

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2008 to March 31, 2008**

**FIRST SPECIAL SESSION**  
**April 1, 2008 to April 18, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 30, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
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**JULY 18, 2008**

**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**  
**2008**

**CHAPTER 474**  
**S.P. 116 - L.D. 372**

**An Act To Strengthen the  
Crime of Gross Sexual Assault  
as It Pertains to Persons Who  
Furnish Drugs to Victims**

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

**Sec. 1. 17-A MRSA §253, sub-§2, ¶A**, as amended by PL 2001, c. 383, §15 and affected by §156, is further 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 furnishing, as defined in section 1101, subsection 18, paragraph A, administering or employing drugs, intoxicants or other similar means. Violation of this paragraph is a Class B crime;

**Sec. 2. 17-A MRSA §253, sub-§3**, as repealed and replaced by PL 1989, c. 401, Pt. A, §4, is repealed and the following enacted in its place:

**3.** It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the substance with knowledge of its nature, except that it is no defense when:

A. The other person is a patient of the actor and has a reasonable belief that the actor is administering the substance for medical or dental examination or treatment; or

B. The other person is in fact 14 or 15 years of age.

See title page for effective date.

**CHAPTER 475**  
**H.P. 882 - L.D. 1240**

**An Act To Implement the  
Recommendations of the  
Criminal Law Advisory  
Commission**

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

**Sec. 1. 14 MRSA §3141, sub-§2**, as enacted by PL 1987, c. 414, §2, is repealed.

**Sec. 2. 14 MRSA §3141, sub-§4**, as amended by PL 1989, c. 875, Pt. E, §17, is further amended to read:

**4. Installment payments.** If the court concludes that the defendant has the ability to pay the fine, but that requiring the defendant to make immediate payment in full would cause a severe and undue hardship for the defendant and the defendant's dependents, the court may authorize payment of the fine by means of installment payments in accordance with this subsection. When a court authorizes payment of a fine by means of installment payments, it shall issue, without a separate disclosure hearing, an order that the fine be paid in full by a date certain, that the defendant has a legal duty to move the court for a modification of time or method of payment to avoid a default and that in default of payment the defendant must appear in court to explain the failure to pay.

In fixing the date of payment, the court shall issue an order ~~which that~~ will complete payment of the fine as promptly as possible without creating a severe and undue hardship for the defendant and the defendant's dependents.

**Sec. 3. 15 MRSA §103-A** is enacted to read:

**§103-A. Commitment affected by certain sentences**

**1. Interruption of commitment.** When a person while in the custody of the Commissioner of Health and Human Services pursuant to a commitment order under section 103 is found by a court to be in violation of the person's conditional release for a Maine conviction and new institutional confinement is ordered, or a person commits a Maine crime for which the person is subsequently convicted and the sentence imposed includes a straight term of imprisonment or a split sentence, the person must be placed in execution of that punishment, and custody pursuant to the commitment order under section 103 must automatically be interrupted thereby. In the event execution of that punishment is stayed pending appeal, the commitment under section 103 continues for the stay's duration. The person must be returned to the custody of the Commissioner of Health and Human Services pursuant to the commitment order under section 103 when the new institutional confinement ordered or the straight term of imprisonment or the unsuspended portion of the split sentence imposed has been fully served.

**Sec. 4. 15 MRSA §812, sub-§2**, as amended by PL 1995, c. 680, §1, is further amended to read:

**2. Notification to victims and law enforcement officers.** ~~Before~~ Whenever practicable, before submitting a negotiated plea to the court, the attorney for the State shall ~~advise~~ make a good faith effort to inform the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime or a violation of Title 17-A, chapter 9, 11, 12 or 13 and, with respect to victims, shall advise victims of their rights under comply with Title 17-A, section 1172, subsection 1, para-

graphs A and B relative to informing victims of the details of and their right to comment on a plea agreement.

**Sec. 5. 15 MRSA §2115, last ¶**, as repealed and replaced by PL 1965, c. 356, §63, is repealed.

**Sec. 6. 15 MRSA §3101, sub-§4, ¶C-2**, as enacted by PL 1997, c. 645, §2, is amended to read:

C-2. With respect to the finding of appropriateness required by paragraph E, subparagraph (2), the State has the burden of proof, except that in a case involving a juvenile who is charged with one or more juvenile crimes that, if the juvenile were an adult, would constitute murder, aggravated attempted murder, attempted murder, felony murder, Class A manslaughter other than the reckless or criminally negligent operation of a motor vehicle, elevated aggravated assault on a pregnant person, elevated aggravated assault, arson that recklessly endangers any person, causing a catastrophe, Class A robbery or Class A gross sexual assault in which the victim submits as a result of compulsion, the juvenile has the burden of proof.

**Sec. 7. 15 MRSA §3304, sub-§6-A, ¶B**, as enacted by PL 2003, c. 142, §1 and affected by §3, is amended to read:

B. If the parent, guardian or legal custodian fails to appear with the juvenile and the court has not found good cause for not appearing, the court, after notice and hearing on the issue of contempt, may find the parent, guardian or legal custodian in contempt of court in accordance with the Maine Rules of ~~Criminal~~ Civil Procedure, Rule 42~~(d)~~ 66(d).

**Sec. 8. 17-A MRSA §15, sub-§1, ¶A**, as amended by PL 2003, c. 102, §1, is further amended to read:

A. Any person who the officer has probable cause to believe has committed or is committing:

- (1) Murder;
- (2) Any Class A, Class B or Class C crime;
- (3) Assault while hunting;
- (4) Any offense defined in chapter 45;
- (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;
- (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 19-A, section 4002, subsection 4;

(6) Theft as defined in section 357, when the value of the services is \$1,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(8) Negotiating a worthless instrument if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(9) A violation of a condition of probation when requested by a probation officer or juvenile community corrections officer;

(10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;

(11) Theft involving a detention under Title 17, section 3521;

(12) Harassment, as set forth in section 506-A;

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769, subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011, subsection 3; and Title 19-A, section 4012, subsection 5; ~~or~~

(14) A violation of a sex offender registration provision under Title 34-A, chapter 15; ~~and or~~

(15) A violation of a requirement of administrative release when requested by the attorney for the State; and

**Sec. 9. 17-A MRSA §32**, as enacted by PL 1981, c. 324, §14, is amended to read:

**§32. Elements of crimes defined**

~~No~~ A person may not be convicted of a crime unless each element of the crime is proved by the State beyond a reasonable doubt. "Element of the crime" means the forbidden conduct; the attendant circumstances specified in the definition of the crime; the intention, knowledge, recklessness or negligence as may be required; and any required result.

**Sec. 10. 17-A MRSA §101, sub-§3**, as amended by PL 1999, c. 358, §1, is further amended to read:

3. Conduct that is justifiable under this chapter constitutes a defense to any crime; ~~provided~~ except

that, if a person is justified in using force against another, but the person recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness. If a defense provided under this chapter is precluded solely because the requirement that the person's belief be reasonable has not been met, the person may be convicted only of a crime for which recklessness or criminal negligence suffices, ~~and then, only if holding the belief, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, is grossly deviant from what a reasonable and prudent person would believe in the same situation.~~

**Sec. 11. 17-A MRSA §351**, as amended by PL 1981, c. 317, §7, is further amended to read:

**§351. Consolidation**

Conduct denominated theft in this chapter constitutes a single crime embracing the separate crimes such as those heretofore known as larceny, larceny by trick, larceny by bailee, embezzlement, false pretenses, extortion, blackmail, shoplifting and receiving stolen property. An accusation of theft may be proved by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the complaint, information or indictment, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief if the conduct of the defense would be prejudiced by lack of fair notice or by surprise. If the evidence is sufficient to permit a finding of guilt of theft in more than one manner, no election among those manners is required.

**Sec. 12. 17-A MRSA §908, sub-§2**, as enacted by PL 1995, c. 681, §1, is repealed.

**Sec. 13. 17-A MRSA §1176**, as enacted by PL 2005, c. 389, §1, is repealed and the following enacted in its place:

**§1176. Confidentiality of victim records**

**1. General rule of confidentiality.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

**2. Disclosure to law enforcement or victim services agencies.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

A. A state agency if necessary to carry out the statutory duties of that agency;

B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;

C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or

D. A person or agency upon request of the victim.

**3. Limited disclosure as part of court order or bail condition.** A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim, only when it is clear that the defendant already knows the victim's current address or location, or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

**4. Limited disclosure pursuant to discovery.** Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an attorney for the State may withhold the current address or location of a victim from a defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

**5. Disclosure of victim's request for notice prohibited.** In no case may a victim's request for notice of release of a defendant be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those employees to perform their official duties.

**Sec. 14. 17-A MRSA §1201, sub-§1, ¶A-1**, as amended by PL 2007, c. 340, §1 and c. 344, §1, is repealed and the following enacted in its place:

A-1. The conviction is for a Class D or Class E crime other than:

(1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode and, as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;

(2) A Class D crime that the State pleads and proves was committed against a family or household member, a dating partner or a victim of sexual assault or stalking under chapter 9 or 13 or section 506-B, 554, 555 or 758. As used in this subparagraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; "dating partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A; "victim of sexual assault or stalking" means a person who has been a victim of conduct defined as stalking in section 210-A or described as sexual assault in chapter 11 committed by someone other than a family or household member or dating partner;

(3) A Class D or Class E crime in chapter 11 or 12;

(4) A Class D crime under section 210-A;

(4-A) A Class E crime under section 552;

(5) A Class D or Class E crime under section 556, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;

(6) A Class D crime in chapter 45 relating to a schedule W drug; or

(7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B.

**Sec. 15. 17-A MRSA §1202, sub-§1-A, ¶A-1**, as enacted by PL 2003, c. 711, Pt. A, §12, is amended to read:

A-1. If the State pleads and proves that the person was convicted of committing against a family or household member a crime under chapter 9 or 13 or section 554 or if the person was convicted under chapter 11 or 12 or section 556, the period of probation may not exceed:

- (1) Six years for a Class A crime; or
- (2) Four years for a Class B or Class C crime.

As used in this paragraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; ~~and~~

**Sec. 16. 17-A MRSA §1202, sub-§1-A, ¶D** is enacted to read:

D. The period of probation for a person sentenced for the crime of nonsupport of dependents under section 552 is as provided under section 552, subsection 4.

See title page for effective date.

## CHAPTER 476 H.P. 883 - L.D. 1241

### An Act To Provide Uniform Treatment of Prior Convictions in the Maine Criminal Code

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

**Sec. 1. 17-A MRSA §2, sub-§3-B** is enacted to read:

**3-B.** "Another jurisdiction" means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa and each of the several states except Maine. "Another jurisdiction" also means the Passamaquoddy Tribe when that tribe has acted pursuant to Title 30, section 6209-A, subsection 1, paragraph A or B and the Penobscot Nation when that tribe has acted pursuant to Title 30, section 6209-B, subsection 1, paragraph A or B.

**Sec. 2. 17-A MRSA §152-A, sub-§1, ¶C**, as enacted by PL 2001, c. 413, §2, is amended to read:

C. The person was previously convicted in this State or another jurisdiction of criminal homicide or any other crime involving the use of deadly force against a person;

**Sec. 3. 17-A MRSA §257, sub-§1, ¶D**, as enacted by PL 1995, c. 429, §2, is amended to read:

D. The offender has been previously convicted of a crime under chapter 11 or previously convicted ~~under the laws of the United States or any other state~~ in another jurisdiction for conduct substantially similar to that contained in chapter 11.

**Sec. 4. 17-A MRSA §282, sub-§1, ¶B**, as enacted by PL 2003, c. 711, Pt. B, §12, is amended to read:

B. The person violates paragraph A and, at the time of the offense, ~~the person~~ has one or more prior convictions ~~for violating under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction.~~ Violation of this paragraph is a Class A crime;

**Sec. 5. 17-A MRSA §282, sub-§1, ¶E**, as enacted by PL 2003, c. 711, Pt. B, §12, is amended to read:

E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions ~~for violating under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction.~~