

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**  
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 17, 2005**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

~~preponderance of the evidence, that he lacks criminal responsibility as described in this subsection.~~

**Sec. 6. 17-A MRSA §39, sub-§3** is enacted to read:

3. Lack of criminal responsibility by reason of insanity is an affirmative defense.

**Sec. 7. 17-A MRSA §40**, as amended by PL 1985, c. 796, §6, is further amended to read:

**§40. Procedure upon plea of not guilty coupled with plea of not criminally responsible by reason of insanity**

1. When the defendant enters a plea of not guilty together with a plea of not criminally responsible by reason of insanity, ~~he~~ the defendant shall also elect whether the trial ~~shall~~ must be in 2 stages as provided for in this section, or a unitary trial in which both the issues of guilt and of insanity are submitted simultaneously to the jury. At the defendant's election, the jury ~~shall~~ must be informed that the 2 pleas have been made and that the trial will be in 2 stages.

2. If a 2-stage trial is elected by the defendant, there ~~shall~~ must be a separation of the issue of guilt from the issue of insanity in the following manner.

A. The issue of guilt ~~shall~~ must be tried first and the issue of insanity tried only if the jury returns a verdict of guilty. If the jury returns a verdict of not guilty, the proceedings ~~shall~~ must terminate.

B. Evidence of mental disease or defect, as defined in section 39, subsection 2, ~~shall~~ is not ~~be~~ admissible in the guilt or innocence phase of the trial for the purpose of establishing insanity. Such evidence ~~shall~~ must be admissible for that purpose only in the 2nd phase following a verdict of guilty.

3. The issue of insanity ~~shall~~ must be tried before the same jury as tried the issue of guilt. Alternate jurors who were present during the first phase of the trial but who did not participate in the deliberations and verdict thereof may be substituted for jurors who did participate. The defendant may elect to have the issue of insanity tried by the court without a jury.

4. If the jury in the first phase returns a guilty verdict, the trial ~~shall~~ must proceed to the 2nd phase. The defendant and the State may rely upon evidence admitted during the first phase or they may recall witnesses. Any evidence relevant to insanity is admissible. The order of proof ~~shall~~ must reflect that the defendant has the burden of establishing ~~his~~ the defendant's lack of criminal responsibility by reason of insanity. The jury shall return a verdict that the defendant is criminally responsible or not criminally

responsible by reason of ~~mental disease or defect~~ insanity. If the defendant is found criminally responsible, the court shall sentence ~~him~~ the defendant according to law.

5. This section does not apply to cases tried before the court without a jury.

See title page for effective date.

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**CHAPTER 264**

**H.P. 868 - L.D. 1271**

**An Act Regarding Criminal Use of an Electronic Weapon**

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

**Sec. 1. 17-A MRSA §1004** is enacted to read:

**§1004. Criminal use of electronic weapon**

1. Except as provided in subsection 4, a person is guilty of criminal use of an electronic weapon if the person intentionally, knowingly or recklessly uses an electronic weapon upon any other person.

2. As used in this section, "electronic weapon" means a portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to have a disabling effect upon human beings.

3. Criminal use of an electronic weapon is a Class D crime.

4. This section does not apply to the use of an electronic weapon by:

A. A law enforcement officer, corrections officer or corrections supervisor engaged in the performance of the law enforcement officer's, corrections officer's or corrections supervisor's public duty if the officer's or corrections supervisor's appointing authority has authorized such use of an electronic weapon; or

B. A person using deadly force when that use is for the purpose of:

(1) Defending that person or a 3rd person as authorized under section 108, subsection 2; or

(2) Defending that person's dwelling place as authorized under section 104, subsections 3 and 4.

See title page for effective date.

**CHAPTER 265**

**S.P. 521 - L.D. 1505**

**An Act To Amend the Sentencing Laws**

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

**Whereas,** the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners was established by the Legislature to examine the factors leading to prison overcrowding, the impact of current sentencing laws, the use of alternative sentences and means to reduce recidivism, in particular recidivism caused by mental illness and substance abuse; and

**Whereas,** the commission's recommendations to create sentencing alternatives for certain classes of offenses were enacted; however, greater judicial discretion is necessary to deter future criminal conduct and for the safety of victims of crime; 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-A MRSA §1152, sub-§2, ¶G,** as amended by PL 1995, c. 136, §1, is further amended to read:

G. A fine as authorized by chapter 53. Such a fine may be imposed in addition to the sentencing alternatives in paragraphs B, D, E ~~and~~ F, H, I, L and M;

**Sec. 2. 17-A MRSA §1152, sub-§2, ¶¶K and L,** as enacted by PL 2003, c. 711, Pt. A, §9, are amended to read:

K. A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 54-G; ~~or~~

L. A suspended term of imprisonment with administrative release as authorized by chapter 54-G; ~~or~~

**Sec. 3. 17-A MRSA §1152, sub-§2, ¶M** is enacted to read:

M. A split sentence of imprisonment with administrative release as authorized by chapter 54-G.

**Sec. 4. 17-A MRSA §1172, sub-§1, ¶¶A, B, D and E,** as enacted by PL 1995, c. 680, §5, are amended to read:

A. The details of a plea agreement, including a deferred disposition, before it is submitted to the court;

B. The right to comment on ~~the~~ a plea agreement, including a deferred disposition, pursuant to section 1173;

D. The time and place of sentencing; ~~and~~

E. The right to participate at sentencing pursuant to section 1174; ~~and~~

**Sec. 5. 17-A MRSA §1172, sub-§1, ¶F** is enacted to read:

F. The right to comment on the proposed early termination of probation, early termination of administrative release or conversion of probation to administrative release, pursuant to section 1174-A.

**Sec. 6. 17-A MRSA §1174-A** is enacted to read:

**§1174-A. Termination or conversion procedure**

When the attorney for the State receives notice of a motion seeking early termination of probation or early termination of administrative release or seeking to convert probation to administrative release, the attorney for the State shall disclose to the court any attempts made to notify each victim of the motion to terminate or convert and any objection to the motion by a victim. If a hearing is held on the motion by the court and the victim is present in court, the victim may address the court at that time.

**Sec. 7. 17-A MRSA §1201, sub-§1, ¶A-1,** as enacted by PL 2003, c. 711, Pt. A, §10, is amended to read:

A-1. The conviction is for a Class D or Class E crime other than ~~any Class D crime committed against a family or household member under chapter 9 or 13 or section 506-B, 554, 555 or 758; any Class D or Class E crime in chapter 11~~