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)

State Of Maine
121st Legislature

First Regular Session

Bill Summaries

Joint Standing Committee
on
Criminal Justice and Public Safety

July 2003

Members:
Sen. Ethan K. Strimling, Chair
Sen. Pamela Hatch
Sen. David L. Carpenter

Rep. George H. Bunker, Chair
Rep. Patricia A. Blanchette
Rep. Stanley J. Gerzofsky
Rep. Paul J. Lessard
Rep. Carol A. Grose
Rep. Lois A. Snowe-Mello
Rep. Christian D. Greeley
Rep. Louie B. Maietta
Rep. Richard M. Sykes
Rep. John W. Churchill

Staff:
Marion Hylan Barr, Legislative Analyst
James Adolf, Legislative 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
Office Of Fiscal And Program Review

121st Maine Legislature
First Regular Session

Summary Of Legislation Before The Joint Standing Committees

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing and joint 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 arranged alphabetically by committee name 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 PURSUANT TO HP 1212	*Bills carried over to the 2nd 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*
ONTP	*Ought Not To Pass report accepted*
OTP-ND	*Committee report Ought To Pass In New Draft*
P&S XXX	*Chapter # of enacted Private & Special Law*
PASSED	*Joint Order passed in both bodies*
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 that the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is September 13, 2003.

David C. Elliott, Director
Offices located in Room 215 of the Cross Office Building

LD 1020 **An Act To Amend the Maine Criminal Code as Recommended by the Criminal Law Advisory Commission** **PUBLIC 143**

Sponsor(s)	Committee Report	Amendments Adopted
	OTP-AM	H-153

LD 1020 proposed to do the following:

1. Define "reasonable degree of force" in the context of the use of physical force by a parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of a person, as limited to applying physical force to a person that at most results in transient pain or minor temporary marks on that person. As enacted, Title 17-A, section 106, subsection 1-A reflects current Maine case law respecting use of physical force by a parent to prevent or punish a child's misconduct. See State v. York, 2001 ME 30, 766 A.2d 570. In light of this new Title 17-A, section 106, subsection 1-A definition, the bill proposed to remove the reference to subsection 1 from Title 17-A, section 106, subsection 4. The bill proposed that the word "purposeful" be replaced with the equivalent word "intentional" in Title 17-A, section 106, subsection 4 to reflect Maine Criminal Code language usage;

2. Amend the law regarding the use of physical force in law enforcement in 3 ways. First, it proposed to add the word "unlawful" to the law to specify that a law enforcement officer or private person may use force upon another when the law enforcement officer or private person reasonably believes that there exists an imminent use of "unlawful" force by another. The addition of "unlawful" would have made this law consistent with other use of force provisions in Chapter 5 of the Maine Criminal Code;

3. Strike an outdated reference to the Maine Correctional Institution – Warren;

4. Make Title 17-A, section 107 gender neutral in conformance with drafting standards;

5. Add the phrase "in fact" before the word "communicates" in Title 17-A, section 210, subsection 1 to clarify that no culpable mental state need be proved. The proposed addition mirrors Maine case law. See State v. Porter, 384 A.2d 429, 433-434 (Me. 1978);

6. Repeal Title 17-A, section 451, subsection 3-A and section 452, subsection 2-A. Each subsection was intended to continue in effect the traditional "2 witness" rule as set forth in State v. Farrington, 411 A.2d 396, 401 (Me. 1980). See State v. Anthoine, 2002 ME 22, ¶8, 789 A.2d 1277, 1279, n.2. However, neither section of law accurately expresses the rule or any exception to the rule. The bill proposed to delete both provisions in favor of allowing State v. Farrington and subsequent cases to speak to the rule and any exception to it;

7. Clarify Title 17-A, section 454, subsection 1, paragraph A, which concerns tampering with a witness, informant, juror or victim, by specifying that the actor must be aware at the time the actor induces or otherwise causes, or attempts to cause, a witness or informant to testify or inform falsely that such testimony or information is false;

8. Amend Title 17-A, section 1108, subsection 5, which concerns acquiring drugs by deception, to clarify that the trier of fact is permitted, as authorized by the Maine Rules of Evidence, Rule 303(b), to infer the causation element of "acquiring" from the act of deception described in Title 17-A, section 1108, subsection 2, paragraph A or B. The proposed change is not intended to create a conclusive presumption;

9. Strike from Title 17-A, section 1158, which concerns the forfeiture of firearms, the reference to the "judgment of conviction" to eliminate confusion. The forfeiture of a firearm is part of the sentence while the sentence is part of the judgment. See the Maine Rules of Criminal Procedure, Rule 32(b);

10. Provide for the tolling of a Maine sentence involving imprisonment in the event the person in execution of that sentence is a recalcitrant witness in a grand jury or criminal proceeding in a Maine court of record and has been ordered into coercive imprisonment as a remedial sanction for refusing to comply with an order of the court to testify or to provide evidence;

11. Enact a new Title 17-A, section 1252, subsection 2, paragraph A and eliminate constitutional doubts by replacing the 2-tier Class A sentencing system with a single sentencing range, while preserving the Supreme Judicial Court's discretion to establish and enforce, through appellate review, sentencing factors that avoid excessively harsh sentences. The proposed change is not intended that this change modify current sentencing practices.

    In 1988 the Legislature doubled the maximum sentence of imprisonment for Class A crimes from 20 years to 40 years. See Public Law 1987, chapter 808, codified as Title 17-A, section 1252, subsection 2, paragraph A. In 1991 the Law Court examined the legislative history of that Act and determined that the legislative intent was to "make available two discrete ranges of sentences for Class A crimes." See State v. Lewis, 590 A.2d 149, 151 (Me. 1991). Most Class A crime sentences were intended to remain in the original 0 to 20 year range, while the "expanded range" of 20-40 year sentences was reserved "only for the most heinous and violent crimes committed against a person" (590 A.2d at 151). The sentencing court was to apply this "heinousness" standard "in its discretion" as a sentencing factor, subject to appellate review (590 A.2d at 151).

    This two-tier system has been placed under a constitutional cloud by the decision of the United States Supreme Court in Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that sentencing factors increasing punishment beyond the maximum authorized must be treated as elements of crimes to be pleaded and proved beyond a reasonable doubt rather than as sentencing factors. Since the "heinousness" standard can be interpreted as increasing the maximum punishment of up to 20 years to the "expanded range" of 20 to 40 years, it is potentially unconstitutional absent legislative correction;

12. Clarify that if the State pleads and proves that an actor has 2 or more prior convictions for stalking under Title 17-A, section 210-A, the State may not plead and prove further sentencing class enhancement under Title 17-A, section 1252;

13. Effective January 1, 2004, eliminate the current requirement under Title 17-A, section 1252-B that deductions for good time and meritorious good time be taken into consideration when a sentencing alternative involving imprisonment is requested or recommended by a party or imposed by a court.

    In 1988 the 113th Legislature enacted Title 17-A, section 1252-B, which for the first time expressly precluded a sentencing court from ignoring administrative awards for good time and meritorious good time in the sentencing decision and instead required that such awards be considered. See Public Law 1987, chapter 808, section 2.

Seven years later, in 1995, the 117th Legislature enacted Title 17-A, section 1253, subsection 8, which on or after October 1, 1995 markedly reduced the statutory deductions for good time and meritorious good time authorized under that same section. See Public Law 1995, chapter 433, section 4. The resulting disparity in an administrative award of good time and meritorious good time for persons committing crimes prior to October 1, 1995 and for persons committing crimes on and after that date is illustrated by the following: A person who committed a crime before October 1, 1995, and subsequently was sentenced to a term of imprisonment of more than 6 months, and receives maximum deductions under section 1253, subsections 3, 4 and 5, or about 180 days a year, will serve about 57% of the term of imprisonment. A person who commits a crime on or after October 1, 1995, and subsequently is sentenced to a term of imprisonment of more than 6 months, receiving maximum deductions under section 1253, subsection 8, or about 60 days a year, will serve about 85% of the term of imprisonment. At the same time that the Legislature prospectively sharply reduced good time and meritorious good time awards, because sentencing courts since 1988 had been required to take good time and meritorious good time deductions into consideration in their sentencing decisions, the Legislature repealed and replaced Title 17-A, section 1252-B to address the disparity. As replaced, Title 17-A, section 1252-B designated the existing provisions as subsection 1 with added specific reference to the deductions applicable to crimes committed prior to October 1, 1995, namely section 1253, subsections 3, 3-B, 4 and 5, and added a subsection 2 that addressed the disparity in deductions created by section 1253, subsection 8. See Public Law 1995, chapter 433, section 1. The Legislature directed in subsection 2 that to the extent that longer terms of imprisonment have previously been imposed in an effort to compensate for the impact of substantial good time and meritorious good time deductions, an adjustment must be made in the sentencing process for crimes committed on or after October 1, 1995 in view of the substantially reduced deduction under subsection 8.

By January 1, 2004, Title 17-A, section 1252-B, subsection 2 will have been law for over 8 years. During this transitional period, a large number of sentences subject to adjustment for the substantially reduced deductions have been imposed. That body of sentences serves to inform a court's sentencing decision rather than the pre-1995 sentences. With its intended legislative purpose accomplished, this directive is no longer necessary. Repealing Title 17-A, section 1252-B is necessary to accomplish the intended fundamental policy change of allowing both the parties and the sentencing court to ignore administrative awards for good time and meritorious good time when a sentencing alternative involving imprisonment is requested or recommended by a party or imposed by a court;

14. Amend the criteria for imposing fines to expressly recognize the existing limitation upon the court's discretion in the event the fine amount is mandatory and thus the convicted offender must be sentenced to pay the fine amounts required under Title 17-A, sections 1201 and 1301;

15. Amend Title 17-A, chapter 55, which concerns the Criminal Law Advisory Commission, to make section 1352, subsection 3 gender neutral; and

16. Amend provisions regarding the Criminal Law Advisory Commission to make the provisions gender neutral.

Committee Amendment "A" (H-153) proposed to strike language that would repeal the statutory provisions regarding the "2 witness" rule and that would eliminate the current 2-tier system for sentencing in Class A crimes. The amendment also proposed to add a fiscal note to the bill.

Enacted Law Summary

Public Law 2003, chapter 143 does the following.

1. It defines "reasonable degree of force" in the context of the use of physical force by a parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of a person, as limited to applying physical force to a person that at most results in transient pain or minor temporary marks on that person.

2. It amends the law regarding the use of physical force in law enforcement in 3 ways. First, it adds the word "unlawful" to the law to specify that a law enforcement officer or private person may use force upon another when the law enforcement officer or private person reasonably believes that there exists an imminent use of "unlawful" force by another. The addition of "unlawful" makes this law consistent with other use of force provisions in Chapter 5 of the Maine Criminal Code. Second, it strikes an outdated reference to the Maine Correctional Institution - Warren. Third, it makes Title 17-A, section 107 gender neutral in conformance with drafting standards.

3. It adds the phrase "in fact" before the word "communicates" in Title 17-A, section 210, subsection 1 to clarify that no culpable mental state need be proved. The addition mirrors Maine case law. See State v. Porter, 384 A.2d 429, 433-434 (Me. 1978).

4. It clarifies Title 17-A, section 454, subsection 1, paragraph A, which concerns tampering with a witness, informant, juror or victim, by specifying that the actor must be aware at the time the actor induces or otherwise causes, or attempts to cause, a witness or informant to testify or inform falsely that such testimony or information is false.

5. It amends Title 17-A, section 1108, subsection 5, which concerns acquiring drugs by deception, to clarify that the trier of fact is permitted, as authorized by the Maine Rules of Evidence, Rule 303(b), to infer the causation element of "acquiring" from the act of deception described in Title 17-A, section 1108, subsection 2, paragraph A or B. This change is not intended to create a conclusive presumption.

6. It strikes from Title 17-A, section 1158, which concerns the forfeiture of firearms, the reference to the "judgment of conviction" to eliminate confusion. The forfeiture of a firearm is part of the sentence while the sentence is part of the judgment. See the Maine Rules of Criminal Procedure, Rule 32(b).

7. It provides for the tolling of a Maine sentence involving imprisonment in the event the person in execution of that sentence is a recalcitrant witness in a grand jury or criminal proceeding in a Maine court of record and has been ordered into coercive imprisonment as a remedial sanction for refusing to comply with an order of the court to testify or to provide evidence.

8. It clarifies that if the State pleads and proves that an actor has 2 or more prior convictions for stalking under Title 17-A, section 210-A, the State may not plead and prove further sentencing class enhancement under Title 17-A, section 1252.

9. Effective January 1, 2004, it eliminates the current requirement under Title 17-A, section 1252-B that deductions for good time and meritorious good time be taken into consideration when a sentencing alternative involving imprisonment is requested or recommended by a party or imposed by a court.

10. It amends the criteria for imposing fines to expressly recognize the existing limitation upon the court's discretion in the event the fine amount is mandatory and thus the convicted offender must be sentenced to pay the fine amounts required under Title 17-A, sections 1201 and 1301.

11. It amends provisions regarding the Criminal Law Advisory Commission to make them gender neutral.

LD 1023 **An Act To Criminalize Noncompliance with an Interstate Compact for Adult Offender Supervision** **PUBLIC 158**

Sponsor(s)	Committee Report	Amendments Adopted
LAFOUNTAIN SULLIVAN	OTP	

LD 1023 proposed that a person commits a Class D crime if that person is released on probation or parole by a state that is a member of an interstate compact for adult offender supervision and the person resides in Maine without complying with the requirements of the interstate compact.

Enacted Law Summary

Public Law 2003, chapter 158 specifies that a person commits a Class D crime if that person is released on probation or parole by a state that is a member of an interstate compact for adult offender supervision and the person resides in Maine without complying with the requirements of the interstate compact.

LD 1026 **An Act To Broaden the Law Enforcement Authority of University of Maine System Public Safety Officers** **ONTP**

Sponsor(s)	Committee Report	Amendments Adopted
DUNLAP CATHCART	ONTP	

LD 1026 proposed to broaden the powers of University of Maine System police officers to include enforcement authority throughout the State, rather than within the limits of university property only.

LD 1065 **Resolve, Directing the Commissioner of Public Safety To Study the Emergency Medical Services System** **RESOLVE 23**

Sponsor(s)	Committee Report	Amendments Adopted
BULL NASS	OTP-AM	H-187 H-208 BULL

LD 1065 was a resolve that proposed to direct the Commissioner of Public Safety to study the emergency medical services system. The resolve proposed that the commissioner's study of the emergency medical services system would include, but not be limited to, an examination of the following issues: