

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTIETH LEGISLATURE**  
**FIRST REGULAR SESSION**  
**December 6, 2000 to June 22, 2001**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 21, 2001**

**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**  
**2001**

the premises covered by the license and ~~no license~~ may not be transferred to any other person.

The ~~tax assessor~~ State Tax Assessor may revoke or suspend the license or licenses of any person for violation of this chapter applicable to the sale of tobacco products. ~~No~~ A license may not be revoked, canceled or suspended until after notice and hearing by the ~~tax~~ assessor.

**Sec. 2. 36 MRSA §4403, sub-§3**, as enacted by PL 1985, c. 783, §16, is amended to read:

**3. Imposition.** The tax ~~shall be~~ is imposed at the time the distributor, retailer or unclassified importer brings or causes to be brought into this State tobacco products that are for sale to consumers or to retailers or for use or at the time tobacco products are manufactured or fabricated in this State for sale in this State.

**Sec. 3. 36 MRSA §4404**, as amended by PL 1987, c. 497, §46, is further amended to read:

**§4404. Returns; payment of tax and penalty**

Every distributor, ~~or retailer and~~ unclassified importer subject to the licensing requirement of section 4402 shall on or before the last day of each month ~~render submit, on forms to be~~ a form prescribed and furnished by the ~~tax assessor~~ State Tax Assessor, a report together with payment of the tax due under this chapter ~~to the tax assessor~~ stating the quantity and the wholesale sale price of all tobacco products held, purchased, manufactured, brought in or caused to be brought in from ~~without~~ outside the State or shipped or transported to retailers within the State during the preceding calendar month. Every such distributor ~~or, retailer and~~ unclassified importer shall keep a complete and accurate record at his ~~its~~ principal place of business to substantiate all receipts of tobacco products; ~~this record shall be preserved for a period of 2 years in such manner as to insure permanency and accessibility for inspection.~~

Such monthly reports ~~shall~~ must contain such further information as the ~~tax assessor shall~~ State Tax Assessor may prescribe and ~~shall~~ must show a credit for any tobacco products exempted as provided in section 4403. Records ~~shall~~ must be maintained to substantiate the exemption. Tobacco products previously taxed ~~which that~~ are returned to a manufacturer because the product has become unfit for use ~~of, sale or consumption or unsalable~~ may be taken as a credit on a subsequent return upon receipt of the credit notice from the original supplier.

See title page for effective date.

**CHAPTER 383**

**H.P. 1280 - L.D. 1740**

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

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

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

D. For purposes of this subsection, proof that a thing is presented in a covered or open manner as a dangerous weapon 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.

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

**3.** When the crime is homicide, a person may be convicted under the laws of this State if either the death of the victim or the bodily impact causing death occurred within the State or had a territorial relationship to the State. ~~If Proof that~~ the body of a homicide victim is found within this State, ~~it is presumed~~ 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.

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

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

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

**3.** Prior convictions may be considered for purposes of enhancing a present sentence if the date of each prior conviction precedes the commission of the offense being enhanced by no more 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.

4. Proof of the date stated in a complaint, information, indictment or other formal charging instrument gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that such a date is the date the offense was committed, notwithstanding the use of the words "on or about" or the equivalent. The convictions of 2 or more prior offenses that were committed within a 3-day period are considered a single conviction for purposes of this section.

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

### **§151. Criminal conspiracy**

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

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

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

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

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

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

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

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

4. ~~No~~ A person may not be convicted of criminal conspiracy to commit a crime unless it is alleged and proved that ~~he~~ the actor, or one with whom ~~he~~ the actor conspired, took a substantial step toward commission of the crime. A substantial step is any conduct which, under the circumstances in which it occurs, is strongly corroborative of the firmness of the

actor's intent to complete commission of the crime; provided that speech alone may not constitute a substantial step.

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

6. For the purpose of determining the period of limitations under ~~chapter 4~~, section 8, the following provisions govern.

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

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

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

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

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

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

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

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

**§152. Criminal attempt**

1. A person is guilty of criminal attempt if, acting with the kind of culpability required for the commission of the crime, and with the intent to complete the commission of the crime, ~~he 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:~~

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

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

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

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

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

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

2. It is ~~no~~ not a defense to a prosecution under this section that it was impossible to commit the crime ~~which that~~ the ~~defendant person~~ attempted, provided that it would have been committed had the factual and legal attendant circumstances specified in the definition of the crime been as the ~~defendant person~~ believed them to be.

3. A person who engages in conduct intending to aid another 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 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 are 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 another 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.

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

#### **§153. Criminal solicitation**

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

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

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

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

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

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

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

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

#### **§201. Murder**

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

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

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

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

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

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

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

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

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

B. It is reasonable for the actor person to react to the provocation with extreme anger or extreme fear, provided that evidence demonstrating only that the actor person has a 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.

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

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

**§203. Manslaughter**

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

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

B. Intentionally or knowingly causes the death of another human being under circumstances ~~which that~~ do not constitute murder because the person causes the death 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. 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

C. Has direct and personal management or control of any employment, place of employment or other employee, and intentionally or knowingly violates any occupational safety or health standard of this State or the Federal Government, 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:

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

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

Violation of this paragraph is a Class C crime.

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

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

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

**§207. Assault**

1. A person is guilty of assault if:

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

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

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

**§210. Terrorizing**

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

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

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

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

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

1. A person is guilty of stalking if:

A. The ~~person~~ actor intentionally or knowingly engages in a course of conduct directed at ~~an~~ either a specific person that would in fact cause both a reasonable person and that other specific person:

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

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

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

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

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

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

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

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

C. The actor violates paragraph A and has 2 or more prior convictions and the actor intentionally or knowingly engages in a course of conduct directed at a specific person that would in fact cause both a reasonable person and that specific person:

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

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

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

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

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

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

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

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

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

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

A. The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by administering or employing drugs, intoxicants or other similar means. Violation of this paragraph is a Class B crime;

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

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

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

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

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

G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident



in or attending a children's home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class C crime;

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

H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person. Violation of this paragraph is a Class B crime;

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

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

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

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

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

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

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

A. When the sentencing class for a prior conviction under this section is Class A, the court shall enhance the basic period of incarceration by a minimum of 4 years of imprisonment.

B. When the sentencing class for a prior conviction under this section is Class B, the court shall enhance the basic period of incarceration by a minimum of 2 years of imprisonment.

C. When the sentencing class for a prior conviction under this section is Class C, the court shall enhance the basic period of incarceration by a minimum of one year of imprisonment.

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

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

#### **§254. Sexual abuse of minors**

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

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

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

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 crime; or

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

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

~~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 subsection 1 is one class higher if the State pleads and proves:~~

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

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

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

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

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

**§255. Unlawful sexual contact**

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

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

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

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

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

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

F. The other person, not the actor's spouse, is in fact 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;

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

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

I. The other person, not the actor's spouse, is in official 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. Violation of this paragraph is a Class D crime;

J. The other person, not the actor's spouse, is in official 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 and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

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

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

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

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

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

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

Q. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department of Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with mental retardation. It is an affirmative defense to prosecution under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3. Violation of this paragraph is a Class D crime;

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

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

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

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

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

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

A. The actor:

(1) Uses a computer knowingly to solicit, entice, persuade or compel another person to meet with the actor;

(2) Is at least 16 years of age;

(3) Knows or believes that the other person is less than 14 years of age; and

(4) Is at least 3 years older than the expressed age of the other person; and

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

(1) A sexual act as defined in section 251, subsection 1, paragraph C;

(2) Sexual contact as defined in section 251, subsection 1, paragraph D; or

(3) Sexual exploitation of a minor pursuant to Title 17, section 2922.

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

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

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

(1) ~~hold him~~ Hold the other person for ransom or reward;

(2) ~~use him~~ Use the other person as a shield or hostage;

(3) ~~inflict~~ Inflict bodily injury upon ~~him~~ the other person or subject ~~him~~ the other person to conduct defined as criminal in chapter 11;

(4) ~~terrorize him~~ Terrorize the other person or a 3rd person;

(5) ~~facilitate~~ Facilitate the commission of another crime by any person or flight thereafter; or

(6) ~~interfere~~ Interfere with the performance of any governmental or political function; or

B. ~~He~~ The actor knowingly restrains another person:

(1) ~~under~~ Under circumstances which, in fact, expose ~~such~~ the other person to risk of serious bodily injury; or

(2) ~~by~~ By secreting and holding ~~him~~ the other person in a place where ~~he~~ the other person is not likely to be found.

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

A. Removing ~~him~~ the other person from ~~his~~ the other person's residence, place of business, or from a school; or

B. Moving ~~him~~ the other person a substantial distance from the vicinity where ~~he~~ the other person is found; or

C. Confining ~~him~~ the other person for a substantial period either in the place where the restriction commences or in a place to which ~~he~~ the other person has been moved.

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

**§302. Criminal restraint**

**1.** A person is guilty of criminal restraint if:

A. Knowing the actor has no legal right to do so, the actor intentionally or knowingly takes, retains or entices another person who:

(1) Is less than 14 years of age. Violation of this subparagraph is a Class D crime;

(2) Is incompetent. Violation of this subparagraph is a Class D crime;

(3) Is either 14, 15 or 16 years of age from the custody of the other person's parent, guardian or other 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

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

B. The actor:

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

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

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

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

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

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

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

**2. "Obtain" means:**

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

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

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

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

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

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

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

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

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

A. Except as otherwise provided in this subsection, value means the market value of the prop-

erty or services at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property or services within a reasonable time after the crime.

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

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

D. If the value of property or services cannot be ascertained beyond a reasonable doubt pursuant to the 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.

E. Amounts of value involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated to charge a single theft of appropriate class or grade. Subject to the requirement that the conduct of the defense ~~shall~~ may not be 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. ~~No An~~ An aggregated count of theft ~~shall~~ may not be deemed duplicitious because of such an order and ~~no an~~ an election ~~shall~~ may not be required. Prosecution may be brought in any venue in which one of the thefts ~~which that~~ have been aggregated was committed.

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

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

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

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

A. The person obtains or exercises unauthorized control 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

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.

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

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

**§354. Theft by deception**

1. A person is guilty of theft if:

A. The person obtains or exercises control over property of another as a result of deception and with 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.

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

A. Creates or reinforces an impression that is false and that the person does not believe to be true, including false impressions as to identity, law, value, knowledge, opinion, 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;

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

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

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

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

D. Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property that the 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.

3. It is 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. 35. 17-A MRSA §354-A, sub-§1**, as enacted by PL 1997, c. 779, §1, is repealed and the following enacted in its place:

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;

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

**§357. Theft of services**

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

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

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

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

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

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

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

(5) 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.

**2. A person is guilty of theft if:**

A. Having control over the disposition of services of another, to which the person knows the person is not 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

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

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

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

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

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

(5) 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.

**3. As used in this section:**

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

B. "Services" includes, but is not limited to, labor; professional service; public utility service; transportation 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; telephone, cellular telephone, telegraph, cable television or computer service; gas, electricity, water or steam; admission to entertainment, exhibitions, sporting events or other events; or other services for which a charge is made; and

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

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

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

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

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

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

1. A person is guilty of theft if:

A. The person obtains property from anyone or personal services from an employee upon agreement, or subject to a known legal obligation, to make a specified payment or other disposition to a 3rd person or to a fund administered by that person, whether from that property or its proceeds or from that person's own property to be reserved in an equivalent or agreed amount, if that person intentionally or recklessly fails to make the required payment or disposition and deals with the property obtained or withheld as

that person's own. 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 and the person is a payroll processor. Violation of this paragraph is a Class B crime;

(5) 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;

(6) 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;

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

(8) The person is a payroll processor and 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 B crime; or

(9) 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. 44. 17-A MRSA §358, sub-§3**, as enacted by PL 1975, c. 499, §1, is amended to read:

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

A. ~~To know~~ Knows of any legal obligation relevant to ~~his~~ the person's liability under this section; and

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

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

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

**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:

1. A person is guilty of theft if:

A. The person receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, with the intent to deprive the owner 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 thereof. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime.

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

1. A person is guilty of theft if:

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

B. Having custody of a vehicle pursuant to an agreement between ~~himself~~ the person and the owner ~~thereof of the vehicle~~ whereby ~~the actor~~ 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 demand from the owner, mailed by certified or registered mail or delivered by hand after the expiration of the rental period to the most current address known to the owner, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 of a gross deviation from the agreement.~~

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

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

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

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

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

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

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

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

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

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

2. Proof that the defendant concealed unpurchased property stored, offered or exposed for sale while the defendant was still on the premises of the place where it was stored, offered or exposed or in a parking lot or public or private way immediately adjacent thereto gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the defendant obtained or exercised unauthorized control over the property with the intent to deprive the owner thereof.

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

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

1. A person is guilty of burglary if:

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

B. The person violates paragraph A and:

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

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

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

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

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

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

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

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

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

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

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

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

C. Enters any place from which that person may lawfully be excluded and that is posted in accordance with subsection 4 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;

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

E. Enters any place in defiance of a lawful order not to 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

F. Enters or remains in a cemetery or burial ground at any time between 1/2 hour after sunset and 1/2 hour before sunrise the following day, unless that person enters or 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.

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

**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 read:

4. For the purposes of subsection 1, paragraph C, property is posted if it is marked with signs or paint in compliance with this subsection. ~~Any Proof that any posted sign or paint marking is actually seen by an intruder is presumed to be~~ gives rise to a 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.

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

B. At the time of the offense, has 2 prior convictions for burglary in a dwelling place or criminal trespass in a dwelling place. ~~For purposes of this paragraph, the dates of the prior convictions must precede the commission of the offense by no more than 10 years. The date of a~~

~~conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of a prior offense is presumed to be that stated in the complaint, information, indictment or other formal charging instrument, notwithstanding the use of the words "on or about" or the equivalent. Section 9-A governs the use of prior convictions when determining a sentence.~~

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

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

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

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

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

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

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

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

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

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

- (1) To testify or inform falsely; or
- (2) To withhold ~~any~~ testimony, information or evidence;

Violation of this paragraph is a Class C crime;

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

- (1) To withhold ~~any~~ testimony, information or evidence;
- (2) To refrain from attending ~~any~~ a criminal proceeding or criminal investigation; or
- (3) To refrain from attending any other proceeding or investigation to which the witness; or informant ~~or victim~~ has been summoned by legal process; ~~or~~.

Violation of this paragraph is a Class C crime; or

C. Solicits, accepts or agrees to accept ~~any~~ pecuniary benefit for ~~doing any of the things committing an act~~ specified in paragraph A, subparagraph (1), or in paragraph B, subparagraph (1), (2) or (3). Violation of this paragraph is a Class C crime.

~~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 juror and the actor does so with the intention of influencing the juror in the performance of the juror's duty. the actor:~~

A. Contacts by any means a person who is a juror or any other person that the actor believes is in a position to 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

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.

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

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

- (1) To testify or inform falsely; or
- (2) To withhold testimony, information or evidence.

Violation of this paragraph is a Class B crime;

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

- (1) To withhold testimony, information or evidence;
- (2) To refrain from attending a criminal proceeding or criminal investigation; or
- (3) To refrain from attending any other proceeding or investigation to which the victim has been summoned by legal process.

Violation of this paragraph is a Class B crime; or

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

Violation of this paragraph is a Class B crime.

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

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

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

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

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

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

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

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

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

A. The person engages in any course of conduct with the intent to harass, torment or threaten another person after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace or by a court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007 or, if the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees. Violation of this paragraph is a Class E crime; or

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

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

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

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

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

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

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

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

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

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

B. Violates paragraph A and, at the time of the incest, the person has 2 or more prior Maine convictions for violations of this section. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.

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

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

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

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

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

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

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

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

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

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

(2) ~~to~~ To compel the person in control of the property to give it up or to engage in

other conduct ~~which~~ that aids in the taking or carrying away of the property;

Violation of this paragraph is a Class B crime;

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

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

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

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

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

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

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

A-1. 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 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 con-

victions when determining a sentence. Violation of this subparagraph is a Class C crime;

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 but not more

than \$10,000. Violation of this subparagraph is a Class C crime;

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

(4) At the time of negotiating a worthless instrument, 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. 78. 17-A MRSA §708, sub-§2,** as amended by PL 1995, c. 38, §1, is further amended to read:

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

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

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

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

A. It is presumed that the person who issued or negotiated the instrument had no account with the drawee at the time the instrument was issued or negotiated if Proof that there is a purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument that states "no account," "account closed" or some other terminology indicating that the instrument was not honored because no account existed gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person who issued or negotiated the instru-

ment has no account with the drawee at the time the instrument was issued or negotiated.

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

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

**3-A.** Amounts of face value of negotiable instruments involved in violations of this section committed pursuant to one scheme or course of conduct, whether the instruments were issued or negotiated to the same person or several persons, may be aggregated to charge a single violation of this section of appropriate class. Subject to the requirement that the conduct of the defense ~~shall~~ may not be 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 violations of this section. ~~No An~~ An aggregated count of violations of this section may not be deemed duplicitous because of such an order and no election may be required. Prosecution may be brought in any venue in which one of the violations of this section ~~which that~~ that have been aggregated was committed.

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

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

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

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

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



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

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

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

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

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

(1) Harbors or conceals the other person;

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

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

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

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

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

B. One of the following occurs:

(1) The person knew of the conduct of the other person that has in fact resulted in the charge of murder or a Class A crime or that has in fact rendered the other person liable to such a charge. Violation of this subparagraph is a Class B crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) To refrain from continuing with a criminal prosecution or juvenile proceeding

~~which he~~ that the other person has initiated;  
or

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

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

**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:

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

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

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

**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:

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

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

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

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

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

A. Fails to appear for work, for school or for a meeting with that person's supervising officer or intentionally fails to return to the correctional

facility from which transfer was made upon the direction of the Commissioner of Corrections or otherwise intentionally violates a curfew, residence, time or travel restriction. Violation of this paragraph is a Class C crime; or

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

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

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

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

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

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

**1-D.** A person is guilty of escape during transport if the person escapes from arrest or escapes from custody while being transported to a jail, police station or any other facility enumerated in subsection 3 pursuant to an arrest, unless at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this subsection is a Class D crime.

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

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

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

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

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

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

E. Prosecution for escape or attempted escape from supervised community confinement must be in the county in which the institution from which the transfer to supervised community confinement was granted is located or in any county to which the transfer to supervised community confinement was granted.

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

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

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

1. A person is guilty of aiding escape if, with the intent to aid ~~any~~ another person to violate section 755:

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

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

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

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

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

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

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

A. The person engages in prostitution as defined in section 851. 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 in prostitution. 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. 100. 17-A MRSA §853-A, sub-§2**, as amended by PL 1987, c. 361, §2, is repealed.

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

**Sec. 102. 17-A MRSA §853-B, sub-§1**, as enacted by PL 1981, c. 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. Upon 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 criminal offense. Violation of this paragraph is a Class E crime; or

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

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

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

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

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

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

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

D. Intentionally uses or employs deception, false pretense or false promise in securing the agree-

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

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

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

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

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

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

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

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

**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:

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

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

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

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

~~4. Violation of subsection 1, paragraph A or B is a Class D crime. Violation of subsection 1, paragraph~~

~~C is a Class E crime.~~ As part of every judgment of conviction and sentence 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 court prior to the judgment and by a preponderance of the evidence that such other person had a right to possess the laser pointer, to the exclusion of the defendant, at the time of the offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Expressly made a civil violation by Title 22.

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

**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:

~~3. A person is presumed to be unlawfully trafficking in scheduled drugs if the person~~ Proof that the person intentionally or knowingly possesses any 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 trafficking in scheduled drugs:

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

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

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

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

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

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:

- (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;

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

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

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

(6) 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 an 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 chapter, and punishable by a term of imprisonment of more than one year 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;

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

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

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

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

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

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;

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

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

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

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

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

F. 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 traffick in a scheduled drug 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;

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

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

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

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

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

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

2. If a person uses a motor vehicle to facilitate the aggravated trafficking in a scheduled drug, the court may, in addition to other authorized penalties, suspend the person's driver's license or permit or 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 or 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-B. Aggravated trafficking or furnishing of counterfeit drugs**

1. A person is guilty of aggravated trafficking in or furnishing a counterfeit drug if the person violates section 1104 and:

A. The person trafficks in a counterfeit drug with or furnishes a counterfeit drug to a child who is in fact under 18 years of age;

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 or counterfeit drugs, as defined in this chapter, and punishable by a term of imprisonment of more than one year. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years; or

C. At the time of the offense, the person:

- (1) Uses a firearm;
- (2) Carries a firearm;
- (3) In furtherance of the offense, possesses a firearm; or
- (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 chapter, and punishable by a term of imprisonment of more than one year 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.

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

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



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

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

D. At the time of the offense, the person furnishes 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 B 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 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.

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

F. 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 furnish a scheduled drug 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;

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

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

2. If a person uses a motor vehicle to facilitate the aggravated furnishing of a scheduled 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-D. Aggravated cultivating of marijuana**

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

A. 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 chapter, and punishable by a term of imprisonment of more than one year and the person grows or cultivates:

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

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

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

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

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

B. 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 person grows or cultivates:

- (a) Five hundred or more marijuana plants. Violation of this division is a Class A crime;
- (b) One hundred or more but fewer than 500 marijuana plants. Violation of this division is a Class B crime;
- (c) More than 5 but fewer than 100 marijuana plants. Violation of this division is a Class C crime; or
- (d) Five or fewer marijuana plants. Violation of this division is a Class D crime;

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:

- (1) Five hundred or more marijuana plants. Violation of this subparagraph is a Class A crime;
- (2) One hundred or more but fewer than 500 marijuana plants. Violation of this subparagraph is a Class B crime;
- (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or
- (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime; or

D. At the time of the offense, the person is within 1,000 feet of the real property comprising a private or public elementary or secondary school and the person grows or cultivates:

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

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

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

2. If a person uses a motor vehicle to facilitate the aggravated cultivating of marijuana, 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.

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

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

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

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

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

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

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

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

A. Authorized by Title 22 or Title 32; or

B. Made a civil violation by Title 22.

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

**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:

~~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:

- A. More than 1 1/4 ounces of marijuana;
- B. Seven grams or more of cocaine or 2 grams or more of cocaine in the form of cocaine base;
- D. Lysergic acid diethylamide in any of the following quantities or concentrations:
  - (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
  - (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

E. Seven grams or more of methamphetamine.

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

1. Quantities of scheduled drugs involved in violations of section 1103, ~~4405 1105-A, 1105-B, 1105-C~~ or 1106 committed pursuant to one scheme or course of conduct and confiscated within a 6-month period may be aggregated to charge a single violation of appropriate class. Subject to the requirement that 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.

**Sec. 125. 17-A MRSA §1106-A, sub-§2**, as enacted by PL 1999, c. 442, §2, is amended to read:

2. Quantities of scheduled drugs involved in violation of section ~~4407 1107-A~~ committed pursuant to one scheme or course of conduct and confiscated within a 48-hour period may be aggregated to charge a single violation of appropriate class. Subject to the

requirement that 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.

**Sec. 126. 17-A MRSA §1107**, as amended by PL 1999, c. 422, §10, is repealed.

**Sec. 127. 17-A MRSA §1107-A** is enacted to read:

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

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

A. A schedule W drug that is:

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

Violation of this paragraph is a Class B crime;

B. A schedule W drug that is:

- (1) Heroin (diacetylmorphine);
- (2) Cocaine in the form of cocaine base and at the time of the offense the person has been convicted of any offense under this chapter or under any law of the United States, another state or a foreign country relating to scheduled drugs, as defined in this 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
- (3) Methamphetamine.

Violation of this paragraph is a Class C crime;

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

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

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

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

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

A. Authorized by Title 22 or Title 32; or

B. Made a civil violation by Title 22.

**Sec. 128. 17-A MRSA §1108, sub-§§1 and 3,** as repealed and replaced by PL 1979, c. 512, §33, are amended to read:

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

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

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

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

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

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

**Sec. 129. 17-A MRSA §1108, sub-§4,** as amended by PL 1983, c. 350, is repealed.

**Sec. 130. 17-A MRSA §1109, sub-§1,** as enacted by PL 1975, c. 499, §1, is repealed and the following enacted in its place:

1. A person is guilty of stealing drugs if:

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

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

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

**Sec. 131. 17-A MRSA §1110, sub-§1,** as amended by PL 1997, c. 340, §1, is further amended to read:

1. ~~A Except as provided in subsection 1-B, paragraph A, a person is guilty of trafficking in hypodermic apparatuses if the 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.

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

**Sec. 132. 17-A MRSA §1110, sub-§1-A,** as enacted by PL 1997, c. 340, §1, is amended to read:

1-A. ~~A Except as provided in subsection 1-B, paragraph B, a person is guilty of furnishing hypodermic apparatuses if the person intentionally or knowingly furnishes 11 or more hypodermic apparatuses, unless the conduct that constitutes such furnishing is expressly authorized by Title 22, section 2383-B.~~ Violation of this subsection is a Class D crime.

**Sec. 133. 17-A MRSA §1110, sub-§1-B** is enacted to read:

**1-B.** The following exceptions apply.

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

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

**Sec. 134. 17-A MRSA §1110, sub-§2,** as repealed and replaced by PL 1987, c. 535, §6, is repealed.

**Sec. 135. 17-A MRSA §1111-A, sub-§1,** ¶C, as amended by PL 1981, c. 531, §2, is further amended to read:

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

**Sec. 136. 17-A MRSA §1111-A, sub-§3,** as amended by PL 1981, c. 531, §4, is further amended to read:

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

- A. Statements by an owner or by anyone in control of the object concerning its use;
- B. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any scheduled drug;
- C. The proximity of the object, in time and space, to a direct violation of this chapter;
- D. The proximity of the object to scheduled drugs;
- E. The existence of any residue of scheduled drugs on the object;
- F. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom ~~he~~ the owner knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter ~~shall~~ may not prevent a finding that the object is intended for use as drug paraphernalia;
- G. Instructions, oral or written, provided with the object concerning its use;
- H. Descriptive materials accompanying the object which explain or depict its use;
- I. National and local advertising concerning its use;
- J. The manner in which the object is displayed for sale;
- K. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- L. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- M. The existence and scope of legitimate uses for the object in the community; and
- N. Expert testimony concerning its use.

**Sec. 137. 17-A MRSA §1111-A, sub-§4**, as amended by IB 1999, c. 1, §5, is repealed and the following enacted in its place:

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

- A. The person uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare,

test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a forfeiture of not more than \$200 may be adjudged;

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

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

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

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

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.

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.

**Sec. 138. 17-A MRSA §1111-A, sub-§5**, as enacted by PL 1981, c. 266, is repealed.

**Sec. 139. 17-A MRSA §1111-A, sub-§6**, as amended by PL 1981, c. 531, §5, is repealed.

**Sec. 140. 17-A MRSA §1111-A, sub-§§7 and 8**, as enacted by PL 1981, c. 266, are repealed.

**Sec. 141. 17-A MRSA §1111-A, sub-§9**, as enacted by PL 1981, c. 266, is amended to read:

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

**Sec. 142. 17-A MRSA §1112, sub-§1**, as amended by PL 1979, c. 512, §34, is further amended to read:

1. A laboratory ~~which that~~ receives a drug or substance from a law enforcement officer or agency for analysis as a scheduled drug shall, if it is capable of so doing, analyze the same as requested, and shall issue a certificate stating the results of such analysis. Such certificate, when duly signed and 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 court of the State of Maine, and ~~shall be prima facie evidence~~ gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the composition, quality and quantity of the drug or substance are as stated therein, unless with 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to such composition, quality and quantity.

**Sec. 143. 17-A MRSA §1116, sub-§1**, as enacted by PL 1981, c. 603, §2, is amended to read:

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

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

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

**Sec. 144. 17-A MRSA §1116, sub-§1-A** is enacted to read:

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

**Sec. 145. 17-A MRSA §1116, sub-§2**, as enacted by PL 1981, c. 603, §2, is amended to read:

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

**Sec. 146. 17-A MRSA §1116, sub-§§3 and 4**, as enacted by PL 1981, c. 603, §2, are repealed.

**Sec. 147. 17-A MRSA §1116, sub-§6**, as enacted by PL 1981, c. 603, §2, is amended to read:

6. This section ~~shall~~ does not apply to:

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

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

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

**Sec. 148. 17-A MRSA §1117**, as enacted by PL 1999, c. 374, §5, is repealed and the following enacted in its place:

**§1117. Cultivating marijuana**

1. A person is guilty of cultivating marijuana if:

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

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

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

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

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

(4) Five or fewer. Violation of this subparagraph is a Class E crime.

**Sec. 149. 17-A MRSA §1158**, as amended by PL 1995, c. 252, §1, is repealed and the following enacted in its place:

**§1158. Forfeiture of firearms**

As part of every judgment of conviction and sentence imposed, a firearm must be forfeited to the State if that firearm:

1. Constitutes the basis for conviction under:

A. Title 15, section 393;

B. Section 1105-A, subsection 1, paragraph C;

C. Section 1105-B, subsection 1, paragraph C;

D. Section 1105-C, subsection 1, paragraph C;  
or

E. Section 1105-D, subsection 1, paragraph B;  
or

2. Is used by the defendant or an accomplice during the commission of any murder or Class A, Class B or Class C crime or any Class D crime defined in chapter 9, 11 or 13.

The court shall order the forfeiture of the firearm unless another person can satisfy the court prior to the judgment and by a preponderance of the evidence that another person had a right to possess the firearm, to the exclusion of the defendant, at the time of the offense. The Attorney General shall adopt rules in accordance with Title 5, chapter 375 governing the disposition to state, county and municipal agencies of firearms forfeited under this section.

**Sec. 150. 17-A MRSA §1252, sub-§4-A**, as enacted by PL 1997, c. 460, §5, is amended to read:

**4-A.** If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 13 or 27 was committed, the defendant had been convicted of 2 or more crimes violating chapter 9, 11, 13 or 27 or essentially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. ~~For purposes of this subsection, the dates of the prior convictions must precede the commission of the offense being enhanced by no more than 10 years, although both prior convictions may have occurred on the same date. This subsection does not apply if the 2 prior offenses were committed within a 3 day period. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date an offense was committed is presumed to be the date stated in the complaint, information or~~

~~indictment, notwithstanding the use of the words "on or about" or the equivalent. Section 9-A governs the use of prior convictions when determining a sentence.~~

**Sec. 151. 17-A MRSA §1252, sub-§5-A**, as amended by PL 1999, c. 374, §6, is further amended to read:

**5-A.** Notwithstanding any other provision of this Code, for a person convicted of violating section ~~4405~~ 1105-A, 1105-B, 1105-C or 1105-D:

A. Except as otherwise provided in paragraphs B and C, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 4 years; when the sentencing class is Class B, the minimum term of imprisonment is 2 years; and, with the exception of ~~trafficking, furnishing or cultivation of marijuana~~ a conviction under section ~~4405~~ 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the sentencing class is Class C, the minimum term of imprisonment is one year;

B. The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in paragraph A, if:

(1) The court finds by substantial evidence that:

(a) Imposition of a minimum unsuspended term of imprisonment under paragraph A will result in substantial injustice to the defendant. In making this determination, the court shall consider, among other considerations, whether the defendant did not know and reasonably should not have known that the victim was less than 18 years of age;

(b) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not have an adverse effect on public safety; and

(c) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not appreciably impair the effect of paragraph A in deterring others from violating section ~~4405~~ 1105-A, 1105-B, 1105-C or 1105-D; and

(2) The court finds that:

(a) The defendant has no prior criminal history; and

(b) The defendant is an appropriate candidate for an intensive supervision program, but would be ineligible to participate under a sentence imposed under paragraph A; or

(c) The defendant's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under paragraph A would frustrate the general purposes of sentencing set forth in section 1151.

If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and

C. If the court imposes a sentence under paragraph B, the minimum sentence of imprisonment, which ~~shall~~ may not be suspended, ~~shall be~~ is as follows: When the sentencing class is Class A, the minimum term of imprisonment ~~shall be~~ is 9 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 ~~4405, 1105-A or 1105-C~~, when the sentencing class is Class C, the minimum term of imprisonment ~~shall be~~ is 3 months.

**Sec. 152. 17-A MRSA §1301, sub-§5**, as enacted by PL 1985, c. 699, is amended to read:

5. Notwithstanding any other provision of this section, any person convicted of a crime under section 1103, ~~4405~~ 1105-A, 1105-B, 1105-C, 1105-D, 1106 or 4407 ~~1107-A~~ may be sentenced to 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.

When the court imposes a fine under this subsection, the court shall make a finding as to the value of the scheduled drug or drugs. If the record does not contain sufficient evidence to support a finding, the court may conduct, in connection with its imposition of a sentence, a hearing on this issue.

**Sec. 153. 34-A MRSA §11203, sub-§6, ¶B**, as enacted by PL 1999, c. 437, §2, is amended to read:

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 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 256; Title 17-A, section 258; Title 17-A, section 301, unless the actor is a parent of the

victim; Title 17-A, section 302; Title 17-A, section 511, subsection 1, paragraph D; Title 17-A, section 556; Title 17-A, section 852, subsection 1, paragraph B; or Title 17-A, section 855; or

**Sec. 154. 34-A MRSA §11203, sub-§7, ¶A**, as enacted by PL 1999, c. 437, §2, is amended to read:

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. 155. Corrective legislation.** The Joint Standing Committee on Judiciary shall review statutory changes enacted by the 120th Legislature that may conflict with this Act and shall prepare corrective legislation before December 1, 2002 for introduction in the 121st Legislature. This section takes effect January 1, 2002.

**Sec. 156. Effective date.** Except as otherwise provided, this Act takes effect January 31, 2003.

Effective January 31, 2003, except as otherwise indicated.

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## CHAPTER 384

### H.P. 1359 - L.D. 1814

#### An Act Regarding the Use of Tokens or Tickets for Games of Chance at Agricultural Fairs

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

Whereas, agricultural fairs need more time to adjust to the requirements of Public Law 1999, chapter 716; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 17 MRSA §341, sub-§§3 and 4**, as enacted by PL 1999, c. 716, §10, are amended to read:

**3. Games conducted at agricultural fairs.** Beginning January 1, ~~2001~~ 2002, games of chance