

MAINE STATE LEGISLATURE

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*State Of Maine
122nd Legislature*

Second Regular Session

Bill Summaries

*Joint Standing Committee
on
Criminal Justice and Public Safety*

July 2006

Members:

*Sen. Bill Diamond, Chair
Sen. John M. Nutting
Sen. Dean F. Clukey*

*Rep. Patricia A. Blanchette, Chair
Rep. Stan Gerzofsky
Rep. Carol A. Grose*

*Rep. Rosaire "Ross" Paradis, Jr.
Rep. Stephen P. Hanley
Rep. Richard M. Sykes
Rep. John W. Churchill
Rep. Christian D. Greeley
Rep. Kimberly J. Davis
Rep. Gary E. Plummer*

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Maine State Legislature



Office of Policy and Legal Analysis Office of Fiscal and Program Review

122nd Maine Legislature Second 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 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/billsumm.htm).

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:

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 (Pocket Veto).....	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 Second Regular Session (unless otherwise specified in a particular law) is August 23, 2006.

Joint Standing Committee on Criminal Justice and Public Safety

LD 2001

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

PUBLIC 527

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-858 H-868 RINES

LD 2001 was introduced by the Criminal Law Advisory Commission and proposed a number of technical drafting changes, as well as changes for clarity. Specifically, the bill proposed to do the following:

1. Amend the law regarding possession by prohibited persons of firearms or crossbows to:
 - A. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in the Maine Revised Statutes, Title 17-A, sections 39 and 40 in the statute governing possession by prohibited persons of firearms or crossbows;
 - B. Add a reference to parole, supervised release for sex offenders and administrative release; and
 - C. Change a cross-reference for the definition of “not criminally responsible by reason of insanity” and remove language no longer needed because of this change;
2. Eliminate the need to specify in the charge and prove at trial the value of an audio or visual recording of all or any part of an illegally obtained motion picture. This is consistent with theft involving a firearm or an explosive device in which pecuniary loss is not an element and the absence of a pecuniary loss is not a defense;
3. Amend the crime of failure to report a sexual assault of a person in custody to clarify that the crime's forbidden conduct element of failing to report the sexual assault to an appropriate criminal justice agency has no accompanying culpable mental state element. This bill also proposed to provide an affirmative defense to prosecution under the section when the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter;
4. Amend the crime of possession of a firearm in a courthouse by:
 - A. Adding the word “unauthorized”;
 - B. Clarifying that the crime's forbidden conduct element of possessing a firearm in a courthouse has no accompanying culpable mental state element;
 - C. Adding “corrections supervisor” to the list of persons to whom the prohibition does not apply;
 - D. Requiring that the firearm be unloaded if possessed under the evidence exception;
 - E. Clarifying that the proceeding in which the firearm is to be offered as evidence may be either civil or criminal;
 - F. Adding a new provision that specifies that possession of a valid permit to carry a concealed firearm is not a defense to this crime; and

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- G. Making a number of nonsubstantive changes to the language for purposes of clarity;
5. Provide that the civil penalty for the sale and use of drug paraphernalia is \$300;
 6. Add to the list of sentencing alternatives the sentencing alternative of supervised release for sex offenders as authorized by the Maine Revised Statutes, Title 17-A, chapter 50. The bill also proposed to add a reference to this alternative since a fine may be imposed in addition to a chapter 50 sentencing alternative. Further, the bill proposed to repeal the option of a deferred disposition as authorized by Title 17-A, chapter 54-F since it is not a sentencing alternative. The bill proposed to make clear that every natural person convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so;
 7. Add to the list of sentencing alternatives applicable to an organization the sentencing alternative of a fine, suspended in whole or in part, with administrative release as authorized by Title 17-A, chapter 54-G. The bill proposed to add a reference to this alternative since a sanction authorized by section 1153 may be imposed in addition to a chapter 54-G sentencing alternative. The bill proposed to makes clear that every organization convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so;
 8. Amend the law regarding notification of a defendant's release to:
 - A. Conform the terminology regarding the affirmative defense of insanity to that recently adopted In Title 17-A, sections 39 and 40 pursuant to Public Law 2005, chapter 263, sections 5 to 7;
 - B. Replace the reference to “placed in institutional confinement” under both Title 15, section 103 and Title 15, section 104-A with “committed to the custody of the Commissioner of Health and Human Services”;
 - C. Add references to supervised release for sex offenders pursuant to Title 17-A, chapter 50 and administrative release pursuant to Title 17-A, chapter 54-G; and
 - D. Add “release from commitment under Title 15, section 101-B” in provisions addressing releases that are unconditional;
 9. Current law increasing the sentencing class one class higher for a Class B, C, D or E crime committed with the use of a dangerous weapon excludes from its application the crimes of aggravated assault and attempted aggravated assault. This exclusion was added because use of a dangerous weapon serves as a factual element of one form of the crime of aggravated assault. This bill proposed to broaden the exclusion to include any crime that contains “use of a dangerous weapon” as a factual element;
 10. Current law provides for the sentencing enhancement by one class if the defendant had 2 or more prior convictions of certain crimes, except for a conviction for stalking if the prior convictions have already served to enhance the sentencing class. The bill proposed to broaden this exclusion to include any crime in which a prior conviction has already served to enhance the class of the crime;
 11. Clarify that when 2 or more provisions in Title 17-A, section 1252 are pled and proved by the State to enhance the class of the crime these provisions may be applied successively as long as those to be made successive contain different class enhancement factors. For example, if the State pled and proved that the Class D crime of reckless conduct was committed with the use of a dangerous weapon and, at the time of its

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commission, the defendant had been convicted of 2 or more qualifying crimes, the class of the reckless conduct would be elevated successively from Class D to Class C and from Class C to Class B because subsections 4 and 4-A constitute enhancement factors reflecting different public policy concerns;

12. Remove the current exception for eligibility for deferred disposition, which is that the crime expressly provides that one or more punishment alternatives it authorizes may not be suspended. It also is important to remove this exception in order to allow the flexibility in sentencing options now available under Title 17-A, section 1348-B, subsection 1 and to recognize the fact that the Legislature also recently added a mandatory minimum fine to the Maine Criminal Code crime for assault and all drug crimes in Title 17-A, chapter 45; and
13. Remove that portion of the paragraph authorizing judicial fact-finding at the sentencing hearing and requires instead that “accompanied by sexual assault” be pleaded and proved beyond a reasonable doubt to the fact-finder at the trial. The change is required under both the United States Constitution and the Constitution of Maine because “accompanied by sexual assault” is a fact incident to attempted murder or murder that makes the person a “repeat sexual assault offender” who consequently is subject to a term of imprisonment for any term of years rather than a lesser definite term as specified under Title 17-A, section 1252, subsection 2. See Blakely v. Washington, 542 U.S. 296 (2004); State v. Schofield, 2005 ME 82, 876 A.2d 43.

Committee Amendment “A” (H-858) proposed to make 2 technical corrections, one for readability and one to clarify meaning.

House Amendment “A” (H-868) was presented on behalf of the Committee on Bills in the Second Reading and proposed to prevent a conflict by incorporating changes made to the Maine Revised Statutes, Title 17-A, section 1175, first paragraph in Public Law 2005, chapter 488, section 4.

Enacted law summary

Public Law 2005, chapter 527 was submitted by the Criminal Law Advisory Commission.

Public Law 2005, chapter 527 amends the law regarding possession by prohibited persons of firearms or crossbows to:

1. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in the Maine Revised Statutes, Title 17-A, sections 39 and 40;
2. Add a reference to parole, supervised release for sex offenders and administrative release; and
3. Change a cross-reference for the definition of “not criminally responsible by reason of insanity” and remove language no longer needed because of this change.

Public Law 2005, chapter 527 eliminates the need to specify in the charge and prove at trial the value of an audio or visual recording of all or any part of an illegally obtained motion picture. This is consistent with theft involving a firearm or an explosive device in which pecuniary loss is not an element, and the absence of a pecuniary loss is not a defense.

Public Law 2005, chapter 527 amends the crime of failure to report a sexual assault of a person in custody to clarify that the crime's forbidden conduct element of failing to report the sexual assault to an appropriate criminal justice agency has no accompanying culpable mental state element. Public Law 2005, chapter 527 also provides

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an affirmative defense to prosecution under the section when the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter.

Public Law 2005, chapter 527 amends the crime of possession of a firearm in a courthouse by:

1. Adding the word “unauthorized”;
2. Clarifying that the crime's forbidden conduct element of possessing a firearm in a courthouse has no accompanying culpable mental state element;
3. Adding “corrections supervisor” to the list of persons to whom the prohibition does not apply;
4. Requiring that the firearm be unloaded if possessed under the evidence exception;
5. Clarifying that the proceeding in which the firearm is to be offered as evidence may be either civil or criminal;
6. Adding a new provision that specifies that possession of a valid permit to carry a concealed firearm is not a defense to this crime; and
7. Making a number of nonsubstantive changes to the language for purposes of clarity.

Public Law 2005, chapter 527 provides that the civil penalty for the sale and use of drug paraphernalia is \$300.

Public Law 2005, chapter 527 adds to the list of sentencing alternatives the sentencing alternative of supervised release for sex offenders as authorized by the Maine Revised Statutes, Title 17-A, chapter 50. Public Law 2005, chapter 527 also adds a reference to this alternative since a fine may be imposed in addition to a chapter 50 sentencing alternative. Further, Public Law 2005, chapter 527 repeals the option of a deferred disposition as authorized by Title 17-A, chapter 54-F, since it is not a sentencing alternative. Public Law 2005, chapter 527 makes clear that every natural person convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so.

Public Law 2005, chapter 527 adds to the list of sentencing alternatives applicable to an organization the sentencing alternative of a fine, suspended in whole or in part, with administrative release as authorized by Title 17-A, chapter 54-G. Public Law 2005, chapter 527 adds a reference to this alternative since a sanction authorized by section 1153 may be imposed in addition to a chapter 54-G sentencing alternative. Public Law 2005, chapter 527 makes clear that every organization convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so.

Public Law 2005, chapter 527 amends the law regarding notification of a defendant's release to:

1. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in Title 17-A, sections 39 and 40 pursuant to Public Law 2005, chapter 263, sections 5 to 7;
2. Replace the reference to “placed in institutional confinement” under both Title 15, section 103 and Title 15, section 104-A with “committed to the custody of the Commissioner of Health and Human Services”;

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3. Add references to supervised release for sex offenders pursuant to Title 17-A, chapter 50 and administrative release pursuant to Title 17-A, chapter 54-G; and
4. Add “release from commitment under Title 15, section 101-B” in provisions addressing releases that are unconditional.

Current law increasing the sentencing class one class higher for a Class B, C, D or E crime committed with the use of a dangerous weapon excludes from its application the crimes of aggravated assault and attempted aggravated assault. This exclusion was added because use of a dangerous weapon serves as a factual element of one form of the crime of aggravated assault. Public Law 2005, chapter 527 broadens the exclusion to include any crime that contains “use of a dangerous weapon” as a factual element.

Current law provides for the sentencing enhancement by one class if the defendant had 2 or more prior convictions of certain crimes, except for a conviction for stalking if the prior convictions have already served to enhance the sentencing class. Public Law 2005, chapter 527 broadens this exclusion to include any crime in which a prior conviction has already served to enhance the class of the crime.

Public Law 2005, chapter 527 clarifies that when 2 or more provisions in Title 17-A, section 1252 are pled and proved by the State to enhance the class of the crime these provisions may be applied successively as long as those to be made successive contain different class enhancement factors. For example, if the State pled and proved that the Class D crime of reckless conduct was committed with the use of a dangerous weapon and, at the time of its commission, the defendant had been convicted of 2 or more qualifying crimes, the class of the reckless conduct would be elevated successively from Class D to Class C and from Class C to Class B, because subsections 4 and 4-A constitute enhancement factors reflecting different public policy concerns.

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Public Law 2005, chapter 527 removes that portion of the paragraph authorizing judicial fact-finding at the sentencing hearing and requires instead that “accompanied by sexual assault” be pleaded and proved beyond a reasonable doubt to the fact-finder at the trial. The change is required under both the United States Constitution and the Constitution of Maine because “accompanied by sexual assault” is a fact incident to attempted murder or murder that makes the person a “repeat sexual assault offender” who consequently is subject to a term of imprisonment for any term of years rather than a lesser definite term as specified under Title 17-A, section 1252, subsection 2. See Blakely v. Washington, 542 U.S. 296 (2004); State v. Schofield, 2005 ME 82, 876 A.2d 43.

LD 2016

**An Act To Extend the Corrections Alternatives Advisory
Committee**

**PUBLIC 667
EMERGENCY**

Sponsor(s)
BLANCHETTE
DIAMOND

Committee Report
OTP-AM

Amendments Adopted
H-859