classes, the
16 exception to this is in the statutes dealing with gross sexual
18 assault, unlawful sexual contact and theft, where if certain
circumstances exist, the classification will go up a class.
Because each way of committing these crimes could be increased if
the particular circumstance exists, an enhancer provision was
drafted at the end of each crime to specify that the
classification will increase if the circumstances are proved.

20 6. It rewrites permissible inference language regarding a
22 person accused of theft to include Title 17-A, section 405,
24 burglary. This change expands the presumption that by permitting
an inference to be made under the Maine Rules of Evidence, Rule
303, a person in exclusive possession of property recently taken
is guilty of the burglary.

26 7. It amends the drug laws dealing with unlawful
28 trafficking, unlawful furnishing and unlawful possession to
30 clarify that a person is guilty of trafficking, furnishing or
32 possessing a scheduled drug if the person intentionally or
knowingly trafficks, furnishes or possesses what the person knows
or believes to be a scheduled drug, which is in fact a scheduled
drug and the drug is a type of scheduled drug.

34 8. It includes language to make the statutes gender neutral
36 and to correct and update grammar. In addition, the following
language changes are made for consistency and are not intended to
be substantive.

38 A. When referring to the age of the perpetrator or victim,
40 the term as used is "___ years of age." For example, if
42 current law says "under 14" or "has not reached his 14th
birthday," this bill revises it to "less than 14 years of
age."

44 B. "Exceeds" is changed to "more than," "under" is changed
46 to "less than."

48 C. The perpetrator of the crime is usually referred to in
50 the definition as "the person." Exceptions occur when the
crime definition involves other people and the "the person"

2 becomes confusing. In these situations, "actor" is used
instead. "Defendant" is often used in procedural and
4 sentencing provisions.

4

6

9. It adds an effective date of January 31, 2003.