

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND NINETEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 2, 1998 to June 19, 1999**

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**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1999**

23-A. "Strict liability crime" has the meaning set forth in section 34.

**Sec. 2. 17-A MRSA §34**, as amended by PL 1981, c. 470, Pt. B, §6, is further amended to read:

**§34. Culpable state of mind as an element**

1. A person is not guilty of a crime unless ~~he~~ that person acted intentionally, knowingly, recklessly or negligently, as the law defining the crime specifies, with respect to each other element of the crime, except as provided in subsection ~~5~~ 4. When the state of mind required to establish an element of a crime is specified as "willfully," "corruptly," "maliciously" or by some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

2. When the definition of a crime specifies the state of mind sufficient for the commission of that crime, but without distinguishing among the elements thereof, the specified state of mind ~~shall apply~~ applies to all the other elements of the crime, ~~unless a contrary purpose plainly appears~~ except as provided in subsection 4.

3. When the law provides that negligence is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally, knowingly or recklessly. When the law provides that recklessness is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of the crime, that element is also established if, with respect thereto, a person acted intentionally.

4. Unless otherwise expressly provided, a culpable mental state need not be proved with respect to:

A. Any fact ~~which that~~ that is solely a basis for sentencing classification; ~~or~~

B. Any element of the crime as to which it is expressly stated that it must "in fact" exist;

C. Any element of the crime as to which the statute expressly provides that a person may be guilty without a culpable state of mind as to that element;

D. Any element of the crime as to which a legislative intent to impose liability without a culpable state of mind as to that element otherwise appears;

E. Any criminal statute as to which it is expressly stated to be a "strict liability crime" or otherwise expressly reflects a legislative intent to impose criminal liability without proof by the

State of a culpable mental state with respect to any of the elements of the crime; or

F. Any criminal statute as to which a legislative intent to impose liability without a culpable state of mind as to any of the elements of the crime otherwise appears.

**4-A.** As used in this section, "strict liability crime" means a crime that, as legally defined, does not include a culpable mental state element with respect to any of the elements of the crime and thus proof by the State of a culpable state of mind as to that crime is not required.

~~5. If a statute defining a crime does not expressly prescribe a culpable mental state with respect to some or all of the elements of the crime, a culpable mental state is nevertheless required, pursuant to subsections 1, 2 and 3, unless:~~

~~A. The statute expressly provides that a person may be guilty of a crime without a culpable state of mind as to those elements; or~~

~~B. A legislative intent to impose liability without a culpable state of mind as to those elements otherwise appears.~~

See title page for effective date.

## CHAPTER 24

### H.P. 570 - L.D. 791

#### An Act to Clarify Sentencing Alternatives Involving Probation and Unconditional Discharge Under the Criminal Code

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

**Sec. 1. 17-A MRSA §1152, sub-§2, ¶A**, as repealed and replaced by PL 1985, c. 821, §3, is amended to read:

A. Unconditional discharge as authorized by chapter ~~49~~ 54-D;

**Sec. 2. 17-A MRSA §1201**, as amended by PL 1987, c. 361, §3, is further amended to read:

**§1201. Eligibility for a sentence alternative that includes a period of probation**

1. A person who has been convicted of a crime may be sentenced to a section 1152 sentencing alternative ~~which that~~ which includes a period of probation ~~or to the sentencing alternative of unconditional discharge, unless:~~

A. The conviction is for murder;

B. The statute ~~which~~ that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person ~~shall~~ must be sentenced to the imprisonment and required to pay the fine authorized therein; or

~~C. The court finds that there is an undue risk that during the period of probation the convicted person would commit another crime; or~~

D. The court finds that such a sentence would diminish the gravity of the crime for which ~~he~~ that person was convicted.

2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, ~~shall~~ may be sentenced to a sentencing alternative that includes a period of probation if he the person is in need of the supervision, guidance, assistance or direction that probation can provide. ~~If there is no such need, and no proper purpose would be served by imposing any condition or supervision on his release, he shall be sentenced to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.~~

**Sec. 3. 17-A MRSA §1203, sub-§1,** as amended by PL 1995, c. 425, §1, is further amended to read:

1. The court may sentence a person to a term of imprisonment, not to exceed the maximum term authorized for the crime, an initial portion of which ~~shall~~ must be served and the remainder of which ~~shall~~ must be suspended, and accompany that term with a period of probation not to exceed the maximum period authorized for the crime. As to both the suspended and unsuspended portions of the ~~sentence~~ term of imprisonment, the place of imprisonment must be as follows.

A. For a Class D or Class E crime the court ~~must~~ shall specify a county jail as the place of imprisonment.

B. For a Class A, Class B or Class C crime the court ~~must~~ shall:

(1) Specify a county jail as the place of imprisonment for any portion of the sentence that is 9 months or less; and

(2) Commit the person to the Department of Corrections for any portion of the sentence that is more than 9 months.

The period of probation commences on the date the person is released from the initial unsuspended portion of the term of imprisonment, unless the court orders it

to commence on an earlier date. If the period of probation commences upon release of the person from the initial unsuspended portion of the term of imprisonment, the court may revoke probation for any criminal conduct committed during that initial period of imprisonment.

**Sec. 4. 17-A MRSA §1203-C** is enacted to read:

**§1203-C. Wholly suspended sentence with probation**

The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the crime, suspend the entire term of imprisonment and accompany the suspension with a period of probation not to exceed the maximum period authorized for the crime, to commence on the date the person goes into actual execution of the sentence.

**Sec. 5. 17-A MRSA c. 54-D** is enacted to read:

**CHAPTER 54-D**  
**UNCONDITIONAL DISCHARGE**

**§1346. Sentencing alternative of unconditional discharge**

A convicted person who is eligible for sentence under section 1201, subsection 1 and for whom a court determines that no other authorized sentencing alternative is appropriate punishment must be sentenced by the court to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

See title page for effective date.

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**CHAPTER 25**

**S.P. 101 - L.D. 240**

**An Act to Amend the Maine Banking  
Code as it Pertains to ATM  
Surcharges**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the passage of this legislation will benefit Maine consumers by allowing banks and credit unions to enter into agreements not to impose automatic teller machine surcharges; and

**Whereas,** Maine banks and credit unions have currently entered into these agreements and are seeking to enter into these agreements; and