

# 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**  
123<sup>RD</sup> LEGISLATURE  
FIRST REGULAR SESSION



Summaries of bills and adopted amendments and laws enacted or finally passed during the First Regular Session of the 123<sup>rd</sup> Maine Legislature coming from the

**JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE  
AND PUBLIC SAFETY**

July 2007

**STAFF:**

MARION HYLAN BARR, LEGISLATIVE ANALYST  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 STATE HOUSE STATION  
AUGUSTA, ME 04333  
(207) 287-1670

**MEMBERS:**

SEN. BILL DIAMOND, CHAIR  
SEN. EARLE L. MCCORMICK  
SEN. ROGER L. SHERMAN

REP. STAN GERZOFSKY, CHAIR  
REP. PATRICIA A. BLANCHETTE  
REP. ANN E M. HASKELL  
REP. STEPHEN P. HANLEY  
REP. DAWN HILL  
REP. BRYAN T. KAENRATH  
REP. RICHARD M. SYKES  
REP. CHRISTIAN D. GREELEY  
REP. GARY E. PLUMMER  
REP. JOSEPH L. TIBBETTS

# STATE OF MAINE

123<sup>RD</sup> LEGISLATURE

FIRST REGULAR SESSION

## LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS



This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 123<sup>rd</sup> Maine Legislature, which was in session from December 6, 2006 to June 21, 2007.

The *Digest* is arranged alphabetically by committee, and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

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 (or Accepted ONTP report).....	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 non-emergency legislation enacted in the First Regular Session is **September 20, 2007**. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

# *Joint Standing Committee on Criminal Justice and Public Safety*

This bill makes it a Class D crime for a person who is required to register under the Sex Offender Registration and Notification Act of 1999 to be present within 250 yards of a public or private elementary or secondary school or preschool facility.

See LD 1491, "An Act to Prohibit the Unauthorized Contact of Persons Convicted of Sex Offenses against Persons under 14 Years of Age with Persons 14 Years of Age."

**LD 1240**

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

**CARRIED OVER**

Sponsor(s)

Committee Report

Amendments Adopted

H-479

This bill is proposed by the Criminal Law Advisory Commission and does the following.

Section 1 of the bill repeals Title 14, section 3141, subsection 2 because experience has demonstrated that mandatory notice at the time of the defendant's initial appearance is ineffective in securing fine payment in full at the time of sentence imposition. Section 2 of the bill adds a requirement in section 3141, subsection 4 that the order issued by the court include a clear directive to the defendant that the defendant has a legal duty to move the court for a modification of time or method of payment of the fine to avoid a default.

Section 3 of the bill enacts the Maine Revised Statutes, Title 15, section 103-A, subsection 1, which directs that in the event a person who is found not criminally responsible by reason of insanity or is the recipient of a negotiated insanity plea as to a Maine crime is subject to an undischarged straight term of imprisonment or an unsuspended portion of a split sentence for a different Maine crime, the person must serve the undischarged term of imprisonment or the unsuspended portion of the split sentence before commencing the commitment to the Commissioner of Health and Human Services ordered by the court pursuant to section 103. Once having fully served the term of imprisonment or unsuspended portion of a split sentence, the person must commence the commitment ordered notwithstanding being on conditional release.

Title 15, section 103-A, sub-section 2 also directs that in the event a person who has entered into the custody of the Commissioner of Health and Human Services pursuant to a commitment order either violates a condition of release and new institutional confinement is ordered or commits a Maine crime for which the person is subsequently convicted and the sentence imposed includes a straight term of imprisonment or a split sentence, the person must be placed in execution of that punishment and custody pursuant to the commitment order is automatically interrupted. In the event execution of that punishment is stayed pending appeal, the commitment will be automatically interrupted once that stay terminates and the person is placed in execution of the punishment. The commitment will be resumed when the new institutional confinement ordered or the straight term of imprisonment or the unsuspended portion of the split sentence imposed has been fully served. Title 15, section 103-A, subsection 3 directs that, while a person is imprisoned in execution of the punishment described in section 103-A, the county jail or state facility in which the person is incarcerated must provide the necessary mental health treatment required under law, including, when appropriate, seeking involuntary psychiatric hospitalization.

Section 4 of the bill conditions the present duty of prosecutors to inform law enforcement officers of the details of certain plea agreements reached before submitting that plea to the court on such notice being practicable. The bill adds Title 17-A, chapter 12 crimes (sexual exploitation of minors) to those triggering notice to law enforcement officers and, with respect to victim notification, it removes an incorrect reference to Title 17-A, section 1173 and replaces it with reference to Title 17-A, section 1172, subsection 1, paragraphs A and B (details of plea agreement shared before presented to court and notification of right to comment once plea agreement is submitted).

Section 5 of the bill adds the Class A crimes of aggravated attempted murder and elevated aggravated assault on a

## *Joint Standing Committee on Criminal Justice and Public Safety*

pregnant person to the juvenile crimes for which the juvenile has the burden of proof with respect to the finding of appropriateness required by the "bind over" statute.

Sections 6 and 7 of the bill amend Title 15, sections 3304 and 3314-B by replacing an outdated reference to Rule 42 of the Maine Rules of Criminal Procedure with a reference to Rule 66 of the Maine Rules of Civil Procedure.

Section 8 of the bill allows a law enforcement officer to make a warrantless arrest of any person who the officer has probable cause to believe has committed or is committing a violation of a requirement of administrative release when requested to do so by the attorney for the State.

Section 9 of the bill amends Title 17-A, section 32 to indicate that it is the State's burden to prove each element of the crime charged beyond a reasonable doubt.

Section 10 of the bill eliminates the current precondition for a conviction for a crime for which recklessness or criminal negligence suffices that the State, in addition to proving beyond a reasonable doubt that the person's belief is unreasonable, prove beyond a reasonable doubt that the person's holding of that belief "when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, is grossly deviant from what a reasonable and prudent person would believe in the same situation."

Section 11 of the bill adds for purposes of completeness in Title 17-A, section 351 a reference to a "complaint" in the second sentence. (A prosecution is commenced whenever a criminal complaint is filed, an indictment is returned or an information is filed (following waiver of an indictment) per Title 17-A, section 8, subsection 6, paragraph B.)

Sections 12 and 13 of the bill elevate the crime of theft by extortion to a Class B crime if the value of the property stolen is more than \$10,000, which is consistent with other crimes of theft.

Sections 14-23 of the bill add to the 4 basic Class D forms of home repair fraud 2 aggravated forms of each based on the pecuniary loss suffered by the victim as a result of the fraud. If the loss is more than \$10,000, the basic crime is elevated to Class B. If the loss is more than \$1,000 but not more than \$10,000, the basic crime is elevated to Class C. These changes are consistent with current penalties for other forms of theft.

Section 24 of the bill removes the current directive in Title 17-A, section 908, subsection 2 that the trial court rather than the jury determine the materiality question. Since whether a fact relating to the terms of the agreement or contract is material is an element of the crime of home repair fraud, a defendant has the constitutional right to have the jury rather than the trial court determine the question of materiality.

Section 25 of the bill clarifies the requirement that a victim's address be kept confidential. It provides a general rule of confidentiality. It allows victim address information to be disclosed to state, criminal justice, juvenile justice and victim services agencies in limited circumstances and to other persons or agencies upon request of the victim. It allows criminal justice personnel and the court to disclose such information upon victim request as part of a court order restricting contact with the victim, or when the defendant already knows that victim's current address or location. It allows an attorney for the State to withhold such information upon a good faith belief that disclosure may compromise victim safety. It prohibits disclosure of a victim request for notice of the defendant's release except as required to carry out the request. The bill protects the confidentiality of victim information but does not prevent access to the information required for the administration of the criminal justice system, juvenile justice system or provision of victim services.

Sections 26-28 of the bill allow a person convicted of the Class E crime of nonsupport of dependents to be placed on probation under the supervision of the Department of Health and Human Services for a period extending to the time when the youngest dependent attains 18 years of age.

**Committee Amendment "A" (H-479)**

## *Joint Standing Committee on Criminal Justice and Public Safety*

This amendment strikes from the bill the language that directs that in the event a person who is found not criminally responsible by reason of insanity or is the recipient of a negotiated insanity plea as to a Maine crime is subject to an undischarged straight term of imprisonment or an unsuspended portion of a split sentence for a different Maine crime, the person must serve the undischarged term of imprisonment or the unsuspended portion of the split sentence before commencing the commitment to the Commissioner of Health and Human Services ordered by the court pursuant to the Maine Revised Statutes, Title 15, section 103. Once having fully served the term of imprisonment or unsuspended portion of a split sentence, the person would have had to commence the commitment ordered notwithstanding being on conditional release.

The amendment also strikes from the bill the language that directs that, while a person is imprisoned in execution of the punishment described in Title 15, section 103-A, the county jail or state facility in which the person is incarcerated must provide the necessary mental health treatment required under law, including, when appropriate, seeking involuntary psychiatric hospitalization.

The amendment repeals the last paragraph of Title 15, section 2115 because its substance, with modification, is best addressed in Title 4, section 51 since it relates to the concurrence required by the Law Court.

LD 1240 was carried over by joint order, H.P. 1369 after being removed from the Special Appropriations Table and recommitted to the Committee on Criminal Justice and Public Safety.

### **LD 1241 An Act To Provide Uniform Treatment of Prior Convictions in the Maine Criminal Code**

**CARRIED OVER**

Sponsor(s)

Committee Report

Amendments Adopted

H-314

This bill is proposed by the Criminal Law Advisory Commission.

1. Section 1 adds a definition for "another jurisdiction" in subsection 3-B of section 2 of the Maine Criminal Code, so that this term has consistent meaning throughout the code. "Another jurisdiction" means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Passamaquoddy Tribe and the Penobscot Nation when a tribe has acted pursuant to the Maine Revised Statutes, Title 30, section 6209-A, subsection 1, paragraph A or B and Title 30, section 6209-B, subsection 1, paragraph A or B, respectively. "Another jurisdiction" does not include any foreign country. The bill also amends various crimes and sentencing provisions by replacing inconsistent terminology with the new term "another jurisdiction."

2. Without modifying either the number of prior convictions currently required or the currently qualifying Maine convictions, the bill amends various crimes and sentencing provisions so that prior convictions uniformly include both the specifically identified Maine convictions as well as convictions for engaging in substantially similar conduct in another jurisdiction.

3. The bill replaces in numerous Title 17-A, chapter 45 drug provisions "convicted of an offense under this chapter punishable by a term of imprisonment of more than one year" with "one or more prior convictions for a Class A, B or C offense under this chapter" to clarify that the qualifying Maine chapter 45 convictions include Class C crimes. The bill also replaces in numerous chapter 45 provisions "convicted of an offense under any law of the United States, of another state or of a foreign country relating to scheduled drugs, as defined by this chapter, and punishable by a term of imprisonment of more than one year" with "convicted of engaging in substantially similar conduct to that of the Class A, B or C offenses under this chapter or another jurisdiction."

LD 1241 was carried over by joint order, H.P. 1369 after being removed from the Special Appropriations Table and