

MAINE STATE LEGISLATURE

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*State Of Maine
120th Legislature*

First Regular Session

Bill Summaries

*Joint Standing Committee
on
Criminal Justice*

August 2001

Members:

*Sen. Michael J. McAlevey, Chair
Sen. William B. O'Gara
Sen. Paul T. Davis*

*Rep. Edward J. Povich, Chair
Rep. Michael W. Quint
Rep. Charles E. Mitchell
Rep. Lillian LaFontaine O'Brien
Rep. Patricia A. Blanchette
Rep. Stanley J. Gerzofsky
Rep. Judith B. Peavey
Rep. Edgar Wheeler
Rep. James H. Tobin, Jr.
Rep. Lois A. Snowe-Mello*

Staff:

*Marion Hylan Barr, Legislative Analyst
Jon Clark, Senior Analyst*

*Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333
(207) 287-1670*



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

13 State House Station, Augusta, Maine 04333-0013
Telephone: (207) 287-1670
Fax: (207) 287-1275

120th Legislature
First Regular Session

Summary Of Legislation Before The Joint Standing Committees
August 2001

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing 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 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).

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 |
| FAILED EMERGENCY ENACTMENT/FINAL PASSAGE..... | Emergency bill failed to get 2/3 vote |
| FAILED ENACTMENT/FINAL PASSAGE..... | Bill failed to get majority vote |
| FAILED MANDATE ENACTMENT..... | Bill imposing local mandate failed to get 2/3 vote |
| NOT PROPERLY BEFORE THE BODY..... | Ruled out of order by the presiding officers; bill died |
| INDEF PP..... | Bill Indefinitely Postponed |
| ONT P..... | 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 21, 2001**.

David E. Boulter, Director
Offices Located in the State House, Rooms 101/107/135

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15. It results in possession of MDMA, GHB or Ketamine being a Class D crime; trafficking in MDMA being a Class B crime; trafficking in GHB or Ketamine being a Class C crime; aggravated furnishing MDMA being a Class B crime with a mandatory minimum 2-year sentence; and aggravated trafficking in MDMA being a Class A crime with a mandatory minimum 4-year sentence.

LD 1739

**Resolve, to Implement Additional Recommendations of the
MCJUSTIS Board**

RESOLVE 45

Sponsor(s)

Committee Report
OTP

Amendments Adopted

LD 1739

This resolve proposed to amend the reporting requirements for the MCJUSTIS Board to clarify that the board must submit its final report and proposed legislation amending the Maine Revised Statutes, Title 17-A by January 31, 2001. This resolve also proposed to amend the board's reporting requirements to specify that the board submit proposed legislation amending other civil and criminal violations to make them compatible with computerized databases by December 15, 2001 and December 15, 2002.

Enacted law summary

Resolve 2001, chapter 45 amends the reporting requirements for the MCJUSTIS Board to clarify that the board submits its final report and proposed legislation amending the Maine Revised Statutes, Title 17-A by January 31, 2001. Resolve 2001, chapter 45 also amends the board's reporting requirements to specify that the board submit proposed legislation amending other civil and criminal violations to make them compatible with computerized databases by December 15, 2001 and December 15, 2002. The retroactivity section makes these changes retroactive to January 31, 2001.

LD 1740

**An Act to Implement Recommendations of the MCJUSTIS Board
Pursuant to the Study Required by Resolve 1997, Chapter 105**

PUBLIC 383

Sponsor(s)

Committee Report
OTP-AM

Amendments Adopted
H-596

LD 1740 was the report of the Maine Criminal Justice Information System, MCJUSTIS, Policy Board pursuant to Resolve 1997, chapter 105, as amended by Public Law 1999, chapter 451, section 5 and Public Law 1999, chapter 790, Part D, section 12.

MCJUSTIS is an information clearinghouse, the purpose of which is to provide access to shared uniform information on criminal defendants and crime data. In order for the information to be uniform and accurate, it must be entered and accessed by all participants in the same way. To ensure that crimes are entered accurately, the statutes defining each crime must be precise and narrow enough to ensure that citing to the specific statutory unit

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will be the same as describing the elements and class of that exact crime. There must be a one-to-one relationship between each crime and the statutory unit that defines it. This bill proposed to revise the Maine Criminal Code to establish that one-to-one relationship for each crime and its unique statutory cite.

The original resolve directed the MCJUSTIS policy board to propose only those substantive changes to the laws that are necessary to result in a unique statutory cite for each crime. In working through each crime in the Maine Criminal Code, the MCJUSTIS policy board, as advised by the Criminal Law Advisory Commission, identified one category of substantive changes that are necessary and several others that it recommends; all are included in this bill.

The category of substantive changes that are necessary relates to how to handle facts about a crime that are not technically elements but are currently used for determining the class of crime for sentencing purposes. The statute currently does not require that such "enhancers" be proved beyond a reasonable doubt by the prosecution. The Law Court has required, however, that the prosecution must prove such facts beyond a reasonable doubt if the facts are to be used to make the underlying crime a higher class than it would otherwise be or would require a specific punishment. This bill proposed to incorporate each enhancer into the elements of the crime that it enhances. This would result in the statutory requirement that the enhancer be proved beyond a reasonable doubt in order to secure a conviction for that crime at that class.

For example, assault is usually a Class D crime. If the victim was under 6 years of age, however, the assault would be a Class C crime. This bill proposed to revise assault to require the prosecutor to prove beyond a reasonable doubt that the victim was under 6 years of age in order to secure the Class C conviction. It proposed changes to the Maine Criminal Code that are substantive and that are proposed to improve the Maine Criminal Code for consistency or clarity.

In addition to formatting changes, this bill proposed to make the following changes to the Maine Criminal Code:

1. Rewrite as an element of a crime any fact regarding the crime that is used to establish the class for the crime or the appropriate sentence is rewritten as an element of the crime. This was a substantive change, although it will make little difference in how cases are currently prosecuted;
2. Revise language, including "presumption," "presumed" and "prima facie" to reflect Supreme Judicial Court rulings and Rule 303 of the Maine Rules of Evidence. The revised language instead would refer to "permissible inference" to ensure that the jury knows how to use certain proven evidence. This does not reflect a change in practice, but clarifies the law;
3. Provide a definition of being related within the "2nd degree of consanguinity." The term is used in defining both gross sexual assault and incest;
4. Establish standard language for referring to prior convictions and using prior convictions to affect one class of a newly committed crime. The Maine Revised Statutes, Title 17-A, section 9-A is would be amended to provide general rules for using prior convictions to enhance a new crime. These general rules would be consistent with most existing provisions concerning the use of prior convictions, but do represent a substantive change in a few cases.

The general rules included here would require considering specific convictions secured within the last 10 years. This was a substantive change for Title 17-A, sections 506-A and 556.

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The period for prior convictions was not changed for prostitution crimes, which remain at 2 years, and certain drug crimes, which do not limit how far back a prior conviction can be used to enhance the current crime.

The general rules propose to provide consistent language dealing with multiple crimes committed within 2 or 3 days. This probably would result in a substantive change in a limited number of crimes in order to treat them consistently;

5. Insert the language declaring the class in the same statutory unit that defines the way to commit the crime. When the statute defines more than one way of committing a crime, and those different ways are identified as different classes, the exception to this is in the statutes dealing with gross sexual assault, unlawful sexual contact and theft, where if certain circumstances exist, the classification will go up a class. Because each way of committing these crimes could be increased if the particular circumstance exists, an enhancer provision was drafted at the end of each crime to specify that the classification will increase if the circumstances are proved;
6. Rewrite permissible inference language regarding a person accused of theft to include Title 17-A, section 405, burglary. This change would expand the presumption that by permitting an inference to be made under the Maine Rules of Evidence, Rule 303, a person in exclusive possession of property recently taken was guilty of the burglary.
7. Amend the drug laws dealing with unlawful trafficking, unlawful furnishing and unlawful possession to clarify that a person was guilty of trafficking, furnishing or possessing a scheduled drug if the person intentionally or knowingly trafficked, furnished or possessed what the person knew or believed to be a scheduled drug, which was in fact a scheduled drug and the drug was a type of scheduled drug.
8. Include language to make the statutes gender neutral and to correct and update grammar. In addition, the following language changes were proposed for consistency and were not intended to be substantive.
 - A. When referring to the age of the perpetrator or victim, the term as used was "__ years of age." For example, if current law says "under 14" or "has not reached his 14th birthday," this bill would revise it to "less than 14 years of age."
 - B. "Exceeds" was changed to "more than," "under" was changed to "less than."
 - C. The perpetrator of the crime was usually referred to in the definition as "the person." Exceptions occur when the crime definition involved other people and the "the person" becomes confusing. In these situations, "actor" was used instead. "Defendant" was often used in procedural and sentencing provisions.
9. Add an effective date of January 31, 2003.

Committee Amendment "A" (H-596) proposed to:

1. Make a technical change to the criminal trespass provisions;
2. Correct an additional cross-reference in the drug statutes required by the bill;
3. Reorder the crime of unlawful possession of scheduled drugs to provide for the highest class being listed first;

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4. Repeal a subsection in the drug statutes that the bill makes unnecessary;
5. Delete a duplicative section of the bill;
6. Reorganize the firearm forfeiture provisions to clarify that section of law;
7. Correct the crime of aggravated cultivating of marijuana to correctly list the Class D and Class E crimes.

LD 1740 proposed to make changes to the Maine Criminal Code with regard to sentence enhancers. To clarify what was stated in the bill, the category of substantive changes that were necessary relates to how to handle facts about a crime that are not technically elements but are currently used for determining the class of crime for sentencing purposes. Facts that function to give the underlying crime a higher class than it would otherwise carry were termed "sentence enhancers" and are the functional equivalent of elements of the resulting in higher class crimes. Legally indistinguishable from an element, a sentence enhancer, in order to meet state and federal constitutional requirements, other than the fact of convictions, must be alleged in the charging instrument, submitted to the jury and proved by the prosecution beyond a reasonable doubt. Although in many instances these specific procedural safeguards currently expressly accompany the sentence enhancer, such is not always the case. The bill as amended proposed to incorporate each sentence enhancer into the elements of the crime that it enhances. This results in the statutory requirement that the enhancers be pleaded and proved beyond a reasonable doubt in order for the prosecution to secure a conviction for that crime at that class. The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 2001, chapter 383 is the report of the Maine Criminal Justice Information System, MCJUSTIS, Policy Board pursuant to Resolve 1997, chapter 105, as amended by Public Law 1999, chapter 451, section 5 and Public Law 1999, chapter 790, Part D, section 12.

MCJUSTIS is an information clearinghouse, the purpose of which is to provide access to shared uniform information on criminal defendants and crime data. In order for the information to be uniform and accurate, it must be entered and accessed by all participants in the same way. To ensure that crimes are entered accurately, the statutes defining each crime must be precise and narrow enough to ensure that citing to the specific statutory unit will be the same as describing the elements and class of that exact crime. There must be a one-to-one relationship between each crime and the statutory unit that defines it. Public Law 2001, chapter 383 revises the Maine Criminal Code to establish that one-to-one relationship for each crime and its unique statutory cite.

The original resolve directed the MCJUSTIS policy board to propose only those substantive changes to the laws that are necessary to result in a unique statutory cite for each crime. In working through each crime in the Maine Criminal Code, the MCJUSTIS policy board, as advised by the Criminal Law Advisory Commission, identified one category of substantive changes that are necessary and several others that it recommends; all are included in Public Law 2001, chapter 383.

The category of substantive changes that are necessary relates to how to handle facts about a crime that are not technically elements but are currently used for determining the class of crime for sentencing purposes. The statute currently does not require that such "enhancers" be proved beyond a reasonable doubt by the prosecution. The Law

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Court has required, however, that the prosecution must prove such facts beyond a reasonable doubt if the facts are to be used to make the underlying crime a higher class than it would otherwise be or would require a specific punishment. Public Law 2001, chapter 383 incorporates each enhancer into the elements of the crime that it enhances. This results in the statutory requirement that the enhancer be proved beyond a reasonable doubt in order to secure a conviction for that crime at that class.

For example, assault is usually a Class D crime. If the victim is under 6 years of age, however, the assault is a Class C crime. This bill revises assault to require the prosecutor to prove beyond a reasonable doubt that the victim is under 6 years of age in order to secure the Class C conviction.

Public Law 2001, chapter 383 contains changes to the Maine Criminal Code that are substantive and that are proposed to improve the Maine Criminal Code for consistency or clarity.

In addition to formatting changes, Public Law 2001, chapter 383 makes the following changes to the Maine Criminal Code.

1. It rewrites as an element of a crime any fact regarding the crime that is used to establish the class for the crime or the appropriate sentence is rewritten as an element of the crime. This is a substantive change, although it will make little difference in how cases are currently prosecuted.
2. It revises language, including "presumption," "presumed" and "prima facie" to reflect Supreme Judicial Court rulings and Rule 303 of the Maine Rules of Evidence. The revised language instead refers to "permissible inference" to ensure that the jury knows how to use certain proven evidence. This does not reflect a change in practice, but clarifies the law.
3. It provides a definition of being related within the "2nd degree of consanguinity." The term is used in defining both gross sexual assault and incest.
4. It establishes standard language for referring to prior convictions and using prior convictions to affect one class of a newly committed crime. The Maine Revised Statutes, Title 17-A, section 9-A is amended to provide general rules for using prior convictions to enhance a new crime. These general rules are consistent with most existing provisions concerning the use of prior convictions, but do represent a substantive change in a few cases.

The general rules included here require considering specific convictions secured within the last 10 years. This is a substantive change for Title 17-A, sections 506-A and 556.

The period for prior convictions is not changed for prostitution crimes, which remain at 2 years, and certain drug crimes, which do not limit how far back a prior conviction can be used to enhance the current crime.

The general rules provide consistent language dealing with multiple crimes committed within 2 or 3 days. This may result in a substantive change in a limited number of crimes in order to treat them consistently.

5. It inserts the language declaring the class in the same statutory unit that defines the way to commit the crime. When the statute defines more than one way of committing a crime, and those different ways are identified as different classes, the exception to this is in the statutes dealing with gross sexual assault, unlawful sexual contact and theft, where if certain circumstances exist, the classification will go up a class. Because each way

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of committing these crimes could be increased if the particular circumstance exists, an enhancer provision was drafted at the end of each crime to specify that the classification will increase if the circumstances are proved.

The category of substantive changes that are necessary relates to how to handle facts about a crime that are not technically elements but are currently used for determining the class of crime for sentencing purposes. Facts that function to give the underlying crime a higher class than it would otherwise carry are termed "sentence enhancers" and are the functional equivalent of elements of the resulting higher class crimes. Legally indistinguishable from an element, a sentence enhancer, in order to meet state and federal constitutional requirements, other than the fact of convictions, must be alleged in the charging instrument, submitted to the jury and proved by the prosecution beyond a reasonable doubt. Although in many instances these specific procedural safeguards currently expressly accompany the sentence enhancer, such is not always the case. Public Law 2001, chapter 383 incorporates each sentence enhancer into the elements of the crime that it enhances. This results in the statutory requirement that the enhancers be pleaded and proved beyond a reasonable doubt in order for the prosecution to secure a conviction for that crime at that class

6. It rewrites permissible inference language regarding a person accused of theft to include Title 17-A, section 405, burglary. This change expands the presumption that by permitting an inference to be made under the Maine Rules of Evidence, Rule 303, a person in exclusive possession of property recently taken is guilty of the burglary.
7. It amends the drug laws dealing with unlawful trafficking, unlawful furnishing and unlawful possession to clarify that a person is guilty of trafficking, furnishing or possessing a scheduled drug if the person intentionally or knowingly trafficks, furnishes or possesses what the person knows or believes to be a scheduled drug and the drug is a type of scheduled drug.
8. It makes a technical change to the criminal trespass provisions.
9. It corrects an additional cross-reference in the drug statutes required by the bill.
10. It reorders the crime of unlawful possession of scheduled drugs to provide for the highest class being listed first.
11. It reorganizes the firearm forfeiture provisions to clarify that section of law.
12. It corrects the crime of aggravated cultivating of marijuana to correctly list the Class D and Class E crimes.
13. It includes language to make the statutes gender neutral and to correct and update grammar. In addition, the following language changes are made for consistency and are not intended to be substantive.
 - A. When referring to the age of the perpetrator or victim, the term used is "years of age." For example, if current law says "under 14" or "has not reached his 14th birthday," this bill revises it to "less than 14 years of age."
 - B. "Exceeds" is changed to "more than," "under" is changed to "less than."
 - C. The perpetrator of the crime is usually referred to in the definition as "the person." Exceptions occur when the crime definition involves other people and the "the person" becomes confusing. In these

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situations, "actor" is used instead. "Defendant" is often used in procedural and sentencing provisions.

14. It adds an effective date of January 31, 2003.

LD 1743

An Act to Establish a Cold Case Homicide Squad

**DIED ON
ADJOURNMENT**

Sponsor(s)

Committee Report

Amendments Adopted

LD 1743 proposed to establish a cold case homicide squad within the Department of Public Safety. The bill proposed to terminate the squad on October 30, 2004 unless the squad is continued by the Legislature. The bill proposed to require the Department of Public Safety to provide a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by January 1, 2004 evaluating the success of the cold case homicide squad and making recommendations on continuation of the squad. The bill also proposed to include an appropriation and an allocation to fund 3 state police detective positions for the cold case homicide squad.

LD 1743 was not removed by the Senate from the Special Appropriations Table and died on adjournment. However, Public Law 2001, chapter 439 (Part 2 budget) enacted part of LD 1743 that establishes the squad and appropriates funds for one additional State Police Detective position. (See Part XXXX.)

LD 1750

**An Act to Authorize the Surrender of Concealed Firearms Permits
of Persons Who are the Subjects of Permanent Protection Orders**

ONTP

Sponsor(s)
KILKELLY
COLWELL

Committee Report
ONTP

Amendments Adopted

LD 1750 proposed to allow the court to order the surrender of a person's concealed firearms permit if the person is subject to a permanent protection order under the Maine Revised Statutes, Title 19-A, section 4007. The bill proposed that the surrender would be for the duration of the order only, and that the permit would be returned, at the person's request, within 10 days after the expiration of the order. It also proposed to require that the Department of Public Safety, Bureau of State Police apply to the Federal Government for approval to establish state-issued concealed firearms permits as qualifying permits for purposes of bypassing federal background check requirements for firearms transactions.