

MAINE STATE LEGISLATURE

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STATE OF MAINE
124TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed during the First Regular Session of the 124th Maine Legislature coming from the

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

July 2009

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STATE OF MAINE

124TH 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 124th 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:

CARRIED OVER.....	Carried over to a subsequent session of the Legislature
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; bill died
ONTP (or Accepted ONTP report).....	Ought Not To Pass report accepted; bill died
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

The effective date for non-emergency legislation enacted in the First Regular Session of the 124th Legislature is September 12, 2009. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

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licensed medical provider. This duty applies regardless of whether the injury was self-inflicted intentionally, recklessly, negligently or accidentally. The duty does not include the actual provision of first aid or other medical treatment, and the duty is satisfied if another person has already made or agreed to make the initial report and request for first aid.

A person who is injured by the failure of another person to report a serious injury may bring a civil action against the person alleged to have breached the duty to report the injury. A person who brings a civil action must prove by a preponderance of the evidence (more likely or more probable than not) that the extent to which the alleged breach of the duty to report was a substantial factor in causing an aggravation of the person's injury.

The bill creates the affirmative defense that the person did not report the serious injury because that person was providing first aid to the injured person. Also, any amount of damages awarded may not be reduced as a result of any intentional act or negligence committed by the injured person, as long as the recoverable damages are limited to the aggravation of the injury proximately caused by the failure to report the injury.

The civil cause of action created must be applied to any claim that is not otherwise barred by the existing statutes of limitations and also must be applied to any lawsuits pending as of the effective date of this section in any court of competent jurisdiction.

The bill also creates the new Class E crime of failure to make a report. A person commits the new crime if the person intentionally, knowingly or recklessly fails to make a report required by the bill.

The bill does not apply to a governmental entity or government employee acting in the course and scope of that entity's or employee's duties.

Committee Amendment "A" (H-488)

This amendment incorporates a fiscal note and is the minority report. This amendment was not adopted.

LD 1275

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

PUBLIC 336

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-376

This bill makes technical and substantive changes as proposed by the Criminal Law Advisory Commission, pursuant to the Maine Revised Statutes, Title 17-A, chapter 55. The bill does the following.

1. It repeals Title 5, section 3360, subsection 3, paragraph I because it is redundant; the forms of kidnapping and criminal restraint that constitute a "human trafficking offense" as defined in Title 5, section 4701, subsection 1, paragraph C are already included within section 3360, subsection 3, paragraph C.
2. It amends Title 17-A, section 106, subsections 1 and 1-A to make clear that the parent or surrogate parent's right to use physical force to prevent or punish misconduct applies to children and only so long as the child is a minor who has not been ordered emancipated by a court. Subsections 1 and 1-A have no application once the child reaches adulthood. The bill also makes technical changes to subsections 2, 3 and 4 of Title 17-A, section 106 to enhance clarity and adds the mental state of "knowing" to subsection 4.
3. It eliminates a current inconsistency between the meaning of "another jurisdiction" and "prior conviction" in the crime of stalking. The latter includes a qualifying conviction from any Indian tribe and not simply a conviction of

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the Passamaquoddy Tribe or the Penobscot Nation. Non-Maine tribes do not constitute "another jurisdiction" under the general definitions of the Maine Criminal Code.

4. It amends Title 17-A, section 1004, subsection 4, paragraph B by deleting that portion characterizing a person's use of an electronic weapon as "using deadly force." A person's lawful use of an electronic weapon is limited to certain specific circumstances in which the law allows the person to use deadly force pursuant to Title 17-A, section 104, subsections 3 and 4 and section 108, subsection 1, paragraph A, subparagraph (1).

5. It adds a new paragraph C to subsection 1 of Title 17-A, section 1158-A providing that, in addition to a court-ordered forfeiture to the State, a court must also order the firearm forfeited to the State if, with the approval of the State, the defendant consents to such forfeiture. This change is important in the circumstance in which a defendant seeks to avoid the elevation of a Class D to a Class C crime, pursuant to Title 17-A, section 1252, subsection 4, if the State pleads and proves that the firearm is used by the defendant during the commission of any Class D crime defined in chapter 9, 11 or 13.

6. It clarifies that any justice or judge, in addition to the justice or judge who originally imposed probation, may initiate and hear a motion to modify or discharge probation and may hear any motion brought by the probation officer or by the person on probation to modify or discharge probation.

7. It amends deferred disposition in 4 ways. First, it broadens eligibility for a deferred disposition both by adding Class B crimes and by including a person who has pled nolo contendere to a qualifying class crime. Second, it allows a court to make a final disposition at the conclusion of the period of deferment and prior to sentence imposition without the necessity of a hearing or the personal appearance of the person in cases where the attorney for the State moves the court in writing to allow the person to withdraw the plea and the person in writing agrees to such withdrawal. Third, it clarifies that until the person is actually sentenced by the court, the person is not deemed to have been convicted. Fourth, it makes reference to the fact that if the attorney for the State has probable cause to believe that a person who was granted a deferred disposition has violated a court-imposed deferment requirement, in addition to the option of applying for an arrest warrant, the attorney for the State may request a warrantless arrest of the person by a law enforcement officer.

8. It amends the administrative release provision to make reference to the fact that if the attorney for the State has probable cause to believe that the person placed on administrative release has violated an administrative release requirement, in addition to the option of applying for an arrest warrant, the attorney for the State may request a warrantless arrest of the person by a law enforcement officer.

9. It addresses the use of less-than-lethal munitions discharged from a firearm by law enforcement officers, corrections officers and corrections supervisors by amending 3 separate statutory provisions. First, it amends Title 17-A, section 101, subsection 5 to provide that the use of a less-than-lethal munition by those state agents constitutes, as a matter of law, the use of nondeadly force and defines "less-than-lethal munition" as "a low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy." Second, the bill amends the definition of "deadly force" in Title 17-A, section 2, subsection 8 to exclude the intentional, knowing or reckless discharge of a firearm in the direction of another person using a less-than-lethal munition and adds the mental state of "knowingly." Third, it amends Title 25, section 2803-B to require that all law enforcement agencies adopt a written policy on the use of physical force, including the use of an electronic weapon and less-than-lethal munitions and certify the same to the board by April 1, 2010; that the board establish policies for the expanded use of physical force by October 1, 2009; and all law enforcement agencies certify to the board that they have provided orientation and training for its members with respect to policies regarding expanded use of physical force by October 1, 2010.

10. It also specifies that, notwithstanding any other law or rule of evidence, a certificate by the custodian of the records of the Board of Trustees of the Maine Criminal Justice Academy, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate or in any documents attached to the certificate.

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Committee Amendment "A" (H-376)

This amendment strikes from the bill the eligibility of persons for deferred disposition who plead guilty to Class B crimes or persons who plead nolo contendere to a Class B, C, D or E crime. Deferred disposition will continue to be a sentencing alternative for those persons who plead guilty to Class C, D or E crimes.

The amendment also makes changes to the dates in provisions regarding policy development, adoption and training to allow the Maine Criminal Justice Academy to effectively implement requirements of the bill.

Enacted Law Summary

Public Law 2009, chapter 336 makes technical and substantive changes as proposed by the Criminal Law Advisory Commission, pursuant to the Maine Revised Statutes, Title 17-A, chapter 55. Public Law 2009, chapter 336 does the following.

1. It repeals Title 5, section 3360, subsection 3, paragraph I because it is redundant; the forms of kidnapping and criminal restraint that constitute a "human trafficking offense" as defined in Title 5, section 4701, subsection 1, paragraph C are already included within section 3360, subsection 3, paragraph C.
2. It amends Title 17-A, section 106, subsections 1 and 1-A to make clear that the parent or surrogate parent's right to use physical force to prevent or punish misconduct applies to children and only so long as the child is a minor who has not been ordered emancipated by a court. Subsections 1 and 1-A have no application once the child reaches adulthood. It also makes technical changes to subsections 2, 3 and 4 of Title 17-A, section 106 to enhance clarity and adds the mental state of "knowing" to subsection 4.
3. It eliminates a current inconsistency between the meaning of "another jurisdiction" and "prior conviction" in the crime of stalking. The latter includes a qualifying conviction from any Indian tribe and not simply a conviction of the Passamaquoddy Tribe or the Penobscot Nation. Non-Maine tribes do not constitute "another jurisdiction" under the general definitions of the Maine Criminal Code.
4. It amends Title 17-A, section 1004, subsection 4, paragraph B by deleting that portion characterizing a person's use of an electronic weapon as "using deadly force." A person's lawful use of an electronic weapon is limited to certain specific circumstances in which the law allows the person to use deadly force pursuant to Title 17-A, section 104, subsections 3 and 4 and section 108, subsection 1, paragraph A, subparagraph (1).
5. It adds a new paragraph C to subsection 1 of Title 17-A, section 1158-A providing that, in addition to a court-ordered forfeiture to the State, a court must also order the firearm forfeited to the State if, with the approval of the State, the defendant consents to such forfeiture. This change is important in the circumstance in which a defendant seeks to avoid the elevation of a Class D to a Class C crime, pursuant to Title 17-A, section 1252, subsection 4, if the State pleads and proves that the firearm is used by the defendant during the commission of any Class D crime defined in chapter 9, 11 or 13.
6. It clarifies that any justice or judge, in addition to the justice or judge who originally imposed probation, may initiate and hear a motion to modify or discharge probation and may hear any motion brought by the probation officer or by the person on probation to modify or discharge probation.
7. It amends deferred disposition by allowing a court to make a final disposition at the conclusion of the period of deferment and prior to sentence imposition without the necessity of a hearing or the personal appearance of the person in cases where the attorney for the State moves the court in writing to allow the person to withdraw the plea and the person in writing agrees to such withdrawal and clarifies that until the person is actually sentenced by the court, the person is not deemed to have been convicted. It also makes reference to the fact that if the attorney for the State has probable cause to believe that a person who was granted a deferred disposition has violated a court-imposed deferment requirement, in addition to the option of applying for an arrest warrant, the attorney for the

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State may request a warrantless arrest of the person by a law enforcement officer.

8. It amends the administrative release provision to make reference to the fact that if the attorney for the State has probable cause to believe that the person placed on administrative release has violated an administrative release requirement, in addition to the option of applying for an arrest warrant, the attorney for the State may request a warrantless arrest of the person by a law enforcement officer.

9. It addresses the use of less-than-lethal munitions discharged from a firearm by law enforcement officers, corrections officers and corrections supervisors by amending 3 separate statutory provisions. First, it amends Title 17-A, section 101, subsection 5 to provide that the use of a less-than-lethal munition by those state agents constitutes, as a matter of law, the use of nondeadly force and defines "less-than-lethal munition" as "a low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy." Second, it amends the definition of "deadly force" in Title 17-A, section 2, subsection 8 to exclude the intentional, knowing or reckless discharge of a firearm in the direction of another person using a less-than-lethal munition and adds the mental state of "knowingly." Third, it amends Title 25, section 2803-B to require that all law enforcement agencies adopt a written policy on the use of physical force, including the use of an electronic weapon and less-than-lethal munitions and certify the same to the board; that the board establish policies for the expanded use of physical force; and all law enforcement agencies certify to the board that they have provided orientation and training for its members with respect to policies regarding expanded use of physical force.

10. It also specifies that, notwithstanding any other law or rule of evidence, a certificate by the custodian of the records of the Board of Trustees of the Maine Criminal Justice Academy, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate or in any documents attached to the certificate.

LD 1338 An Act To Deter Graffiti

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BRIGGS BRYANT B	ONTP	

This bill creates new civil offenses of applying graffiti on private or public property without permission from the owner, possessing graffiti implements by minors on or near a school or by persons near private or public property without permission of the property owner and furnishing graffiti implements to a minor, unless the person furnishing is the minor's parent or guardian. The penalties for these violations are a fine of up to \$250 for a first offense and a fine of up to \$500 for a 2nd or subsequent offense. Each day a violation occurs or remains is considered a separate violation, and a person who violates this section also shall pay restitution for all costs of removal of the graffiti. The bill also defines "graffiti," "graffiti implement," and "property" for purpose of the new violations.

LD 1342 Resolve, To Direct the Commissioner of Health and Human Services To Establish a Blue Ribbon Task Force To Examine the Attorney General's Report Regarding Police Shootings as It Relates to Deaths of Persons with Mental Illness

**ACCEPTED ONTP
REPORT**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
LEWIN NUTTING J	ONTP MAJ OTP-AM MIN	