

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

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

July 2011

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STATE OF MAINE
125TH LEGISLATURE
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LEGISLATIVE DIGEST OF BILL SUMMARIES AND
ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD 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 LD is noted to the right of the LD title. The following describes the various final actions.

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; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public Law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 125th Legislature is September 28, 2011. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Criminal Justice and Public Safety

LD 1392 An Act To Increase the Penalty for Sexual Abuse by Certain Offenders

**DIED BETWEEN
HOUSES**

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

This bill increases the sentencing class of a sex offense by one class or, for a Class A offense, increases the maximum term of imprisonment from 30 to 40 years if the offender is a family or household member of or in a position of authority over the victim and being a family or household member of or in a position of authority over the victim is not an element of the offense.

Committee Amendment "A" (S-283)

This amendment is the minority report of the Joint Standing Committee on Criminal Justice and Public Safety. It adds an appropriations and allocations section.

This amendment was not adopted.

LD 1399 An Act To Implement the Recommendations of the Criminal Law Advisory Commission Relative to the Maine Criminal Code and Related Statutes

PUBLIC 464

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-618 S-360 ROSEN R

This bill amends the Title 15, section 101-D, subsection 5, paragraph A in 4 regards: it precludes the Commissioner of Health and Human Services from commencing involuntary commitment proceedings following a court finding of incompetency and the dismissal of all criminal charges against the defendant when that defendant is subject to an undischarged term of imprisonment; it requires the court dismissing the criminal charges to order the defendant into execution of the undischarged term of imprisonment; it imposes on the correctional facility to which the defendant must be transported the duty to do the transporting; and it corrects a reference to the Department of Health and Human Services and replaces the word "procedures" with the word "proceedings."

It amends Title 15, section 101-D, subsection 9 by requiring that, if a post-sentencing examination must take place outside the correctional facility, that correctional facility has the duty to provide transportation and security for the examination.

It authorizes a warrantless arrest based on probable cause for a violation of a condition of release from a community confinement monitoring program pursuant to Title 30-A, section 1659-A, subsection A.

It amends each of the forms of the Maine Criminal Code crimes of gross sexual assault, unlawful sexual contact and unlawful sexual touching in which the actor is a psychiatrist, psychologist or licensed social worker, or a person purporting to be a psychiatrist, psychologist or licensed social worker, by deleting the current elemental requirement

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that the patient or client be receiving "mental health therapy" from the actor.

It amends the Maine Criminal Code crime of sexual abuse of minors by repealing current Title 17-A, section 254, subsection 1, paragraph F and moving its substance into a new Title 17-A, section 254, subsection 1, paragraph A-3 for purposes of clarity. It also replaces the current reference in Title 17-A, section 254, subsection 2 to paragraph F with a reference to paragraph A-3.

It amends Title 17-A, section 284, subsection 5 by striking the term "dissemination," which has no relevance to the crime of possession of sexually explicit material, and by adding the terms "transporting," "exhibiting" and "purchasing," which, like the term "possession," constitute the alternative prohibited conduct elements regarding the sexually explicit visual image or material.

It amends Title 17-A, section 506 to clarify that current electronic communication devices and those to be developed in the future are included within section 506. A new subsection 2-A is added that defines "electronic communication device" to mean any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending or receiving communication, allowing a person to electronically engage in the conduct prohibited under section 506.

It adds a new subsection to Title 17-A, section 755 to comprehensively address the crime of escape from a community confinement monitoring program. Currently, this form of escape, unlike escape from supervised community confinement granted pursuant to Title 34-A, section 3036-A, is not defined in section 755, but instead is defined only in Title 30-A, section 1659-A. To eliminate confusion, it amends escape to incorporate this version by relying in part on escape as defined in Title 17-A, section 755 and by replacing Title 30-A, section 1659-A, subsection 5 with a cross-reference to the new provision in escape.

It amends the definition of "contraband" in Title 17-A, section 757, subsection 2 to include any tool or other item that may be used to facilitate a violation of section 755. This form of contraband was unintentionally omitted when sections 756 and 757 were amended by Public Law 2009, chapter 608, sections 5 and 6.

It amends the name of the crime "trafficking in dangerous knives" to "possession or distribution of dangerous knives" in order to more accurately describe the crime.

It amends Title 17-A, section 1107-A, subsection 4, providing for an affirmative defense based on a valid prescription to the crime of unlawful possession of scheduled drugs, by adding the schedule W drugs containing methamphetamine, hydrocodone or hydromorphone.

It amends Title 17-A, section 1111-A in the following ways: it amends the title of the section from "sale and use of drug paraphernalia" to "use of drug paraphernalia" to more accurately describe the crime; for clarity, it deletes subsection 4 and replaces it with a new subsection 4-A that addresses the crime of "use of drug paraphernalia" and a new subsection 4-B that addresses civil violations; and it repeals existing exclusion language and instead converts it to an exception under the protections afforded to persons pursuant to the Maine Medical Use of Marijuana Act.

It amends Title 17-A, section 1253, subsection 2 to allow for a detention credit to be awarded for any portion of a day a person is detained short of 24 hours for a person who has previously been detained for the conduct for which the person is sentenced to a term of imprisonment or an initial unsuspended portion of a split sentence of 96 hours or less. It limits the application of the partial day credit to persons whose crime is committed after October 15, 2011 to avoid an unconstitutional application.

It amends Title 17-A, section 1326-A to allow a court to determine the time and method of restitution payment, even if the person is a client of the Department of Corrections.

It amends work program release restitution for clarification and to add another circumstance in which the

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requirements imposed under Title 17-A, section 1330 apply.

It amends the Maine Criminal Code sentencing alternative of unconditional discharge addressed in Title 17-A, section 1346 to allow the Class D and Class E crimes not eligible for a sentencing alternative involving probation pursuant to Title 17-A, section 1201, subsection 1 to nonetheless be eligible for an unconditional discharge.

Committee Amendment "A" (H-618)

This amendment clarifies that for purposes of relationships between patients and providers, the relationship must be current, therefore not criminalizing conduct after the patient-provider relationship has concluded. The amendment also properly places the violation dealing with sexual contact, the Maine Revised Statutes, Title 17-A, section 254, subsection 1, paragraph A-3 proposed in the bill in Title 17-A, section 255-A, which deals with unlawful sexual contact offenses, not sexual acts.

The amendment adds language to Title 17-A, section 284 to be consistent with recently enacted Public Law 2011, chapter 50. The amendment adds language to specify that income withholding orders remain effective and enforceable until restitution is paid in full, even after an offender is no longer in the custody or under the supervision of the Department of Corrections. The amendment also adds an appropriations and allocations section.

Senate Amendment "A" To Committee Amendment "A" (S-360)

This amendment specifies that the provision concerning harassment by telephone or by electronic communication device takes effect July 1, 2012.

Enacted Law Summary

Public Law 2011, chapter 464 makes a number of changes to the Criminal Code and related statutes. Specifically, it enacts the following changes.

1. It amends the Title 15, section 101-D, subsection 5, paragraph A in 4 regards: it precludes the Commissioner of Health and Human Services from commencing involuntary commitment proceedings following a court finding of incompetency and the dismissal of all criminal charges against the defendant when that defendant is subject to an undischarged term of imprisonment; it requires the court dismissing the criminal charges to order the defendant into execution of the undischarged term of imprisonment; it imposes on the correctional facility to which the defendant must be transported the duty to do the transporting; and it corrects a reference to the Department of Health and Human Services and replaces the word "procedures" with the word "proceedings."
2. It amends Title 15, section 101-D, subsection 9 by requiring that, if a post-sentencing examination must take place outside the correctional facility, that correctional facility has the duty to provide transportation and security for the examination.
3. It authorizes a warrantless arrest based on probable cause for a violation of a condition of release from a community confinement monitoring program pursuant to Title 30-A, section 1659-A, subsection A.
4. It amends each of the forms of the Maine Criminal Code crimes of gross sexual assault, unlawful sexual contact and unlawful sexual touching in which the actor is a psychiatrist, psychologist or licensed social worker, or a person purporting to be a psychiatrist, psychologist or licensed social worker, by deleting the current elemental requirement that the patient or client be receiving "mental health therapy" from the actor. It clarifies that for purposes of relationships between patients and providers, the relationship must be current, therefore not criminalizing conduct after the patient-provider relationship has concluded, and it properly places the violation dealing with sexual contact in Title 17-A, section 255-A, which deals with unlawful sexual contact offenses, not sexual acts.
5. It amends the Maine Criminal Code crime of sexual abuse of minors by repealing current Title 17-A, section 254, subsection 1, paragraph F and moving its substance into a new Title 17-A, section 254, subsection 1, paragraph A-3 for purposes of clarity. It also replaces the current reference in Title 17-A, section 254, subsection 2 to paragraph F

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with a reference to paragraph A-3.

6. It amends Title 17-A, section 284, subsection 5 by striking the term "dissemination," which has no relevance to the crime of possession of sexually explicit material, and by adding the terms "transporting," "exhibiting" and "purchasing," which, like the term "possession," constitute the alternative prohibited conduct elements regarding the sexually explicit visual image or material.

7. It amends Title 17-A, section 506 to clarify that current electronic communication devices and those to be developed in the future are included within section 506. A new subsection 2-A is added that defines "electronic communication device" to mean any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending or receiving communication, allowing a person to electronically engage in the conduct prohibited under section 506. Changes regarding electronic communications do not become effective until July 1, 2012.

8. It adds a new subsection to Title 17-A, section 755 to comprehensively address the crime of escape from a community confinement monitoring program. Currently, this form of escape, unlike escape from supervised community confinement granted pursuant to Title 34-A, section 3036-A, is not defined in section 755, but instead is defined only in Title 30-A, section 1659-A. To eliminate confusion, it amends escape to incorporate this version by relying in part on escape as defined in Title 17-A, section 755 and by replacing Title 30-A, section 1659-A, subsection 5 with a cross-reference to the new provision in escape.

9. It amends the definition of "contraband" in Title 17-A, section 757, subsection 2 to include any tool or other item that may be used to facilitate a violation of section 755. This form of contraband was unintentionally omitted when sections 756 and 757 were amended by Public Law 2009, chapter 608, sections 5 and 6.

10. It amends the name of the crime "trafficking in dangerous knives" to "possession or distribution of dangerous knives" in order to more accurately describe the crime.

11. It amends Title 17-A, section 1107-A, subsection 4, providing for an affirmative defense based on a valid prescription to the crime of unlawful possession of scheduled drugs, by adding the schedule W drugs containing methamphetamine, hydrocodone or hydromorphone.

12. It amends Title 17-A, section 1111-A in the following ways: it amends the title of the section from "sale and use of drug paraphernalia" to "use of drug paraphernalia" to more accurately describe the crime; for clarity, it deletes subsection 4 and replaces it with a new subsection 4-A that addresses the crime of "use of drug paraphernalia" and a new subsection 4-B that addresses civil violations; and it repeals existing exclusion language and instead converts it to an exception under the protections afforded to persons pursuant to the Maine Medical Use of Marijuana Act.

13. It amends Title 17-A, section 1253, subsection 2 to allow for a detention credit to be awarded for any portion of a day a person is detained short of 24 hours for a person who has previously been detained for the conduct for which the person is sentenced to a term of imprisonment or an initial unsuspended portion of a split sentence of 96 hours or less. It limits the application of the partial day credit to persons whose crime is committed after October 15, 2011 to avoid an unconstitutional application.

14. It amends Title 17-A, section 1326-A to allow a court to determine the time and method of restitution payment, even if the person is a client of the Department of Corrections. It also adds language to specify that income withholding orders remain effective and enforceable until restitution is paid in full, even after an offender is no longer in the custody or under the supervision of the Department of Corrections.

15. It amends work program release restitution for clarification and to add another circumstance in which the requirements imposed under Title 17-A, section 1330 apply.

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16. It amends the Maine Criminal Code sentencing alternative of unconditional discharge addressed in Title 17-A, section 1346 to allow the Class D and Class E crimes not eligible for a sentencing alternative involving probation pursuant to Title 17-A, section 1201, subsection 1 to nonetheless be eligible for an unconditional discharge.

LD 1400 An Act To Address Certain Aspects of Bail

PUBLIC 341

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-534

This bill amends the Maine Bail Code in several ways. It adds a new definition of "crime involving domestic violence," which means a crime of domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct, as defined in the Title 17-A, as well as a violation of a protective order under Title 19-A, section 4011 in which the alleged victim is a family or household member as defined in Title 19-A, section 4002, subsection 4.

The bill replaces "district attorney" with "responsible prosecutorial office" to broaden the application to include the Attorney General's Office as well as any district attorney.

It adds a new provision addressing the preconviction limitations on a bail commissioner's authority as provided in Title 15, section 1092, subsection 4.

It adds a provision requiring that in the preconviction context a bail commissioner specify a court date within 8 weeks of the date of the bail order when that bail order uses one or more release conditions not automatically included in every bail order for pretrial release.

The bill adds a provision that requires that the court and not a bail commissioner set preconviction bail for a crime if: the condition of release alleged to be violated relates to new criminal conduct for a Class C or above crime or a Class D or Class E crime that involves domestic violence, sexual assault or sexual exploitation of minors; the underlying crime for which preconviction bail was granted is classified as Class C or above; or the underlying crime for which preconviction bail was granted involves domestic violence, sexual assault or sexual exploitation of minors.

The bill clarifies that a law enforcement officer may make a warrantless arrest in the context of an anticipated motion to revoke bail by the attorney for the State. It expressly authorizes an arrest under these circumstances when the attorney for the State requests that the defendant be arrested for purposes of instituting a revocation of bail. The bill does not address an arrest for a violation of the crime of violation of a condition of release pursuant to Title 15, section 1092.

The bill adds to the list of circumstances in which a law enforcement officer may make a warrantless arrest the following: a violation of preconviction or post-conviction bail pursuant to Title 15, section 1095, subsection 2 or section 1098, subsection 2 upon request of the attorney for the State; failure to appear in violation of Title 15, section 1091, subsection 1, paragraph A; and a Class D or Class E crime committed while released on preconviction or post-conviction bail.

Committee Amendment "A" (H-534)

This amendment clarifies that if a bail commissioner does not have sufficient information to determine whether the bail commissioner is authorized to set bail on a violation of a condition of release, the bail commissioner may not set bail.