

MAINE STATE LEGISLATURE

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STATE OF MAINE
117TH LEGISLATURE

FIRST REGULAR SESSION

BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
CRIMINAL JUSTICE

AUGUST 1995

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**ONE HUNDRED AND SEVENTEENTH LEGISLATURE
FIRST REGULAR SESSION**

**SUMMARY OF LEGISLATION BEFORE
THE JOINT STANDING COMMITTEES**

AUGUST 1995

This document is a compilation of the bill summaries prepared by this office for the Joint Standing Committees of the Maine Legislature. The volume is organized alphabetically by committee; within each committee, the summaries are arranged by LD number. A subject index is provided at the beginning of each committee's summaries. The publication, History and Final Disposition of Legislative Documents, is helpful in determining to which committee any particular bill was referred.

In this document, the committee report or reports, the prime sponsor for each bill and the lead co-sponsor in each house if one has been designated are listed below each bill title. All adopted amendments are listed, by paper number, together with the sponsor for floor amendments. Final action on each bill is listed to the right of the title. Various categories of final action are abbreviated as follows:

CARRIED OVER	<i>Bill carried over to Second Session</i>
CON RES XXX	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
CONF CMTE UNABLE TO AGREE	<i>Committee of Conference unable to agree; bill died</i>
DIED BETWEEN BODIES	<i>House & Senate disagree; bill died</i>
DIED ON ADJOURNMENT	<i>Action incomplete when session ended; bill died</i>
EMERGENCY	<i>Enacted law takes effect sooner than 90 days</i>
FAILED EMERGENCY ENACTMENT	<i>Emergency bill failed to get 2/3 vote</i>
FAILED ENACTMENT	<i>Bill failed to get majority vote</i>
FAILED MANDATE ENACTMENT	<i>Bill imposing local mandate failed to get 2/3 vote</i>
INDEF PP	<i>Bill Indefinitely Postponed</i>
ONTP	<i>Ought Not to Pass report accepted</i>
P&S XXX	<i>Chapter # of enacted Private & Special Law</i>
PUBLIC XXX	<i>Chapter # of enacted Public Law</i>
RESOLVE XXX	<i>Chapter # of enacted Resolve</i>
UNSIGNED	<i>Not signed by Governor within 10 days</i>
VETO SUSTAINED	<i>Legislature failed to override Governor's Veto</i>

These summaries were prepared by the analyst or analysts assigned to the committee. If more detailed information is needed on a bill, contact the committee analyst.

5581LHS

**An Act to Limit a Citizen's Right to Threaten the Use of
Deadly Force against a Law Enforcement Officer Engaged in
Carrying out Public Duty Except When Justified in Using
Deadly Force**

SPONSOR(S)**COMMITTEE REPORT****AMENDMENTS ADOPTED**

OTP MAJ
ONTP MIN

SUMMARY

This bill would have barred a private citizen, who otherwise would have the legal right to do so, from threatening the use of deadly force against a person the private citizen knew or should have known was a law enforcement officer unless the private citizen knew that that law enforcement officer was not at that time engaged in the performance of the law enforcement officer's official duties or unless the private citizen was justified under the Maine Revised Statutes, Title 17-A, chapter 5 in actually using deadly force against that officer. Although broader in scope, this bill was nonetheless intended to overrule the result in State v. Clisham, 614 A.2d 1297 (Me. 1992) that allows a private citizen to threaten a law enforcement officer, acting under color of authority, with death or serious bodily injury under circumstances in which the private citizen is legally justified in using only nondeadly force. In State v. Clisham the Law Court equated threatening deadly force with the actual use of nondeadly force. Id. at 1298. See also State v. Lord, 617 A.2d 536 (Me. 1992). This legal parallel drawn by the Law Court when a law enforcement officer is involved is rejected because of the substantial and unwarranted risk of death or serious bodily injury posed to the private citizen and law enforcement officer alike.

**An Act to Reduce the Amount of Good Time and Meritorious
Good Time Available to Persons Sentenced to Terms of
Imprisonment**

SPONSOR(S)**COMMITTEE REPORT****AMENDMENTS ADOPTED**

OTP-AM

S-204

S-212 HALL

SUMMARY

This bill, in critical part, reduces the amount of good time and meritorious good time currently available under the Maine Criminal Code. The changes apply only to persons committing crimes on or after October 1, 1995 to avoid creating an ex post facto law.

Regarding good time, the bill makes 2 changes. First, it requires that good time be calculated on an as-earned basis rather than on an up-front basis. Second, it reduces the maximum number of days available to be earned each month to 2 days.

Regarding meritorious good time, the bill makes 2 changes. First, it reduces the maximum number of days available to be earned each month by a person imprisoned and in the custody of the Department of Corrections to 2 days. Second, it eliminates the availability of meritorious good time entirely for persons imprisoned and in the custody of a sheriff. As to the latter category of prisoners, however, the authorized deduction under the Maine Revised Statutes, Title 30-A, section 1606 remains available.

This bill repeals and replaces Title 17-A, section 1252-B to make clear that courts are expected to adjust terms of imprisonment imposed downward.

COMMITTEE AMENDMENT "A" (S-204) replaces the bill. This amendment makes fundamental policy changes relative to the current deductions for good time and meritorious good time under the Maine Revised Statutes, Title 17-A, section 1253. These fundamental changes apply only to persons committing crimes on or after October 1, 1995 to avoid creating an ex post facto law.

The current statutory distinctions made in Title 17-A, section 1253 regarding good time and meritorious good time are eliminated as to persons committing crimes on or after October 1, 1995. A single deduction of up to 5 days per calendar month is established for all such persons sentenced to imprisonment irrespective of the actual length of imprisonment imposed or the place of imprisonment. That deduction must be calculated on an as-earned basis, instead of on an up-front basis. The chief administrative officer of the state facility or the sheriff of the county jail must determine how to allocate the 5 days that may be earned and deducted per calendar month to best provide an incentive for positive prisoner behavior, utilizing the basic criteria of conduct, participation in programs and fulfillment of assigned responsibilities. Any portion of the time actually deducted from the term of imprisonment of an inmate or any portion of time potentially to be deducted, up to and including the maximum authorized, is subject to withdrawal for a disciplinary offense or for the violation of any state law. The chief administrative officer of the facility or the sheriff of the county jail makes that determination. An important part of this policy change is that potential deductions not yet awarded are subject to withdrawal for a disciplinary offense or for a violation of any state law. This is true since no portion of the deduction is awarded up-front and the highest risk of misconduct by a prisoner exists during the initial period of confinement, a point in time when little or no good time has actually been deducted. Any good time withdrawn may be restored if the prisoner's later conduct warrants restoration.

This amendment also repeals and replaces Title 17-A, section 1252-B to make clear that the currently authorized statutory deductions for good time and meritorious good time are not consistent with the Maine Criminal Code's sentencing scheme respecting terms of imprisonment. Under current law, the actual length of sentences served by inmates is significantly less than what the court imposes at sentencing. This disparity not only conflicts with the sentencing policy of the Maine Criminal Code, but also does not reflect the public's desire for truth in sentencing.

Separate from the need to significantly reduce good time deductions to reinstate truth in sentencing and to eliminate any impetus for legislatively increasing the current ceiling limits for Class A, Class B, Class C, Class D and Class E crimes and the mandatory minimum for murder is the need for parties and sentencing courts who have been requesting and imposing longer terms of imprisonment to compensate for the administrative deductions required by Title 17-A, section 1252-B, to now, in view of the substantial reductions in these statutory deductions, necessarily adjust terms of imprisonment to be imposed downward. This downward adjustment is absolutely critical to carry out the considered legislative judgment because failure of the parties and the courts to do so will significantly lengthen the actual periods of incarceration to be served, placing an additional unwanted and unneeded strain on the State's overburdened state correctional facilities and county jails.

This amendment also adds a fiscal note.

SENATE AMENDMENT "A" TO COMMITTEE AMENDMENT "A" (S-212) makes a technical change.

LD 545 An Act Creating a Victims' Rights Chapter in the Maine Criminal Code

ONTP

SPONSOR(S)

COMMITTEE REPORT
ONTP

AMENDMENTS ADOPTED

SUMMARY

This bill was submitted by the Criminal Law Advisory Commission. This bill would have done the following:

1. Facilitated the participation of the victim in the criminal justice process to the extent that such participation was practicable and consistent with the goals of the process.
2. Relocated to one place in the Maine Criminal Code current provisions defining victims' rights and refined those provisions when appropriate.