

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

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.

Penmor Lithographers
Lewiston, Maine
2005

purposes of the standards for validity and reliability to the quality standards established for the comprehensive, standards-based system of learning results.

See title page for effective date.

CHAPTER 447

H.P. 680 - L.D. 970

An Act To Improve Sentencing for Serious Offenders

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

Sec. 1. 17-A MRSA §1252, sub-§4-A, as repealed and replaced by PL 2003, c. 688, Pt. A, §14, 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 ~~or~~ section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, the defendant had been convicted of 2 or more crimes violating chapter 9, 11, 13 or 27 ~~or~~ section 402-A, subsection 1, paragraph A; or section 752-A or 752-C 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. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time. This subsection does not apply to section 210-A if the prior convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C.

Sec. 2. 17-A MRSA §1322, sub-§3, as repealed and replaced by PL 1993, c. 305, §1, is amended by amending the first paragraph to read:

3. Economic loss. "Economic loss" includes economic detriment consisting of environmental clean-up expense, property loss, allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment. "Economic loss" includes expenses of an emergency response by any public agency and critical investigation expenses.

Sec. 3. 17-A MRSA §1322, sub-§3, ¶A-1 is enacted to read:

A-1. "Critical investigation expense" means a necessary expense incurred by a government or by a victim while investigating or prosecuting suspected criminal conduct. "Critical investigation expense" is limited to the cost of an audit or other financial analysis when that analysis is necessary to determine whether and to what extent a victim has suffered financial harm from criminal conduct by an employee or other person in a position of trust and the cost of analysis of suspected illegal drugs.

See title page for effective date.

CHAPTER 448

H.P. 655 - L.D. 936

An Act To Amend the Maine Tort Claims Act

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

Sec. 1. 14 MRSA §8104-B, sub-§3, as enacted by PL 1987, c. 740, §4, is amended to read:

3. Performing discretionary function. Performing or failing to perform a discretionary function or duty, whether or not the discretion is abused and whether or not any statute, charter, ordinance, order, resolution or policy under which the discretionary function or duty is performed is valid or invalid, except that if the discretionary function involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection 42, this section does not provide immunity for the governmental entity for an employee's negligent operation of the motor vehicle resulting in a collision, regardless of whether the employee has immunity under this chapter;

See title page for effective date.

CHAPTER 449

H.P. 270 - L.D. 357

An Act Regarding Bail Conditions

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

Sec. 1. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 2001, c. 252, §2, is further amended by enacting subparagraph (10-A) to read:

(10-A) Enter and remain in a long-term residential facility for the treatment of substance abuse;

Sec. 2. 15 MRSA §1092, sub-§1, ¶B, as enacted by PL 2003, c. 452, Pt. H, §3 and affected by Pt. X, §2, is amended to read:

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (5), (8), (10-A) or (13).

Sec. 3. 15 MRSA §1096, first ¶, as enacted by PL 1995, c. 356, §19, is amended to read:

~~An order of a~~ A ~~preconviction bail entered by order of a bail commissioner may be revoked by any judge or justice, and a preconviction bail order of a judge or justice may be revoked by the any judge or justice or, if that judge or justice is not available, by another judge or justice of the same court, upon a determination made after notice and opportunity for hearing that:~~

See title page for effective date.

CHAPTER 450

H.P. 867 - L.D. 1249

An Act To Amend the Crimes of Unlawful Sexual Contact and Unlawful Sexual Touching

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

Sec. 1. 17-A MRSA §255-A, sub-§1, ¶¶S and T, as enacted by PL 2001, c. 383, §23 and affected by §156, are amended to read:

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 in-

cludes penetration. Violation of this paragraph is a Class D crime;

Sec. 2. 17-A MRSA §255-A, sub-§1, ¶¶U and V are enacted to read:

U. 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 of the actor for mental health therapy. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes and based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse. Violation of this paragraph is a Class D crime; or

V. 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 of the actor for mental health therapy and the sexual contact includes penetration. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes and 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.

Sec. 3. 17-A MRSA §260, sub-§1, ¶I, as corrected by RR 2003, c. 2, §27, is amended to read:

I. 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 Health and 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; ~~or~~

Sec. 4. 17-A MRSA §260, sub-§1, ¶J, as enacted by PL 2003, c. 138, §5, is amended to read:

J. 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