

MAINE STATE LEGISLATURE

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STATE OF MAINE
123RD LEGISLATURE
SECOND REGULAR AND FIRST SPECIAL SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed
during the Second Regular or First Special Sessions of the 123rd Maine
Legislature coming from the

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

May 2008

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STATE OF MAINE
123RD LEGISLATURE
SECOND REGULAR & FIRST SPECIAL SESSIONS



**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 Second Regular or First Special Sessions of the 123rd Maine Legislature.

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:

<i>CON RES XXX</i>	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; bill died</i>
<i>DIED BETWEEN BODIES</i>	<i>House & Senate disagree; bill died</i>
<i>DIED IN CONCURRENCE</i>	<i>One body accepts ONTP report; the other indefinitely postpones the bill</i>
<i>DIED ON ADJOURNMENT</i>	<i>Action incomplete when session ended; bill died</i>
<i>EMERGENCY</i>	<i>Enacted law takes effect sooner than 90 days</i>
<i>FAILED EMERGENCY ENACTMENT/FINAL PASSAGE</i>	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT/FINAL PASSAGE</i>	<i>Bill failed to get majority vote</i>
<i>FAILED MANDATE ENACTMENT</i>	<i>Bill imposing local mandate failed to get 2/3 vote</i>
<i>NOT PROPERLY BEFORE THE BODY</i>	<i>Ruled out of order by the presiding officers; bill died</i>
<i>INDEF PP</i>	<i>Bill Indefinitely Postponed; bill died</i>
<i>ONTP (or Accepted ONTP report)</i>	<i>Ought Not To Pass report accepted; bill died</i>
<i>P&S XXX</i>	<i>Chapter # of enacted Private & Special Law</i>
<i>PUBLIC XXX</i>	<i>Chapter # of enacted Public Law</i>
<i>RESOLVE XXX</i>	<i>Chapter # of finally passed Resolve</i>
<i>UNSIGNED</i>	<i>Bill held by Governor</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's Veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session (R2) is June 30, 2008. The effective date for non-emergency legislation enacted in the First Special Session (S1) is July 18, 2008.¹ The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills. Any bill summarized in this document having an LD number less than 1932 was a bill carried over from the First Regular Session of the 123rd Legislature.

¹ The session in which each law was enacted or finally passed (R2 or S1) is included in Appendix C.

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section 34, subsection 4-A. The sentence for this crime must include a period of incarceration of not less than 7 days and a fine of not less than \$500. These penalties may not be suspended. All other violations involving ignition interlock devices are traffic infractions.

Public Law 2007, chapter 531 increases the license reinstatement fee from \$35 to \$50 for persons whose suspension is for OUI or failure to submit to a test.

Public Law 2007, chapter 531 provides that a person may be classified as an habitual offender if the person's license is reinstated contingent on use of an ignition interlock device and that person operates a motor vehicle without an ignition interlock device; tampers with or circumvents the operation of an ignition interlock device; or requests or solicits another person to blow into or otherwise activate an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

Public Law 2007, chapter 531 applies only to OUI offenses occurring after August 31, 2008.

LD 1240 An Act To Implement the Recommendations of the Criminal Law Advisory Commission

PUBLIC 475

Sponsor(s)

Committee Report

Amendments Adopted

OTP-AM

H-651

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.

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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 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

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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)

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 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.

Committee Amendment "B" (H-651)

This amendment strikes from the bill a correction of an outdated reference to Rule 42 of the Maine Rules of Criminal Procedure, as this correction was made in Public Law 2007, chapter 196, section 6. The amendment strikes from the bill language that elevates the crime of theft by extortion to a Class B crime if the value of the property stolen is more than \$10,000. The amendment also strikes from the bill the 2 new aggravated forms of home repair fraud.

The amendment also corrects a conflict created when Public Law 2007, chapter 340 and chapter 344 both affected the same provision of law.

Enacted Law Summary

Public Law 2007, chapter 475 amends provisions dealing with court procedure by repealing Title 14, section 3141, subsection 2, since mandatory notice at the time of a defendant's initial appearance has proven ineffective in securing fine payment in full at the time of sentence imposition and by adding 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.

Public 2007, chapter 475 enacts a provision that 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

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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.

Public 2007, chapter 475 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 crimes involving sexual exploitation of minors to those triggering notice to law enforcement officers and it corrects a reference in the victim notification provision.

Public 2007, chapter 475 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 and 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.

Public 2007, chapter 475 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."

Public 2007, chapter 475 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.

Public 2007, chapter 475 clarifies the requirement that a victim's address be kept confidential. It provides a general rule of confidentiality, which 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. Public 2007, chapter 475 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.

Public 2007, chapter 475 allows 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.

Public 2007, chapter 475 also amends the Juvenile Code by adding the Class A crimes of aggravated attempted murder and elevated aggravated assault on a 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.

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

PUBLIC 476

Sponsor(s)

Committee Report

Amendments Adopted

OTP-AM

H-649

This bill is proposed by the Criminal Law Advisory Commission.