

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1740

H.P. 1280

House of Representatives, March 22, 2001

**An Act to Implement Recommendations of the MCJUSTIS Board
Pursuant to the Study Required by Resolve 1997, Chapter 105.**

Reported by Representative POVICH for the Maine Criminal Justice Information System Policy Board pursuant to Resolve 1997, chapter 105, section 4.

Reference to the Joint Standing Committee on Criminal Justice suggested and printing ordered under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

2 and for imposing a sentence under this paragraph rather than
under paragraph A; and

4 C. If the court imposes a sentence under paragraph B, the
6 minimum sentence of imprisonment, which ~~shall~~ may not be
8 suspended, ~~shall-be~~ is as follows: When the sentencing class
10 is Class A, the minimum term of imprisonment ~~shall-be~~ is 9
12 months; when the sentencing is Class B, the minimum term of
imprisonment ~~shall-be~~ is 6 months; and, with the exception
of trafficking or furnishing marijuana under section ~~1105,~~
1105-A or 1105-C, when the sentencing class is Class C, the
minimum term of imprisonment ~~shall-be~~ is 3 months.

14 **Sec. 151. 17-A MRSA §1301, sub-§5**, as enacted by PL 1985, c.
16 699, is amended to read:

18 5. Notwithstanding any other provision of this section, any
18 person convicted of a crime under section 1103, ~~1105~~ 1105-A,
20 1105-B, 1105-C, 1105-D, 1106 or ~~1107~~ 1107-A may be sentenced to
22 pay a fine of an amount equal to the value at the time of the
offense of the scheduled drug or drugs upon which the conviction
is based.

24 When the court imposes a fine under this subsection, the court
26 shall make a finding as to the value of the scheduled drug or
drugs. If the record does not contain sufficient evidence to
28 support a finding, the court may conduct, in connection with its
imposition of a sentence, a hearing on this issue.

30 **Sec. 152. 34-A MRSA §11203, sub-§6, ¶B**, as enacted by PL 1999,
32 c. 437, §2, is amended to read:

34 B. A violation under Title 17-A, section 253, subsection 2,
36 paragraph E, F, G, H, I or J; Title 17-A, section 254; Title
38 17-A, section ~~255~~ 255-A, subsection 1, paragraph A, ~~E, F, G~~
40 B, I or, J, K, L, M, N, O, R, S or T; Title 17-A, section
42 256; Title 17-A, section 258; Title 17-A, section 301,
unless the actor is a parent of the victim; Title 17-A,
section 302; Title 17-A, section 511, subsection 1,
paragraph D; Title 17-A, section 556; Title 17-A, section
852, subsection 1, paragraph B; or Title 17-A, section 855;
or

44 **Sec. 153. 34-A MRSA §11203, sub-§7, ¶A**, as enacted by PL 1999,
46 c. 437, §2, is amended to read:

48 A. A conviction for or an attempt to commit an offense
under Title 17-A, section 253, subsection 1; Title 17-A,
section 253, subsection 2, paragraph A, B, C or D; or Title

17-A, section 255 ~~255-A~~, subsection 1, paragraph B, C, D or ~~E, F, G, H, O or P~~; or

Sec. 154. Effective date. This Act takes effect January 31, 2003.

SUMMARY

This bill is the report of the Maine Criminal Justice Information System, MCJUSTIS, Policy Board pursuant to Resolve 1997, chapter 105, as amended by Public Law 1999, chapter 451, section 5 and Public Law 1999, chapter 790, Part D, section 12.

MCJUSTIS is an information clearinghouse, the purpose of which is to provide access to shared uniform information on criminal defendants and crime data. In order for the information to be uniform and accurate, it must be entered and accessed by all participants in the same way. To ensure that crimes are entered accurately, the statutes defining each crime must be precise and narrow enough to ensure that citing to the specific statutory unit will be the same as describing the elements and class of that exact crime. There must be a one-to-one relationship between each crime and the statutory unit that defines it. This bill revises the Maine Criminal Code to establish that one-to-one relationship for each crime and its unique statutory cite.

The original resolve directed the MCJUSTIS policy board to propose only those substantive changes to the laws that are necessary to result in a unique statutory cite for each crime. In working through each crime in the Maine Criminal Code, the MCJUSTIS policy board, as advised by the Criminal Law Advisory Commission, identified one category of substantive changes that are necessary and several others that it recommends; all are included in this bill.

The category of substantive changes that are necessary relates to how to handle facts about a crime that are not technically elements but are currently used for determining the class of crime for sentencing purposes. The statute currently does not require that such "enhancers" be proved beyond a reasonable doubt by the prosecution. The Law Court has required, however, that the prosecution must prove such facts beyond a reasonable doubt if the facts are to be used to make the underlying crime a higher class than it would otherwise be or would require a specific punishment. This bill incorporates each enhancer into the elements of the crime that it enhances. This results in the statutory requirement that the enhancer be proved

2 beyond a reasonable doubt in order to secure a conviction for
that crime at that class.

4 For example, assault is usually a Class D crime. If the
victim is under 6 years of age, however, the assault is a Class C
6 crime. This bill revises assault to require the prosecutor to
prove beyond a reasonable doubt that the victim is under 6 years
8 of age in order to secure the Class C conviction.

10 This bill contains changes to the Maine Criminal Code that
are substantive and that are proposed to improve the Maine
12 Criminal Code for consistency or clarity.

14 In addition to formatting changes, this bill makes the
following changes to the Maine Criminal Code.

16
18 1. It rewrites as an element of a crime any fact regarding
the crime that is used to establish the class for the crime or
the appropriate sentence is rewritten as an element of the
20 crime. This is a substantive change, although it will make
little difference in how cases are currently prosecuted.

22
24 2. It revises language, including "presumption," "presumed"
and "prima facie" to reflect Supreme Judicial Court rulings and
Rule 303 of the Maine Rules of Evidence. The revised language
26 instead refers to "permissible inference" to ensure that the jury
knows how to use certain proven evidence. This does not reflect
28 a change in practice, but clarifies the law.

30
32 3. It provides a definition of being related within the
"2nd degree of consanguinity." The term is used in defining both
gross sexual assault and incest.

34
36 4. It establishes standard language for referring to prior
convictions and using prior convictions to affect one class of a
newly committed crime. The Maine Revised Statutes, Title 17-A,
section 9-A is amended to provide general rules for using prior
38 convictions to enhance a new crime. These general rules are
consistent with most existing provisions concerning the use of
40 prior convictions, but do represent a substantive change in a few
cases.

42
44 The general rules included here require considering specific
convictions secured within the last 10 years. This is a
substantive change for Title 17-A, sections 506-A and 556.

46
48 The period for prior convictions is not changed for prostitution
crimes, which remain at 2 years, and certain drug crimes, which
do not limit how far back a prior conviction can be used to
50 enhance the current crime.

2 The general rules provide consistent language dealing with
4 multiple crimes committed within 2 or 3 days. This may result in
6 a substantive change in a limited number of crimes in order to
treat them consistently.

8 5. It inserts the language declaring the class in the same
10 statutory unit that defines the way to commit the crime. When
12 the statute defines more than one way of committing a crime, and
14 those different ways are identified as different classes, the
16 exception to this is in the statutes dealing with gross sexual
18 assault, unlawful sexual contact and theft, where if certain
circumstances exist, the classification will go up a class.
Because each way of committing these crimes could be increased if
the particular circumstance exists, an enhancer provision was
drafted at the end of each crime to specify that the
classification will increase if the circumstances are proved.

20 6. It rewrites permissible inference language regarding a
22 person accused of theft to include Title 17-A, section 405,
24 burglary. This change expands the presumption that by permitting
an inference to be made under the Maine Rules of Evidence, Rule
303, a person in exclusive possession of property recently taken
is guilty of the burglary.

26 7. It amends the drug laws dealing with unlawful
28 trafficking, unlawful furnishing and unlawful possession to
30 clarify that a person is guilty of trafficking, furnishing or
32 possessing a scheduled drug if the person intentionally or
knowingly trafficks, furnishes or possesses what the person knows
or believes to be a scheduled drug, which is in fact a scheduled
drug and the drug is a type of scheduled drug.

34 8. It includes language to make the statutes gender neutral
36 and to correct and update grammar. In addition, the following
38 language changes are made for consistency and are not intended to
be substantive.

40 A. When referring to the age of the perpetrator or victim,
42 the term as used is "___ years of age." For example, if
current law says "under 14" or "has not reached his 14th
44 birthday," this bill revises it to "less than 14 years of
age."

46 B. "Exceeds" is changed to "more than," "under" is changed
to "less than."

48 C. The perpetrator of the crime is usually referred to in
50 the definition as "the person." Exceptions occur when the
crime definition involves other people and the "the person"

2 becomes confusing. In these situations, "actor" is used
instead. "Defendant" is often used in procedural and
4 sentencing provisions.

6 9. It adds an effective date of January 31, 2003.