

# MAINE STATE LEGISLATURE

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**STATE OF MAINE  
119TH LEGISLATURE**

**FIRST REGULAR SESSION**

**BILL SUMMARIES  
JOINT STANDING COMMITTEE  
ON  
CRIMINAL JUSTICE**

**JULY 1999**

**MEMBERS:**

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Sen. William B. O'Gara  
Sen. Paul T. Davis*

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**ONE HUNDRED NINETEENTH LEGISLATURE**  
**FIRST REGULAR SESSION**

**Summary Of Legislation Before The Joint Standing and Select Committees**  
**August 1999**

We are pleased to provide this summary of all bills that were considered by the Joint Standing and Select Committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this session for the Legislature and each of its joint standing and select committees.

The document is organized for convenient reference to information on bills considered by the committees. It is organized by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet ([www.state.me.us/legis/opla](http://www.state.me.us/legis/opla)).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

*CARRIED OVER*.....Bill carried over to Second Regular Session  
*CON RES XXX*..... Chapter # of Constitutional Resolution passed by both Houses  
*CONF CMTE UNABLE TO AGREE*.....Committee of Conference unable to agree; bill died  
*DIED BETWEEN BODIES*.....House & Senate disagree; bill died  
*DIED IN CONCURRENCE*..... One body accepts ONTP report; the other indefinitely postpones the bill  
*DIED ON ADJOURNMENT*.....Action incomplete when session ended; bill died  
*EMERGENCY*..... Enacted law takes effect sooner than 90 days  
*ENACTMENT FAILED*..... Bill failed to get vote required for enactment or final passage  
*NOT PROPERLY BEFORE THE BODY*..... Ruled out of order by the presiding officers; bill died  
*INDEF PP*.....Bill Indefinitely Postponed  
*ONTP*..... Ought Not To Pass report accepted  
*OTP ND*..... Committee report Ought To Pass In New Draft  
*OTP ND/NT*..... Committee report Ought To Pass In New Draft/New Title  
*P&S XXX*..... Chapter # of enacted Private & Special Law  
*PUBLIC XXX*..... Chapter # of enacted Public Law  
*RESOLVE XXX*..... Chapter # of finally passed Resolve  
*UNSIGNED*.....Bill held by Governor  
*VETO SUSTAINED*.....Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is September 18, 1999.

This bill was submitted on behalf of the Criminal Law Advisory Commission.

**House Amendment "A" (H-339)** proposed to change the title to clarify that involuntary conduct is a defense in the Maine Criminal Code.

*Enacted law summary*

Public Law 1999, chapter 195 removes "voluntary conduct" from the Maine Revised Statutes, Title 17-A, section 31 in chapter 2 of the Maine Criminal Code and enacts a new section 103-B in chapter 5. New section 103-B expressly treats the issue as a "defense" under section 101, subsection 4 of the Maine Criminal Code, renames the issue "involuntary conduct" and describes what constitutes involuntary rather than voluntary conduct.

**LD 1858**

**An Act to Amend the Possession of Firearms by Felons**

**CARRIED OVER**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
JABAR RUHLIN		

LD 1858 proposes to prohibit the use, possession and control of a firearm by a person convicted of certain Class D or Class E crimes of domestic violence. The prohibition lasts until the person has served the sentence resulting from the conviction.

A crime of domestic violence is defined as a crime in which:

1. The person used or attempted to use physical force, or threatened to use a deadly weapon; and
2. The person and the victim have or had a family-like relationship. Specifically, the person committing the crime must be a current or former spouse, parent or guardian of the victim; a person with whom the victim has a child; or a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian or has a similar relationship.

In addition, the person who was convicted must have had the assistance of counsel in the proceeding or must have knowingly and intelligently waived the assistance of counsel. A final requirement is that if the person had a right to a jury trial for the domestic violence prosecution, then the case must have been tried by a jury or the person must have knowingly and intelligently waived the right to a trial by jury.

This bill has been carried over to the Second Regular Session.

**LD 1871**

**An Act to Revise Procedures for Probation Revocation**

**PUBLIC 246**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-427

LD 1871 proposed to restructure the laws governing probation revocation and probation violation. The bill proposed to separate the procedures for probation revocation by arrest and by summons and also make the following substantive changes.

1. Require that when a person arrested for a violation of probation is held subsequent to a preliminary hearing, the motion for probation revocation must be filed within five days of the arrest. In addition, when such a person is not sooner released, an initial appearance must be held by the court within 14 days of the arrest;
2. Codify the practice that has developed whereby initial appearances are conducted on motions for revocation of probation and set forth procedures governing initial appearances on motions to revoke probation;
3. Make clear that a court may find a violation of probation, but nevertheless utilize none of the initially suspended sentence. This commonly occurs when a person on probation admits a violation of probation but, prior to final disposition, remedies the situation to the satisfaction of the attorney for the State and the court, for example, by paying restitution owed. The bill proposed to eliminate an ambiguity that exists under current law as to whether this practice is authorized and make clear that the running of the period of probation is tolled between the date the proceedings are commenced and the date of final disposition, even if no part of the original suspension order is modified; and
4. Provide the same protection to persons entering into an agreement with the attorney for the State for disposition of a motion to revoke probation as is currently provided under the Maine Rules of Criminal Procedure for persons entering guilty pleas to substantive charges. As proposed, the person on probation is provided the opportunity to withdraw that person's admission if the court deems the agreed upon disposition too lenient and intends to enter a harsher disposition than that agreed to.

This bill was submitted on behalf of the Criminal Law Advisory Commission.

**Committee Amendment "A" (H-427)** proposed to do the following:

1. Clarify that a preliminary hearing is not required if a person is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction;
2. Specify that a motion for probation revocation must be approved by the prosecuting attorney;
3. Continue to use failure to hold a preliminary hearing as grounds for a person's release;
4. Specify that at an initial appearance the court shall advise the probationer of the right to be represented by counsel at a hearing and that if the probationer can not afford counsel the court shall appoint counsel.

#### ***Enacted law summary***

Public Law 1999, chapter 246 restructures the laws governing probation revocation and probation violation. It separates the procedures for probation revocation by arrest and by summons. Specifically, Public Law 1999, chapter 246 makes the following substantive changes:

1. Requires that when a person arrested for a violation of probation is held subsequent to a preliminary hearing, the motion for probation revocation must be filed within five days of the arrest and when such a person is not sooner released, an initial appearance must be held by the court within 14 days of the arrest;
2. Clarifies that a preliminary hearing is not required if a person is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction;

3. Specifies that a motion for probation revocation must be approved by the prosecuting attorney;
4. Continues to use failure to hold a preliminary hearing as grounds for a person's release;
5. Specifies that at an initial appearance the court shall advise the probationer of the right to be represented by counsel at a hearing and that if the probationer can not afford counsel the court shall appoint counsel.
6. Codifies the practice that has developed whereby initial appearances are conducted on motions for revocation of probation and sets forth procedures governing initial appearances on motions to revoke probation.
7. Makes clear that a court may find a violation of probation, but nevertheless utilize none of the initially suspended sentence.
8. Makes clear that the running of the period of probation is tolled between the date the proceedings are commenced and the date of final disposition, even if no part of the original suspension order is modified; and
9. Provides a person on probation the opportunity to withdraw that person's admission if the court deems the agreed upon disposition too lenient and intends to enter a harsher disposition than that agreed to.

**LD 1878**

**An Act to Make More Uniform the Training of Firefighters**

**VETO  
SUSTAINED**

Sponsor(s)  
RUHLIN  
BERRY R

Committee Report  
OTP-AM

Amendments Adopted  
S-194

LD 1878 proposed that the Maine Fire Training and Education Program of the Maine Technical College System provide a centralized training resource center for firefighters of the State. Specifically, the bill proposed that the Maine Fire Training and Education Program ensure that more firefighters are trained in local communities statewide. As proposed, training must be offered annually and must be free of charge. The program proposed to increase grant funds available to local communities to support construction of specialized training facilities where the State's firefighters can practice life-saving skills; provide firefighters with the opportunity for fire science education and leadership education through available distance learning technologies, including interactive television and the Internet; ensure that local fire departments have current training and education materials and equipment to prepare members for fires and other community emergencies; provide a one-stop resource center for firefighters and citizens; and support the development of fire and emergency leaders throughout the State.

**Committee Amendment "A" (S-194)** proposed that the Maine Fire Training and Education Program of the Maine Technical College System provide a centralized training resource center for firefighters of the State. Specifically, the amendment proposed that the Maine Fire Training and Education Program shall provide a one-stop resource center for training materials. As proposed, the program must strengthen curriculum development to ensure that materials meet applicable regulations and can be customized for local use, and the program must strengthen firefighter certification to increase training uniformity and local recognition. The amendment also proposed to add an appropriation section and a fiscal note to the bill.

LD 1878, as amended, was enacted but subsequently vetoed by the Governor.

**LD 1892**

**An Act to Refine Certain Theft Provisions in the Law**

**ONTP**