

Joint Standing Committee on Criminal Justice and Public Safety

LD 31

Resolve, To Direct State, County and Local Departments and Agencies To Coordinate a Single-point Referral and Resource Service Related to Drug Issues in Washington County

RESOLVE 100

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BUNKER	OTP-AM MAJ	H-624
SHOREY	ONTP MIN	

LD 31 was a concept draft pursuant to Joint Rule 208. The bill proposed to establish a seamless strategic drug abuse model for addressing issues surrounding criminal enforcement, substance abuse treatment and education and public advocacy in Washington County.

Committee Amendment "A" (H-624) proposed to replace the bill and was the majority report. The amendment proposed to create a resolve that directs the Department of Behavioral and Developmental Services, the Department of Human Services and the Department of Corrections to work in cooperation with county and local service providers, law enforcement and other interested parties to coordinate a single point of contact for persons in Washington County to receive information and treatment referral services for all drug-related issues. The amendment proposed that the Department of Behavioral and Developmental Services, Office of Substance Abuse report progress on developing and implementing a single point of contact for Washington County to the joint standing committee having jurisdiction over criminal justice and public safety matters by January 2005. The amendment also proposed to add a fiscal note.

Enacted Law Summary

Resolve 2003, chapter 100 directs the Department of Behavioral and Developmental Services, the Department of Human Services and the Department of Corrections to work in cooperation with county and local service providers, law enforcement and other interested parties to coordinate a single point of contact for persons in Washington County to receive information and treatment referral services for all drug-related issues. Resolve 2003, chapter 100 also directs the Department of Behavioral and Developmental Services, Office of Substance Abuse to report progress on developing and implementing a single point of contact for Washington County to the joint standing committee having jurisdiction over criminal justice and public safety matters by January 2005.

LD 105

An Act to Further the Productive Use of Land Held by the Department of Corrections

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
USHER BLANCHETTE	ONTP	

LD 105 was a concept draft pursuant to Joint Rule 208. The bill proposed to require that land in Windham held by the State under the direction of the Department of Corrections be put to productive use.

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LD 617 **An Act Amending the Time by Which a Sex Offender or Sexually Violent Predator Must Register** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
ROTUNDO WALCOTT	ONTP	

LD 617 proposed to reduce from 10 days to 48 hours the time within which a sex offender or sexually violent predator must register with the Department of Public Safety, State Bureau of Identification to comply with the Sex Offender Registration and Notification Act of 1999.

LD 617 was not enacted, but an amended version of the bill was incorporated into Committee Amendment "A" (H-860) to LD 1903, which was enacted as Public Law 2003, chapter 711.

LD 891 **An Act To Require Law Enforcement Agencies To Adopt Policies Concerning Recording and Preservation of Interviews** **PUBLIC 677**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
STRIMLING NORBERT	OTP-AM MAJ ONTP MIN	H-880 MILLS J S-405

LD 891 proposed to require police departments and other law enforcement agencies to videotape examinations that concern the commission of a crime and that are conducted within police departments or other law enforcement facilities.

Committee Amendment "A" (S-405) proposed to replace the bill, was the majority report of the committee and was based upon similar legislation in other jurisdictions. The amendment proposed to make a statement inadmissible if the statement was made as a result of custodial interrogation that was conducted at a police station or other place of detention, unless the statement was recorded electronically and was presented in a substantially accurate and unaltered manner, or the person seeking to have the statement admitted demonstrated by a preponderance of evidence that the statement was reliable, in addition to any demonstration of voluntariness required by law. The amendment proposed that this requirement apply to interrogations of persons accused of murder or gross sexual assault.

The amendment also proposed to define certain terms, including "custodial interrogation," "electronic recording" and "place of detention". The amendment proposed to exempt certain statements from the recording requirement. Specifically, it proposed to allow use of unrecorded statements for impeachment purposes; if recording was not feasible; if the statement was made in open court, such as at a court proceeding, grand jury proceeding or preliminary hearing; if the statement was made spontaneously and not in response to a question; or if the custodial interrogation took place out of the State.

Additionally, the amendment proposed to make a recorded statement confidential and exempt from public inspection as a public record; to allow law enforcement agencies to purchase recording equipment from the Department of

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Administrative and Financial Services, Bureau of General Services for nominal cost and to authorize the Department of Public Safety to make grants to law enforcement agencies for training and equipment. The amendment also proposed to add a fiscal note.

House Amendment "A" to Committee Amendment "A" (H-880) proposed to direct the Board of Trustees of the Maine Criminal Justice Academy to set minimum standards for and all law enforcement agencies to formally adopt written policies regarding procedures to deal with the digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases.

House Amendment "B" to Committee Amendment "A" (H-940) proposed to incorporate the provisions of House Amendment "A" to Committee Amendment "A" and to add a mandate preamble and a fiscal note. This amendment was not adopted.

Senate Amendment "A" to Committee Amendment "A" (S-415) proposed to amend the appropriations and allocations section of the committee amendment to correct the program name and the text of the initiative. This amendment was not adopted.

Senate Amendment "B" to Committee Amendment "A" (S-490) proposed to provide that a "place of detention" does not include a police vehicle. It also proposed to provide that a statement made by a person accused of murder, felony murder, gross sexual assault or a juvenile crime that if committed by an adult would be a Class A crime may be declared inadmissible by the court if the statement was made as a result of a custodial interrogation that was conducted at a place of detention and the statement was not an electronic recording presented in a substantially accurate and unaltered manner. It further proposed to provide that an unrecorded statement was not be subject to these provisions if the person being interrogated requested, in writing or in a recording, that the statement not be recorded. This amendment was not adopted.

Senate Amendment "C" to Committee Amendment "A" (S-513) proposed to incorporate the provisions of House Amendment "A" to Committee Amendment "A" and to provide that the minimum standards for policies for the recording and preservation of interviews of suspects in serious crimes under the Maine Revised Statutes, Title 25, section 2803-B, subsection 1, paragraph J must designate that such interviews be electronically recorded. This amendment was not adopted.

Senate Amendment "D" to Committee Amendment "A" (S-514) proposed to incorporate the provisions of House Amendment "A" to Committee Amendment "A" and to provide that the minimum standards for policies for the recording and preservation of interviews of suspects in serious crimes under the Maine Revised Statutes, Title 25, section 2803-B, subsection 1, paragraph J must designate that such interviews be electronically recorded. This amendment also proposed to add a mandate preamble. This amendment was not adopted.

Enacted Law Summary

Public Law 2003, chapter 677 directs the Board of Trustees of the Maine Criminal Justice Academy to set minimum standards for and all law enforcement agencies to formally adopt written policies regarding procedures to deal with the digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases.

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LD 917

An Act Regarding the Sale of Weapons at Gun Shows

**DIED ON
ADJOURNMENT**

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

LD 917 proposed to require that a national instant criminal background check be performed prior to the sale or transfer of a firearm at a gun show. The bill proposed to make a gun show operator responsible for any failure to perform a required background check and subject to a fine of up to \$10,000 for each such failure. The bill also proposed to require gun show operators to post signs at gun shows and notify exhibitors of the background check requirement and to provide unlicensed sellers and transferors with access to licensed sellers and transferors who will undertake the required background checks.

Committee Amendment "A" (H-750) was the majority report of the committee and proposed to exempt from the bill's requirements gun shows that are operated by nonprofit corporations, including, but not limited to, sporting or gun clubs or fraternal benefit societies. The amendment also proposed to add a fiscal note. This amendment was not adopted.

LD 1014

An Act To Enhance Professionalism of Private Investigators in this State

PUBLIC 620

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BUNKER	OTP-AM	H-249
CARPENTER		H-832 BRANNIGAN

LD 1014 proposed to make several changes to the current licensing requirements for private investigators. The bill proposed to allow, under certain circumstances, a private investigator licensed in a state or territory that has a reciprocal agreement with Maine to conduct an investigation in Maine without a Maine private investigator's license. The bill also proposed to require a private investigative assistant to complete 1,700 hours of employment, under the supervision of a licensed private investigator and within 18 months of receiving an investigative assistant license, to be eligible for a private investigator's license. Additionally, the bill proposed to require that a licensed private investigator complete 40 hours of continuing professional education within each 2-year license renewal period and to clarify that use of a badge to suggest that a private investigator is a sworn peace officer of the State is unlawful.

Committee Amendment "A" (H-249) proposed to replace the bill. The amendment proposed to do the following:

1. Change the time when a private investigator's license may be renewed after initial licensure from every 2 to every 4 years and double the renewal fee to \$400;
2. Change the term of an investigative assistant's license from one year with a possibility of a 6-month extension to 2 years and double the fee to \$600;

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3. Clarify that presentation of a badge by a private investigator or an investigative assistant to cause another person to believe that the private investigator or investigative assistant is a sworn peace officer is a Class D crime; and
4. Clarify that a private investigator or investigative assistant who contracts with a state law enforcement agency is bound by that agency's confidentiality obligations.

House Amendment "A" to Committee Amendment "A" (H-832) proposed to remove the fiscal note from Committee Amendment "A."

LD 1014, which failed enactment during the First Regular Session of the 121st Legislature, was recalled from the legislative files, reconsidered and enacted after amending the bill with House Amendment "A," which removed an incorrect fiscal note.

Enacted Law Summary

Public Law 2003, chapter 620 makes the following changes to the current licensing requirements for private investigators.

1. It changes the time when a private investigator's license may be renewed after initial licensure from every 2 to every 4 years and doubles the renewal fee to \$400.
2. It changes the term of an investigative assistant's license from one year with a possibility of a 6-month extension to 2 years and doubles the fee to \$600.
3. It clarifies that presentation of a badge by a private investigator or an investigative assistant to cause another person to believe that the private investigator or investigative assistant is a sworn peace officer is a Class D crime.
4. It clarifies that a private investigator or investigative assistant who contracts with a state law enforcement agency is bound by that agency's confidentiality obligations.

LD 1186

An Act To Provide Funding for Court Security

P & S 48

Sponsor(s)
STRIMLING

Committee Report
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SECRETARY PUR
TO JT RULE
309

Amendments Adopted
S-592 CATHCART

LD 1186

The Maine Revised Statutes, Title 34-A, section 1210-A currently provides for a subsidy to counties for supporting prisoners detained or sentenced to county jails and maintaining community corrections. This bill proposed to change the section to reimburse counties for a percentage of the actual costs of those programs.

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LD 1186 proposed that the percentage would start at 10% beginning July 1, 2005 and increase in annual increments of 5% to a maximum of 30% of actual costs reimbursed.

Committee Amendment "A" (S-227) proposed to strike and replace the distribution formula in the bill. This amendment proposed to create a new 10% surcharge on all fines, forfeitures and penalties, except the new surcharge may not be imposed on fines collected for violations of the Maine Revised Statutes, Title 29-A, chapter 21. The amendment proposed that the money collected pursuant to the surcharge be distributed annually to each county based on that county's total jail operating costs as a percentage of the expenditures to operate all jails. The amendment also proposed to strike the effective date, as this distribution will begin in the next fiscal year, and to add an appropriation section and fiscal note. This amendment was not adopted.

House Amendment "A" to Senate Amendment "A" (H-697) was presented on behalf of the Committee on Bills in the Second Reading and proposed to prevent a conflict by incorporating changes made to the Maine Revised Statutes, Title 34-A, section 1210-A, subsection 9 in Public Law 2003, chapter 20. This amendment was not adopted.

Senate Amendment "A" (S-380) proposed to change the date on which the Department of Corrections will start reimbursing each county for a portion of the actual costs of operating its jail from July 1, 2005 to July 1, 2007. The amendment also proposed to add a fiscal note. This amendment was not adopted.

Senate Amendment "B" (S-592) proposed to strike the title and the bill and to appropriate funds for contractual services to provide security at existing courthouses. The amendment also proposed to add a fiscal note.

Enacted Law Summary

Private and Special Law, chapter 48 appropriates funds for contractual services to provide security at existing courthouses.

LD 1729

An Act To Strengthen the Sex Offender Registration and Notification Act of 1999

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
STANLEY GERZOFKY	ONTP	

LD 1729 proposed to expand the definition of "domicile" in the Sex Offender Registration and Notification Act of 1999 to include all of the places where a person lives, resides or dwells.

LD 1729 was not enacted, but an amended version of the bill was incorporated into Committee Amendment "A" (H-860) to LD 1903, which was enacted as Public Law 2003, chapter 711.

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LD 1731 **An Act To Expand the State Fire Marshal's Responsibilities and To Clarify That the Commissioner of Public Safety Will Follow the Maine Administrative Procedure Act when Adopting Certain Rules** **PUBLIC 535**

<u>Sponsor(s)</u> BLANCHETTE HATCH PH	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-681
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LD 1731 proposed to expand the responsibility of the State Fire Marshal to include protection of the public in the area of incendiary devices and to clarify that the Commissioner of Public Safety must follow the Maine Administrative Procedure Act when making rules involving life safety and property protection.

Committee Amendment "A" (H-681) proposed to update the definition of "explosives" in Title 17-A, section 1001; to amend the headnote of Title 25, section 2452 to better reflect the purpose of the law; to change the phrase "outdoor gatherings" to "mass outdoor gatherings," as defined in the Maine Revised Statutes, Title 22, section 1601; and to add a fiscal note.

Enacted Law Summary

Public Law 2003, chapter 535 expands the responsibility of the State Fire Marshal to include protection of the public in the area of incendiary devices and makes it clear that the Commissioner of Public Safety must follow the Maine Administrative Procedure Act when making rules involving life safety and property protection. Public Law 2003, chapter 535 also updates the definition of "explosives" in Title 17-A, section 1001; amends the headnote of Title 25, section 2452 to better reflect the purpose of the law; and changes the phrase "outdoor gatherings" to "mass outdoor gatherings," as defined in the Maine Revised Statutes, Title 22, section 1601.

LD 1738 **An Act To Amend the Law Providing Restitution to Victims of Timber Theft** **PUBLIC 540**

<u>Sponsor(s)</u> SMITH N BRYANT	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-690
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LD 1738 proposed to amend the law awarding restitution for the unlawful cutting of trees by allowing evidence of more than just financial loss when determining restitution and by allowing the court to award restitution in lieu of or based upon the schedule of forfeitures for unlawfully cutting trees.

Committee Amendment "A" (H-690) proposed to replace the bill. The amendment proposed that, at the request of the prosecutor, the court may suspend all or a portion of the forfeiture adjudged for unlawfully cutting trees and apply it to restitution to the property owner of the unlawfully cut trees. The amendment also proposed to add a fiscal note.

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Enacted Law Summary

Public Law 2003, chapter 540 amends the law awarding restitution for the unlawful cutting of trees by specifying that, at the request of the prosecutor, the court may suspend all or a portion of the forfeiture adjudged for unlawfully cutting trees and apply it to restitution to the property owner of the unlawfully cut trees.

LD 1744 **An Act To Amend the Laws Governing the Display of Fireworks and Indoor Pyrotechnics** **PUBLIC 521**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DUPLESSIE HATCH PH	OTP-AM	H-644

LD 1744 proposed to amend the law regarding pyrotechnics by:

1. Requiring a person to apply for a permit from the Commissioner of Public Safety 20 days before conducting a fireworks display, instead of the current 10 days;
2. Increasing the amount of public liability insurance that an applicant for a permit to conduct a fireworks display must have from \$500,000 to \$1,000,000;
3. Requiring the State Fire Marshal or the State Fire Marshal's designee to monitor all indoor pyrotechnic events;
4. Increasing certain penalties regarding the unlawful conduct of a fireworks display and failure to obtain a fireworks permit; and
5. Delineating license renewal procedures for fireworks technicians.

Committee Amendment "A" (H-644) proposed to remove the section of the bill that would increase penalties for conducting a fireworks display without a permit or in violation of a permit and proposed to add a fiscal note.

Enacted Law Summary

Public Law 2003, chapter 521 amends the law regarding pyrotechnics as follows.

1. It requires a person to apply for a permit from the Commissioner of Public Safety 20 days before conducting a fireworks display, instead of 10 days before as currently required.
2. It increases the amount of public liability insurance that an applicant for a permit to conduct a fireworks display must have from \$500,000 to \$1,000,000.

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- 3. It requires the State Fire Marshal or the State Fire Marshal's designee to monitor all indoor pyrotechnic events.
- 4. It delineates license renewal procedures for fireworks technicians.

LD 1762 **An Act To Amend the Maine Emergency Medical Services Act of 1982** **PUBLIC 559**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BULL HATCH PH	OTP-AM	H-709

LD 1762 proposed to extend the deadline for the completion of the ambulance vehicle operators course requirements from January 1, 2005 to January 1, 2007, to correct inconsistencies regarding complaint procedures between the Maine Emergency Medical Services Act of 1982 and the Maine Administrative Procedure Act and to clarify the confidentiality provisions in the areas of quality assurance and investigations regarding licensees in the emergency medical services field.

Committee Amendment "A" (H-709) proposed to clarify that both investigative records and complaints become public records upon the conclusion of an investigation, unless they are confidential pursuant to another provision of law. The amendment also proposed to change from January 31, 2004 to January 31, 2005 the date by which the Commissioner of Public Safety must complete a study of the statewide emergency medical services system and report findings and suggested legislation to the Legislature.

Enacted Law Summary

Public Law 2003, chapter 559 extends the deadline for the completion of the ambulance vehicle operators course requirements from January 1, 2005 to January 1, 2007, corrects inconsistencies regarding complaint procedures between the Maine Emergency Medical Services Act of 1982 and the Maine Administrative Procedure Act and clarifies the confidentiality provisions in the areas of quality assurance and investigations regarding licensees in the emergency medical services field. Public Law 2003, chapter 559 also clarifies that both investigative records and complaints become public records upon the conclusion of an investigation, unless they are confidential pursuant to another provision of law and changes from January 31, 2004 to January 31, 2005 the date by which the Commissioner of Public Safety must complete a study of the statewide emergency medical services system and report findings and suggested legislation to the Legislature.

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LD 1764

**An Act To Improve the Operations of the Department of
Corrections and the Safety of State Correctional Facilities**

PUBLIC 706

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BLANCHETTE HATCH PH	OTP-AM	H-749 S-576 CATHCART

LD 1764 was drafted in 3 parts. Part A of LD 1764 proposed to do the following:

1. Require a bound-over juvenile who is to be detained to be detained with adults once that person becomes 18 years of age;
2. Require that a juvenile detention order be reviewed by the court within 10 days;
3. Add the requirement of a determination of probable cause to the initial appearance provision in the Maine Juvenile Code before a juvenile may be detained;
4. Change the fund to which fees received from probationers are deposited to the adult community corrections account;
5. Direct the prosecutor, if requested by the Court, to inform the court at the time of sentencing of the total deduction allowed from prior detention;
6. Require restitution collected for victims who cannot be located to be forwarded to the Treasurer of State to be handled as unclaimed property;
7. Make technical corrections, including adding "Mountain View" when referring to juvenile facilities and using "community reintegration" instead of "aftercare;"
8. Clarify that a person who is discharged from a facility is still liable for restitution ordered, and if that person is remanded to another facility, the restitution collected must be used to defray the facility's costs;
9. Clarify the limitations on juvenile detention and commitment; and
10. Change the psychiatric provisions for juvenile detainees to be identical to the ones for committed juveniles.

Part B of the bill proposed to do the following:

1. Clarify the MaineCare reimbursement process for county jails;
2. Limit the reimbursement rate for medical services provided outside the Department of Corrections' facilities to the MaineCare rate and ensure that medications used by the department are consistent with the MaineCare program;

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3. Change the process for determinations regarding hospitalization of prisoners by restricting the decision to the individual department facility's medical staff;
4. Conform the department's formulary to MaineCare's standard, instead of the standard at state mental health facilities; and
5. Make the section that enacts 34-A MRSA §3031-B retroactive to July 1, 2004.

Part C of the bill proposed to do the following:

1. Repeal and replace the obsolete references to the previous Interstate Compact for Out-of-State Parolee Supervision;
2. Designate the Commissioner of the Department of Corrections or the commissioner's designee as the compact administrator for Maine;
3. Make technical changes and enact language repealed in C-1 – C-4; and
4. Establish one state council for both the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles.

Committee Amendment "A" (H-749) proposed to do the following:

1. Specify that a bound-over juvenile be detained with adults once the juvenile attains 18 years and 6 months of age;
2. Eliminate an extra court hearing and help put a juvenile in an appropriate placement more quickly;
3. Repeal language directing the attorney representing the State to provide a custodian with a statement showing the length of a person's detention. This provision was inadvertently left in law when the responsibility of providing a custodian with a statement of the length of a person's detention was transferred to the sheriffs during the First Regular Session of the 121st Legislature;
4. Amend detention language to specify that a person may not be detained at or committed to a corrections facility if that person is more appropriately a subject for intensive temporary out-of-home treatment services or for in-home treatment services provided by or through the Department of Behavioral and Developmental Services as agreed upon by the Commissioner of Behavioral and Developmental Services and the Commissioner of Corrections;
5. Remove from the bill all of Part B, which dealt with the reimbursement rate to providers for medical services provided to inmates outside correctional facilities. Provisions in Part B were incorporated into Public Law 2003, chapter 513, Part E;
6. Direct the Department of Corrections to report the impact of changes to the juvenile detention and commitment laws by March 1, 2005 to the joint standing committee of the Legislature having jurisdiction over criminal justice matters. Upon receiving the report, the committee may report out a bill;

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7. Move the crime of violating an interstate compact for adult offender supervision to the Maine Revised Statutes, Title 17-A, while leaving a reference to the crime in the Interstate Compact for Adult Offender Supervision; and
8. Add a fiscal note.

Senate Amendment "A" to Committee Amendment "A" (S-576) proposed to strip the appropriations and allocations section from the committee amendment and to add a fiscal note.

Enacted Law Summary

Public Law 2003, chapter 706 makes a number of changes to the Juvenile Code and corrections laws. Public Law 2003, chapter 706 does the following.

1. It specifies that a bound-over juvenile be detained with adults, instead of juveniles, once the juvenile attains 18 years and 6 months of age.
2. It eliminates an extra court hearing and helps put a juvenile in an appropriate placement more quickly.
3. It clarifies the limitations on juvenile detention and commitment and changes the psychiatric provisions for juvenile detainees to be identical to the ones for committed juveniles.
4. It repeals language directing the attorney representing the State to provide a custodian with a statement showing the length of a person's detention. This provision was inadvertently left in law when the responsibility of providing a custodian with a statement of the length of a person's detention was transferred to sheriffs.
5. It amends detention language to specify that a person may not be detained at or committed to a corrections facility if that person is more appropriately a subject for intensive temporary out-of-home treatment services or for in-home treatment services provided by or through the Department of Behavioral and Developmental Services as agreed upon by the Commissioner of Behavioral and Developmental Services and the Commissioner of Corrections.
6. It directs the Department of Corrections to report the impact of changes to the juvenile detention and commitment laws by March 1, 2005 to the joint standing committee of the Legislature having jurisdiction over criminal justice matters. Upon receiving the report, the committee may report out a bill.
7. It moves the crime of violating an interstate compact for adult offender supervision to the Maine Revised Statutes, Title 17-A, while leaving a reference to the crime in the Interstate Compact for Adult Offender Supervision.
8. It changes the fund to which fees received from probationers are deposited to the adult community corrections account. Public Law 2003, chapter 706 requires restitution collected for victims who cannot be located to be forwarded to the Treasurer of State to be handled as unclaimed property. It also clarifies that a person who is discharged from a facility is still liable for restitution ordered and if that person is remanded to another facility, the restitution collected must be used to defray the facility's costs.

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9. It establishes the state council required under the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles, designates the compact administrators and repeals the obsolete Interstate Compact for Out-of-State Parolee Supervision.

LD 1788 **An Act To Waive Fees for Background Checks for Certain** **ONTP**
Emergency Medical Services Personnel

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

LD 1788 proposed to waive the fees charged by the State Bureau of Identification within the Department of Public Safety, Bureau of State Police for background checks for municipal employees and volunteers applying for licensure as emergency medical services personnel.

Committee Amendment "A" (H-689) was the minority report and proposed to add a fiscal note to the bill. This amendment was not adopted.

LD 1789 **An Act To Revise the Minimum Firefighter Safety Standards** **PUBLIC 570**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DUPLESSIE	OTP-AM	H-691
EDMONDS		

LD 1789 proposed to update Maine’s firefighter personal equipment and clothing safety standards to meet National Fire Protection Association standards. Specifically, the bill proposed that if new equipment is purchased, it must meet the safety standard in effect at the time of the purchase, and if used protective clothing that is not new is acquired, the clothing must at least meet the standards in effect in 1987. The bill proposed that any protective clothing purchased prior to 1987 that does not meet National Fire Protection Association standards must be replaced. The bill also proposed to expand firefighter training requirements to include “education” requirements and to move language requiring hearing protection to the provision of law establishing standards for equipment and clothing.

Committee Amendment "A" (H-69) proposed to add an effective date of July 1, 2005 to give fire departments time to comply with the new standards and proposed to add a mandate preamble and fiscal note.

Enacted Law Summary

Public Law 2003, chapter 570 updates Maine’s firefighter personal equipment and clothing safety standards to meet National Fire Protection Association standards. Specifically, if new equipment is purchased, it must meet the safety standard in effect at the time of the purchase. If used protective clothing that is not new is acquired, the clothing must at least meet the standards in effect in 1987. Any protective clothing purchased prior to 1987 that does not meet National Fire Protection Association standards must be replaced. Public Law 2003, chapter 570 also expands firefighter training requirements to include “education” requirements and moves language requiring hearing

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protection to the provision of law establishing standards for equipment and clothing. Public Law 2003, chapter 570 has an effective date of July 1, 2005 in order to give fire departments time to comply with the new standards.

LD 1803

An Act Requiring Blood Testing of All Drivers Involved in Fatal Accidents

PUBLIC 565

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BOWLES DUPLESSIE	OTP-AM	H-712

LD 1803

Current law requires the operator of a motor vehicle involved in an accident that results or is likely to result in death to submit to a test to determine blood-alcohol level or drug concentration. The investigating police officer is required to cause the test to be administered but has the discretion to determine the form of the test, whether by breath, blood or urine analysis, to which the operator must submit. LD 1803 proposed to remove that discretion, instead requiring that an operator must submit to, and the investigating law enforcement officer must cause to be administered, a blood test to determine blood-alcohol level or drug concentration.

Committee Amendment "A" (H-712) replaced the bill and proposed to amend the Maine Revised Statutes, Title 29-A by requiring that, in cases when there is probable cause to believe that death has occurred or will occur as a result of an accident, the investigating officer shall cause a blood test to be administered on every operator involved in the accident as soon as practicable following the accident. The amendment proposed that the officer may also cause a breath test or any other chemical test to be administered if the officer determines appropriate. Operators shall submit to and complete all tests administered, as required by current law, and except as otherwise provided in Title 29-A, section 2522, subsection 2, testing must be conducted in accordance with Title 29-A, section 2521, which governs drivers' implied consent to chemical tests. The amendment also proposed to add a mandate preamble and a fiscal note.

Enacted Law Summary

Public Law 2003, chapter 565 amends the Maine Revised Statutes, Title 29-A by requiring that, in cases when there is probable cause to believe that death has occurred or will occur as a result of an accident, the investigating officer shall cause a blood test to be administered on every operator involved in the accident as soon as practicable following the accident. The officer may also cause a breath test or any other chemical test to be administered if the officer determines appropriate. Operators shall submit to and complete all tests administered. Except as otherwise provided in Title 29-A, section 2522, subsection 2, testing must be conducted in accordance with Title 29-A, section 2521, which governs drivers' implied consent to chemical tests.

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LD 1821 **An Act To Increase the Amount of Restitution Allowed for State and Municipal Fire Service** **PUBLIC 556**

<u>Sponsor(s)</u> DUPLESSIE BRYANT		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-713
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LD 1821

Current law provides that any person who engages in out-of-door burning in violation of the law or who fails to comply with any stated permit condition or restriction commits a Class E crime. If the State proves that while in violation that person's out-of-door fire resulted in fire suppression costs to municipalities or State Government, the court may order restitution to a municipality not exceeding \$2,000 and total restitution to municipalities and the State not exceeding \$10,000. LD 1821 proposed to increase the limit on restitution to \$25,000 for a municipality and \$125,000 for total restitution to municipalities and State Government.

Committee Amendment "A" (H-713) proposed to add a fiscal note.

Enacted Law Summary

Public Law 2003, chapter 556 increases limits on restitution that may be paid by persons engaging in out-of-door burning. Current law provides that any person who engages in out-of-door burning in violation of the law or who fails to comply with any stated permit condition or restriction commits a Class E crime. If the State proves that while in violation that person's out-of-door fire resulted in fire suppression costs to municipalities or State Government, the court may order restitution to a municipality not exceeding \$2,000 and total restitution to municipalities and the State not exceeding \$10,000. Public Law 2003, chapter 556 increases the limit on restitution to \$25,000 for a municipality and \$125,000 for total restitution to municipalities and State Government.

LD 1832 **An Act To Maintain the Current Statutes Regarding Unlawful Solicitation To Benefit Law Enforcement Agencies** **PUBLIC 560
EMERGENCY**

<u>Sponsor(s)</u>		<u>Committee Report</u> OTP		<u>Amendments Adopted</u>
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LD 1832 proposed to remove language that repeals the current law regarding unlawful solicitation to benefit law enforcement agencies. This bill proposed to allow a person to continue to solicit as long as the property solicited in no way tangibly benefits the solicitor.

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Enacted Law Summary

Public Law 2003, chapter 560 removes language that repeals the current law regarding unlawful solicitation to benefit law enforcement officers and agencies. Public Law 2003, chapter 560 continues to allow a person to solicit as long as property solicited in no way tangibly benefits the solicitor.

Public Law 2003, chapter 560 was enacted as an emergency measure effective March 17, 2004.

LD 1835 **An Act To Increase Penalties for Certain Violent Crimes** **ONTP**
Committed against Senior Citizens

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

LD 1835 proposed to require a court, when imposing a sentencing alternative involving a term of imprisonment, to assign special weight to the objective fact of the age of the victim in crimes of attempted murder, manslaughter, elevated aggravated assault or assault when the victim was at least 65 years of age at the time of the crime.

Current law requires that the age of the victim be assigned special weight if the victim was less than 6 years of age at the time of the crime.

LD 1844 **An Act To Amend the Maine Criminal Code and Motor Vehicle** **PUBLIC 657**
Laws as Recommended by the Criminal Law Advisory Commission

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM MAJ	H-853
	OTP-AM MIN	

LD 1844 proposed to do the following:

1. Add “date of birth” to the information that must be provided to a law enforcement officer upon request by the person to whom a summons is issued or delivered under either the Maine Revised Statutes, Title 17-A, section 15-A or 17. Currently, the information required of the person is limited to name and address. Date of birth is an important aid in properly identifying the person being summonsed and is currently required in Title 29-A, section 105, subsection 4. The bill also proposed to add the word “correct” relative to the information to be supplied by the person and to strike an exception relative to use of nonconforming forms that no longer is relevant;
2. Address a defect in the statute prohibiting obstruction of government administration revealed by the recent case of State v. Matson, 2003 ME 34, 818 A.2d 213. In Matson, the defendant had been convicted under the statute for physically interfering with the arrest of another person. Because the physical interference, intentionally standing in the way and refusing to move, was held to constitute something less than "force, violence or intimidation," the conviction was reversed. The focus of the crime is intentional physical interference with an

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official function, not "intimidation" of an officer. Harassing speech alone is not sufficient, but when it is accompanied by a physical act that actually interferes with an official function, the further requirement of "intimidation" is unnecessary;

3. Repeal Title 17-A, section 1158 and replace it with section 1158-A, which proposed to do the following:
 - A. Make technical drafting changes;
 - B. Clarify that forfeiture of a firearm under certain circumstances is conditioned on the State's both alleging that the firearm was used by the defendant or an accomplice during the commission of the crime in the indictment or information and proving that allegation to the fact finder beyond a reasonable doubt; and
 - C. Clarify when a court may not order as part of the sentence the forfeiture of a firearm otherwise qualifying for forfeiture. Access to the exception is available only to a person other than the defendant. The exception must be established by the other person at a point in time prior to the actual imposition of the defendant's sentence, and the burden imposed on the other person is to satisfy the court of the exception by a preponderance of the evidence.

The bill also proposed to address forfeiture of firearms other than in the context of a conviction under possession of a firearm by a prohibited person or in the context of a handgun used by the defendant or an accomplice during the commission of murder or any other unlawful homicide crime. The other person's burden would be satisfied by proof by a preponderance of the evidence that at the time of the commission of the crime, the other person had a right to possess the firearm to the exclusion of the defendant. This burden is the same as under Title 17-A, section 1158.

The bill also proposed to address forfeiture of firearms in the context of the conviction under Title 15, section 393. The other person's burden would be satisfied by proof by a preponderance of the evidence that, at the time of the commission of the crime, the person had a right to possess the firearm to the exclusion of the defendant and the person either did not know or should not have known that the defendant was a prohibited person under Title 15, section 393 or, even if the other person did know or should have known, nonetheless did not intentionally, knowingly or recklessly allow the defendant to possess or have under the defendant's control the firearm. This burden imposed upon the other person is greater than under Title 17-A, section 1158.

The bill further proposed to address forfeiture of a handgun used by the defendant or an accomplice during the commission of murder or any other unlawful homicide crime. The other person's burden would be satisfied by proof by a preponderance of the evidence that, at the time of the commission of the crime, the other person was the rightful owner from whom the handgun had been stolen and the other person was not a principal or an accomplice in the commission of the crime. It also proposed to define "handgun" for purposes of Title 17-A, section 1158-A;

4. Replace Title 17-A, section 1202, subsection 1-B in order to address the constitutional defect of 2-year probation periods for persons convicted of Class D or Class E crimes involving domestic violence, which was revealed in the recent case of State v. Hodgkins, 2003 ME 57, 822 A.2d 1187. The bill also proposed to eliminate the necessity of the State's pleading and the jury's having to find that the Class D or Class E crime involved "domestic violence" by specifically enumerating the Class D or Class E crimes that automatically qualify and by having the State plead and the jury find that the qualifying crime was committed by the person "against a family or household member," as defined in Title 19-A, section 4002, subsection 4. The bill also proposed to make clear that imposition of the extended period of probation is further conditioned upon the

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court's ordering the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014. This precondition is necessary because only one program currently exists for female defendants, and a program may not be reasonably available for certain male defendants. The bill also proposed to clarify that termination of the extended probation period requires a judicial finding that the probationer has served at least one year of probation, has successfully completed a certified batterers' program and has met all other conditions of probation;

5. Clarify that in the event there is a failure by the State to comply with the time limits set forth in Title 17-A, section 1205-C, a court may, but is not required to, issue an order that, pending initial appearance, the probationer be released on personal recognizance;
6. Eliminate the constitutional question raised by Maine's 2-tier system for terms of imprisonment for Class A crimes by replacing that system with a single 0 - to 30-year range. This change anticipates that the Law Court, through the case-by-case sentence review process, will develop and apply criteria that will avoid the imposition of excessively harsh sentences within the single range.

In 1988 the Legislature doubled the maximum sentence of imprisonment for all Class A crimes from 20 years to 40 years. In 1991 the Law Court examined the legislative history of the relevant act and determined that the legislative intent was to "make available two discrete ranges of sentences for Class A crimes." See State v. Lewis, 590 A.2d 149, 151 (Me. 1991). Most Class A crime sentences were intended to remain in the original 0- to 20-year range, while the "expanded range" of 20- to 40-year sentences was reserved "only for the most heinous and violent crimes committed against a person." The sentencing court was to apply this "heinousness" standard "in its discretion" as a sentencing factor, subject to appellate review.

This 2-tier system has been placed under a constitutional cloud by the decision of the United States Supreme Court in Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that sentencing factors increasing punishment beyond the maximum authorized must be treated as elements of crimes to be pleaded and proved beyond a reasonable doubt rather than as sentencing factors. Since the "heinousness" standard can be interpreted as increasing maximum punishment of up to 20 years to the "expanded range" of 20 to 40 years, it is potentially unconstitutional absent legislative correction; and

7. Add the culpable mental state of "intentionally" to Title 29-A, section 105, subsection 4, regarding the enforcement of the motor vehicle laws, to conform it to Title 17-A, sections 15-A and 17.

Committee Amendment "A" (H-853) was the majority report of the Joint Standing Committee on Criminal Justice and Public Safety and proposed to clarify the burden of proof in cases regarding forfeiture of firearms and to add the Class D crime of criminal restraint to crimes involving domestic violence for purposes of 2-year sentences of probation. The amendment also proposed to add a fiscal note.

Committee Amendment "B" (H-854) was the minority report of the Joint Standing Committee on Criminal Justice and Public Safety and proposed to clarify the burden of proof in cases regarding forfeiture of firearms, add the Class D crime of criminal restraint to crimes involving domestic violence for purposes of 2-year sentences of probation and eliminate the 2-tier sentencing system for Class A crimes. Unlike Committee Amendment "A," this amendment proposed to eliminate the constitutional doubts raised by our 2-tier system for Class A crimes by enumerating certain Class A crimes or certain forms of Class A crimes for which a 40-year ceiling is authorized. All other Class A crimes, or forms of Class A crimes, would be subject to a 20-year sentencing ceiling. The Class A crimes and forms of Class A crimes to which the 40-year ceiling would have application are of a similar nature and constitute the most serious antisocial and violent Class A crimes. Given the nature of those included, even in the absence of serious criminal history or other aggravating circumstances of the offender, a period of incarceration

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in excess of 20 years might properly be merited based upon the particular circumstances of the crime as committed by the offender when compared against all possible means of committing that crime. The amendment also proposed to add a fiscal note. This amendment was not adopted.

Enacted Law Summary

Public Law 2003, chapter 657 does the following.

1. It adds "date of birth" to the information that must be provided to a law enforcement officer upon request by the person to whom a summons is issued or delivered, adds the word "correct" relative to the information to be supplied by the person and strikes an exception relative to use of nonconforming forms that no longer is relevant.
2. It addresses a defect in the statute prohibiting obstruction of government administration.
3. It repeals Title 17-A, section 1158 and replaces it with section 1158-A, which clarifies statutes dealing with forfeiture of firearms.
4. It replaces Title 17-A, section 1202, subsection 1-B in order to address the constitutional defect of 2-year probation periods for persons convicted of Class D or Class E crimes involving domestic violence and eliminates the necessity of the State's pleading and the jury's having to find that the Class D or Class E crime involved "domestic violence" by specifically enumerating the Class D or Class E crimes that automatically qualify and by having the State plead and the jury find that the qualifying crime was committed by the person "against a family or household member," as defined in Title 19-A, section 4002, subsection 4. It also makes clear that imposition of the extended period of probation is further conditioned upon the court's ordering the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014 and that termination of the extended probation period requires a judicial finding that the probationer has served at least one year of probation, has successfully completed a certified batterers' program and has met all other conditions of probation.
5. It clarifies that, in the event there is a failure by the State to comply with the time limits set forth in Title 17-A, section 1205-C for initial proceedings on a probation violations, a court may, but is not required to, issue an order that, pending initial appearance, the probationer be released on personal recognizance.
6. It eliminates the constitutional question raised by Maine's 2-tier system for terms of imprisonment for Class A crimes by replacing that system with a single 0 - to 30-year range. This change anticipates that the Law Court, through the case-by-case sentence review process, will develop and apply criteria that will avoid the imposition of excessively harsh sentences within the single range.
7. It adds the culpable mental state of "intentionally" to Title 29-A, section 105, subsection 4 regarding the enforcement of the motor vehicle laws in order to conform it to Title 17-A, sections 15-A regarding issuance of summons for a criminal offense and 17 regarding enforcement of civil actions.

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LD 1847 **An Act To Implement the Recommendations of the Commission To** **PUBLIC 656**
Improve Community Safety and Sex Offender Accountability
Regarding Public Notification by Law Enforcement

<u>Sponsor(s)</u>		<u>Committee Report</u>		<u>Amendments Adopted</u>
		OTP-AM		H-852

LD 1847 was a recommendation of the Commission to Improve Community Safety and Sex Offender Accountability, established pursuant to Resolve 2003, chapter 75. It proposed to require law enforcement agencies to adopt a written policy regarding public notification of persons in the community required to register under the Sex Offender Registration and Notification Act of 1999. This bill proposed to require the Board of Trustees of the Maine Criminal Justice Academy to use the model notification policy developed by the Maine Chiefs of Police Association, in cooperation with sexual assault response teams and sexual assault crisis centers.

Committee Amendment "A" (H-852) proposed to strike language that required the Board of Trustees of the Maine Criminal Justice Academy to use a model sex offender notification policy developed by the Maine Chiefs of Police Association. Under the bill the Board of Trustees of the Maine Criminal Justice Academy was directed to set minimum standards for a notification policy as authorized by statute, which is consistent with the board's common practice. The amendment proposed that, in setting minimum policy standards, in accordance with the Maine Revised Statutes, Title 25 the board is strongly encouraged to seek input from the Maine Chiefs of Police Association, sexual assault response teams and sexual assault crisis centers.

Enacted Law Summary

Public Law 2003, chapter 656 is one of the recommendations of the Commission to Improve Community Safety and Sex Offender Accountability, established pursuant to Resolve 2003, chapter 75. Public Law 2003, chapter 656 directs the Board of Trustees of the Maine Criminal Justice Academy to set minimum policy standards for law enforcement agencies to use in developing community notification policies regarding sex offenders.

LD 1855 **An Act To Implement the Recommendations of the Commission To** **ONTP**
Improve Community Safety and Sex Offender Accountability

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

LD 1855 proposed to implement the recommendations of the Commission to Improve Community Safety and Sex Offender Accountability, which was created pursuant to Resolve 2003, chapter 75. The commission was established to provide a legislative forum to review criminal sentencing laws for sex crimes and to review sex offender registration and notification laws and policies. The purpose of this commission's review was to take a thoughtful and comprehensive look at Maine's sex offender laws and to identify areas in which immediate legislative and policy change is necessary to increase community safety. The bill proposed to do the following:

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1. Raise the classification of sex crimes committed against children who have not attained 12 years of age. Without imposing new minimum mandatory sentences, the bill proposed to provide courts, when victims are under 12 years of age, with an increased potential range of penalties by raising by one class the following crimes:
 - A. Unlawful sexual contact when the actor is at least 3 years older than the victim, from a Class C crime to a Class B crime, and when the actor is at least 3 years older than the victim and there is penetration, from a Class B crime to a Class A crime;
 - B. Visual sexual aggression against a child, from a Class D crime to a Class C crime;
 - C. Sexual misconduct with a child, from a Class D crime to a Class C crime;
 - D. Solicitation of a child by computer to commit a prohibited act, from a Class D crime to a Class C crime;
 - E. Violation of privacy, from a Class D crime to a Class C crime;
 - F. Sexual exploitation of minors, from a Class B crime to a Class A crime;
 - G. Dissemination of sexually explicit materials, from a Class C crime to a Class B crime for the first offense and from a Class B crime to a Class A crime for a subsequent offense; and
 - H. Possession of sexually explicit materials, from a Class D crime to a Class C crime and from a Class C crime to a Class B crime for a subsequent offense;
1. Allow courts to have the option to impose a sentence of imprisonment in excess of 20 years, based upon the fact that the victim is under 12 years of age, for the Class A crimes of gross sexual assault and repeat sexual exploitation of minors;
2. Increase the period of probation for persons convicted of sex crimes committed against children who have not attained 12 years of age. Without imposing minimum mandatory sentences, the bill proposed to provide courts, when victims are under 12 years of age, with an increased potential range of penalties by increasing periods of probation for persons convicted under the Maine Revised Statutes, Title 17, chapter 93-B or Title 17-A, chapter 11 as follows:
 - A. For a person convicted of a Class A crime, a period of probation not to exceed 18 years;
 - B. For a person convicted of a Class B crime, a period of probation not to exceed 12 years; and
 - C. For a person convicted of a Class C crime, a period of probation not to exceed 6 years;
4. Allow the court to have the option to impose a sentence of probation of up to 18 years based upon the fact that the defendant was convicted of gross sexual assault after having been previously convicted and sentenced for a Class B crime or Class C crime of unlawful sexual contact;
5. Rename "dangerous sexual offender," defined in Title 17-A, section 1252, subsection 4-B, as "repeat sexual assault offender;"

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6. Allow courts to have the option to impose a sentence of imprisonment in excess of 20 years, based upon the fact that the defendant was convicted of gross sexual assault after having been previously convicted and sentenced for a Class B crime or Class C crime of unlawful sexual contact;
7. Change the names of registration categories in the Sex Offender Registration and Notification Act of 1999, also known as the "SORNA," from "sexually violent predators" and "sex offenders" to "lifetime registrants" and "10-year registrants," respectively;
8. Move Class D or Class E offenses that currently require lifetime registration as "sexually violent predators" under the SORNA of 1999 to 10-year registration for "sex offenders;"
9. Make technical drafting changes to the SORNA of 1999, including:
 - A. Adding to the list of registerable offenses the former crime of rape, restoring the former crimes of unlawful sexual contact and solicitation of a child by computer to commit a prohibited act and moving from the definition of "sex offense" to "sexually violent offense" the crimes of unlawful sexual contact that involve penetration;
 - B. Making registration requirements consistent by removing from the crime of "kidnapping" the defense that the actor is a parent, which is consistent with the crime of criminal restraint for purposes of sex offender registration; and
 - C. Defining the terms "another state," "registrant," "jurisdiction," and "tribe" to be more consistent with federal law;
10. Authorize the State to suspend the requirement that a sex offender or sexually violent predator register during any period in which the registrant leaves the State, establishes a domicile in another state and remains physically absent from the State;
11. Increase from \$25 to \$35 the sex offender and sexually violent predator fee for initial registration and annual renewal registration and specify that the law enforcement agency that processes registrants' pictures and fingerprints receives \$10 of the fee;
12. Make all changes to the Sex Offender Registration and Notification Act of 1999 retroactive to June 30, 1992;
13. Direct the Department of Behavioral and Developmental Services, the Department of Human Services, the Department of Corrections and the Department of Public Safety, in cooperation with the Child Abuse Action Network, to:
 - A. Identify the subpopulation of potential offenders or young persons at risk of offending because they have been sexually or physically abused or face a significant mental health disability, with recognition of the fact that over 95% of sex offenders are male;
 - B. Identify the types of prevention and treatment currently known to work with these young persons;
 - C. Coordinate prevention and education efforts with the goal of seeking coordinated services to transition at-risk youth to healthy adulthood; and

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- D. Report findings to the joint standing committees of the Legislature having jurisdiction over health and human services and criminal justice and public safety matters; and

14. Direct the Criminal Law Advisory Commission to:

- A. Review the Sex Offender Registration and Notification Act of 1999 to identify all crimes of gross sexual assault and unlawful sexual contact that currently do not require any registration;
- B. Assess whether the current Maine crimes listed as sex offenses and sexually violent offenses are appropriate under the federal guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 United States Code, Section 14071, as amended; and
- C. Report its findings and any proposed changes to the Joint Standing Committee on Criminal Justice and Public Safety.

LD 1855 was not enacted, but an amended version of the bill was incorporated into Committee Amendment "A" (H-860) to LD 1903, which was enacted as Public Law 2003, chapter 711.

LD 1856 **An Act To Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners** **PUBLIC 707**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-833 H-976 BLANCHETTE S-571 GAGNON

LD 1856 proposed to implement a number of the recommendations of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, which was created pursuant to Public Law 2003, chapter 451. The bill proposed to add 2 additional legislators to the membership of the commission and to extend the initial reporting date of the commission to February 2, 2004. The bill also proposed to extend the life of the commission to January 1, 2005, authorizing additional meetings and a final report, including legislation, to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. Finally, LD 1856 proposed to authorize the commission to carry forward any remaining funds appropriated in fiscal year 2004-05.

Committee Amendment "A" (H-833) proposed to increase from 17 to 23 the membership of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners. The new members proposed to be added include a representative of the Maine Chiefs of Police Association; domestic violence and sexual assault victims service providers; the Commissioner of Inland Fisheries and Wildlife; and one senator representing the 2nd-largest political party in the Senate and one representative representing the 2nd-largest political party in the House of Representatives. The amendment proposed that Legislators may continue to serve on the commission, even if not reelected to serve in the Legislature in November 2004. The amendment also proposed to add a fiscal note.

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House Amendment "A" (H-976) proposed to strike the emergency preamble and the emergency clause from the bill.

Senate Amendment "A" (S-571) proposed to amend the bill to conform to the study guidelines approved by the Legislative Council. Specifically, the amendment proposed to specify that the commission is authorized to meet only 4 more times and to report its findings to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by November 3, 2004, instead of by January 1, 2005.

Enacted Law Summary

Public Law 2003, chapter 707 increases from 17 to 23 the membership of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, which was created pursuant to Public Law 2003, chapter 451. The new members added include a representative of the Maine Chiefs of Police Association; domestic violence and sexual assault victims service providers; the Commissioner of Inland Fisheries and Wildlife; and one senator representing the 2nd-largest political party in the Senate and one representative representing the 2nd-largest political party in the House of Representatives. Legislators may continue to serve on the commission, even if not reelected to serve in the Legislature in November 2004. Public Law 2003, chapter 707 also extends the life of the commission to January 2005, authorizing 4 additional meetings and a final report, including legislation, to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters.

LD 1903

An Act To Further Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners and the Recommendations of the Commission To Improve Community Safety and Sex Offender Accountability

PUBLIC 711

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-860 H-884 BLANCHETTE S-601 CATHCART

LD 1903 proposed to implement the recommendations of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, which was established pursuant to Public Law 2003, chapter 451. The bill proposed to do the following:

1. Expand the responsibility of the Judicial Branch's Drug Coordinator to include all criminal diversion programs and changes the title of the position to "Coordinator of Diversion and Rehabilitation Programs;"
2. Increase the monetary threshold for classification of theft crimes for Class C and Class D crimes, including the crimes of forgery and negotiating a worthless instrument;
3. Decrease from a Class C to a Class D crime burglary of a motor vehicle;
4. Decrease from a Class C to a Class D crime an inmate's failure to appear for work, school or a meeting with the inmate's supervising officer while the inmate is on intensive supervision or supervised community confinement;

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5. Create 2 new sentencing alternatives, deferred disposition and administrative release, and authorize the court to convert probation to administrative release;
6. Restrict the use of probation for Class D and Class E crimes to only those crimes involving domestic violence, sex offenses and repeat OUI offenses.
7. Reduce for all crimes, except those under the Maine Revised Statutes, Title 17-A, chapter 11 and Title 17-A, section 854, excluding subsection 1, paragraph A, subparagraph (1) of that section, the length of time a person may be sentenced to probation to 4 years for a Class A crime, 3 years for a Class B crime and 2 years for a Class C crime;
8. Grant the sentencing court the authority to deviate from a mandatory minimum sentence and mandatory minimum fine in those circumstances when the court determines that the mandatory fine or sentence would create a substantial injustice and the deviation would not diminish the gravity of the offense or adversely affect the public safety. The court must consider specific factors before deviating from the mandatory minimum;
9. Require a notice of a defendant's release sent to a victim to include a phone number or address of a publicly accessible site on the Internet so the victim can learn the earliest possible date of the expiration of the imprisonment portion of the defendant's sentence;
10. Provide that a person who is entitled to a deduction from that person's sentence for time spent in detention may be given additional detention credit for good behavior during the time spent in detention;
11. Increase the amount of good behavior good time that may be awarded from 2 to 4 days, except for persons convicted of gross sexual assault or murder;
12. Expand the concept of good time earned for work to include good time earned for education and rehabilitation and increase the amount that may be awarded from 3 to 5 days for prisoners in state facilities participating in community programs;
13. Reward counties that use 50% of their community corrections program funding on diversion programs by reallocating funds from counties that do not comply with the requirement to use 20% of their funds on community corrections programs;
14. Direct the Department of Behavioral and Developmental Services, the Department of Corrections and county sheriffs to develop a joint plan of action to address mental illness in the criminal justice community;
15. Place a moratorium on any amendments to the Maine Criminal Code with the exception of changes recommended by the Commission to Improve Community Safety and Sex Offender Accountability;
16. Direct the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners to undertake a study to determine the impacts of Maine's sentencing laws on inmate population and direct the Criminal Law Advisory Commission to assist the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners with a review of all minimum mandatory sentences and to propose amending any it finds are no longer necessary;

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17. Direct the Department of Corrections to maximize early termination of probation under current law, with appropriate victim notice and urge judges to give deference to applications for early termination of probation; and
18. Appropriate funding to carry out the purposes of this bill.

Committee Amendment "A" (H-860) proposed to replace the bill and combine the recommendations of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners and the recommendations of the Commission to Improve Community Safety and Sex Offender Accountability, which was established pursuant to Resolve 2003, chapter 75. The amendment also proposed to incorporate proposed changes to LD 617, "An Act Amending the Time by Which a Sex Offender or Sexually Violent Predator Must Register" and LD 1729, "An Act to Strengthen the Sex Offender Registration and Notification Act of 1999."

Part A of the amendment proposed to incorporate the recommendations of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners. Part A of the amendment proposed to do the following:

1. Expand the responsibility of the judicial branch's Drug Coordinator to include all criminal diversion programs and change the title of the position to "Coordinator of Diversion and Rehabilitation Programs;"
2. Remove from the bill language that proposed to increase the monetary threshold for certain theft offenses;
3. Repeal and replace the section of law regarding the crime of burglary of a motor vehicle, breaking the crime into a Class C offense if the burglary involves a forcible entry and a Class D offense if there is no force used in entering the vehicle;
4. Amend the section of law regarding the Class C crime of escape by removing from the crime an inmate's failure to appear for work, school or a meeting with the inmate's supervising officer while that inmate is on intensive supervision or supervised community confinement. The amendment proposed to make failure to do any of these an administrative violation under the Department of Corrections;
5. Create 2 new sentencing alternatives. Deferred disposition may be used for certain persons who have pled guilty to a Class C, Class D or Class E crime. Administrative release may be used for certain persons who have been convicted of a Class D or Class E crime. The amendment proposed to authorize the court to convert probation to administrative release and authorize the use of bail for deferred disposition;
6. Restrict the use of probation for Class D and Class E crimes to those crimes involving domestic violence, sex offenses and repeat OUI offenses;
7. Reduce for all crimes, except those involving domestic violence and sex offenses, the length of time a person may be sentenced to probation to 4 years for Class A crimes, 3 years for Class B crimes and 2 years for Class C crimes. Sex offenses and crimes involving domestic violence continue to be eligible for probation not to exceed 6 years for Class A crimes and not to exceed 4 years for Class B crimes and Class C crimes;
8. Clarify that, once a period of probation has commenced, the court has authority to terminate that probation at any time;
9. Remove from the bill language that proposed to grant the sentencing court the authority to deviate from a mandatory minimum sentence and mandatory minimum fine in those circumstances when the court determined

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that the mandatory fine or sentence would create a substantial injustice and the deviation would not diminish the gravity of the offense or adversely affect public safety;

10. Remove from the bill language that proposed to require that a notice of a defendant's release sent to a victim include a phone number or address of a publicly accessible site on the Internet so the victim can learn the earliest possible date of the expiration of the imprisonment portion of the defendant's sentence;
11. Provide that a person who is entitled to a deduction from that person's sentence for time spent in detention may be given additional detention credit of up to 2 days per month for good behavior during the time spent in detention;
12. Except for persons who commit murder, sex offenses or crimes involving domestic violence, increase the amount of good behavior good time that may be awarded from 2 to 4 days. The increase in good time may be applied to persons who commit crimes on or after August 1, 2004. Persons convicted of the excepted crimes continue to be eligible for a total of only 5 days of good time per month as allowed under current law. The 5-day total includes a combination of good behavior and meritorious good time;
13. Except for persons who commit murder, sex offenses or crimes involving domestic violence, expand the concept of good time earned for work to include good time earned for education and rehabilitation and increase the amount that may be awarded from 3 to 5 days for prisoners in state facilities participating in community programs. The increase in good time may be applied to persons who commit crimes on or after August 1, 2004. Again, persons convicted of the excepted crimes continue to be eligible for a total of only 5 days of good time per month as allowed under current law. The 5-day total includes a combination of good behavior and meritorious good time. The amendment proposed that those eligible for the increases in good time may earn up to a total of 9 days per month;
14. Preclude a court, in setting the appropriate length of a term of imprisonment, from factoring in the potential impact of good time deductions provided under the Maine Revised Statutes, Title 17-A, section 1253, except in cases in which the parties jointly recommend a "time served" sentence or recommend a sentence in which the total term of imprisonment or an unsuspended portion of that term has been calculated to achieve a specific projected release date;
15. Replace the proposed language regarding community corrections funds and direct each county to provide documentation verifying to the Department of Corrections that 20% of its funds under the County Jail Prisoner Support and Community Corrections Fund were expended on community corrections in order to receive that 20% of its distribution in the following year. The amendment proposed that if a county cannot verify the required expenditure, that county's 20% will be distributed to the counties that are in compliance, based on the percentage distribution rate described in Title 34-A, section 1210-A, subsection 3;
16. Give the Commissioner of Corrections authority to place on supervised community confinement a prisoner with 2 years of incarceration remaining, if that prisoner meets all other eligibility requirements for supervised community confinement. However, the amendment proposed that the commissioner may not use this expanded authority until the average statewide probation caseload is no more than 90 probationers to one probation officer;
17. Amend the reporting requirements of the bill that direct the Department of Corrections and the Department of Behavioral and Developmental Services to create a plan of action to address mental illness in the criminal justice system. The amendment proposed to direct the departments to report to the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners by July 1, 2004 and to report to the joint

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standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by January 2005;

18. Remove from the bill language that proposed to place a one-year moratorium on changes to the Maine Criminal Code;
19. Remove from the bill language that proposed to require the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, in cooperation with the Criminal Law Advisory Commission, to review, assess and make recommendations regarding the impacts of sentencing and minimum mandatory sentences; and
20. Request that, by May 1, 2005, the courts and the district attorneys, within existing resources, report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters the following: how often the sentencing alternatives of deferred disposition and administrative release were used and an assessment of the effectiveness of these alternatives in ensuring the accountability and rehabilitation of offenders, as well as any impact on recidivism rates; the impact of the use of deferred disposition and administrative release on the resources of the courts; the impact of the use of deferred disposition and administrative release on the resources of the district attorneys; and any recommendations regarding how to improve the procedures for imposing and enforcing the sentencing alternatives of deferred disposition and administrative release.

Parts B, C and D of Committee Amendment “A” to LD 1903 proposed to incorporate the recommendations of the Commission to Improve Community Safety and Sex Offender Accountability and the proposed changes to LD 617, “An Act Amending the Time by Which a Sex Offender or Sexually Violent Predator Must Register” and LD 1729, “An Act to Strengthen the Sex Offender Registration and Notification Act of 1999.” Specifically, Part B proposed to do the following:

1. Repeal the chapter dealing with sexual exploitation of minors, Title 17, chapter 93-B, reenact it as Title 17-A, chapter 12 and correct related cross-references;
2. Raise the classification of sex crimes committed against children who have not attained 12 years of age. Without imposing new minimum mandatory sentences, the amendment proposed to provide courts, when victims are under 12 years of age, with an increased potential range of penalties by raising by one class the following crimes:
 - A. Unlawful sexual contact when the actor is at least 3 years older than the victim, from a Class C crime to a Class B crime, and when the actor is at least 3 years older than the victim and there is penetration, from a Class B crime to a Class A crime;
 - B. Visual sexual aggression against a child, only when the person acts for the purpose of arousing or gratifying sexual desire, from a Class D crime to a Class C crime;
 - C. Sexual misconduct with a child, from a Class D crime to a Class C crime;
 - D. Solicitation of a child by computer to commit a prohibited act, from a Class D crime to a Class C crime;
 - E. Sexual exploitation of a minor, from a Class B crime to a Class A crime;

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- F. Dissemination of sexually explicit materials, from a Class C crime to a Class B crime for the first offense and from a Class B crime to a Class A crime for a subsequent offense; and
 - G. Possession of sexually explicit materials, from a Class D crime to a Class C crime and from a Class C crime to a Class B crime for a subsequent offense;
3. Increase the period of probation for persons convicted of sex crimes committed against children who have not attained 12 years of age. Without imposing minimum mandatory sentences, the amendment proposed to provide courts, when victims are under 12 years of age, with an increased potential range of penalties by increasing periods of probation for persons convicted under Title 17-A, chapter 11 or 12 as follows:
 - A. For a person convicted of a Class A crime, a period of probation not to exceed 18 years;
 - B. For a person convicted of a Class B crime, a period of probation not to exceed 12 years; and
 - C. For a person convicted of a Class C crime, a period of probation not to exceed 6 years;
 4. Authorize the court to sentence a person to probation for life if the person commits gross sexual assault against a person under 12 years of age and that person has a prior conviction for committing gross sexual assault, rape or gross sexual misconduct against a victim who had not attained 12 years of age at the time of the offense. The amendment also proposed to require the court to attach, as a condition of probation, the requirement that the person participate in counseling or treatment to the satisfaction of the probation officer;
 5. Require the court, when exercising its sentencing discretion, to give serious consideration to the fact that a person convicted of a Class A crime of gross sexual assault also has a previous conviction for a Class B or Class C crime of unlawful sexual contact, if the State pleads and proves that fact;
 6. Require the court, when exercising its sentencing discretion, to give serious consideration to the fact that a person convicted of a crime under Title 17-A, section 253, subsection 1, paragraph C or Title 17-A, section 282, subsection 1, paragraph C or F committed the crime against a person who had not attained 12 years of age, if the State pleads and proves that fact; and
 7. Rename “dangerous sexual offender,” defined in Title 17-A, section 1252, subsection 4-B, as “repeat sexual assault offender.”

Part C proposed to do the following:

1. Change the names of registration categories in the Sex Offender Registration and Notification Act of 1999, also known as the “SORNA of 1999,” from “sexually violent predators” and “sex offenders” to “lifetime registrants” and “10-year registrants,” respectively and correct references in other titles;
2. Move the 2 Class D unlawful sexual contact offenses that currently require lifetime registration to the 10-year registration category;
3. In the SORNA of 1999, amend the definition of “domicile” and create the new definition “residence” for the purpose of better tracking and verifying the location of persons who must register. It also proposes to amend the definitions of “sex offense” and “sexually violent offense” to more accurately comply with the federal registration guidelines, including adding to the list of registerable offenses the former crime of rape, restoring the

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former crimes of unlawful sexual contact and solicitation of a child by computer to commit a prohibited act, moving from the definition of “sex offense” to “sexually violent offense” the crimes of unlawful sexual contact that involve penetration and adding newly created offenses. The amendment also proposes to specify that for purposes of registration, criminal restraint and kidnapping committed by a parent are not registerable offenses and to add the following new definitions: “another state,” “registrant,” “jurisdiction,” and “tribe” to be more consistent with federal law;

4. Decrease the time period that registrants must register or update registration information with the State Bureau of Identification from 10 days to 5 and add the requirement that a registrant must notify the law enforcement agency having jurisdiction where the person must register or update registration information within 24 hours;
5. Authorize the State to suspend the requirement that a sex offender or sexually violent predator register during any period in which the registrant leaves the State, establishes a domicile in another state and remains physically absent from the State; and
6. Leave unchanged the annual fee paid by a person who must register under the SORNA of 1999.

Part D proposed to do the following:

1. Direct the Department of Behavioral and Developmental Services, the Department of Human Services, the Department of Corrections and the Department of Public Safety, in cooperation with the Child Abuse Action Network and the Maine Coalition Against Sexual Assault to:
 - A. Identify the subpopulation of potential offenders or young persons at risk of offending because they have been sexually or physically abused or face a significant mental health disability, with recognition of the fact that over 95% of sex offenders are male;
 - B. Identify the types of prevention and treatment currently known to work with these young persons;
 - C. Coordinate prevention and education efforts with the goal of seeking coordinated services to transition at-risk youth to healthy adulthood; and
 - D. Report findings to the joint standing committees of the Legislature having jurisdiction over health and human services matters and criminal justice and public safety matters;
2. Incorporate the Criminal Law Advisory Commission's proposed changes to definitions under the Sex Offender Registration and Notification Act of 1999;
3. Make all changes to the Sex Offender Registration and Notification Act of 1999 retroactive to June 30, 1992; and
4. Add a fiscal note.

House Amendment "A" to Committee Amendment "A" (H-875) proposed to expand the list of Class D and Class E offenses for which probation may continue to be imposed to include:

1. A Class D or Class E crime that was initially charged by the attorney for the State as a Class A, Class B or Class C crime;

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2. A Class D crime committed by a person who has a prior conviction for a Class A, Class B, Class C or Class D crime under the Maine Revised Statutes, Title 17-A; a prior conviction under the laws governing operating under the influence; or a prior conviction under the laws governing habitual offenders;
3. A Class D crime for failure to control or report a dangerous fire;
4. A Class D crime for possession of a schedule W drug; and
5. A Class D crime for cruelty to animals.

The amendment also proposed to expand the list of Class A, Class B and Class C offenses for which the current statutory length of probation may be imposed. The amendment proposed that the current statutory length of probation may be imposed if the State pleads and proves that a person was convicted of a Class A, Class B or Class C crime and has a prior conviction for a Class A, Class B, Class C or Class D crime under the Maine Revised Statutes, Title 17-A, a prior conviction under the laws governing operating under the influence or a prior conviction under the laws governing habitual offenders. The amendment also proposed that the current statutory length of probation may be imposed if the State pleads and proves that a person was convicted of unlawful trafficking in a schedule W drug, aggravated trafficking of scheduled drugs or certain offenses involving possession of a schedule W drug.

The amendment further proposed to provide that a person sentenced to a term of imprisonment may receive a reduction in that term of imprisonment of up to 3 days per calendar month for good behavior and up to 2 days per calendar month for fulfillment of responsibilities assigned in the person's transition plan for work, education or rehabilitation programs. With these changes, the amendment proposed that a person may earn a total of 7 days of good time per calendar month after sentence and commitment, as compared to 9 days per calendar month in Committee Amendment "A." This amendment was not adopted.

House Amendment "B" to Committee Amendment "A" (H-884) proposed to correct a drafting error by removing contradictory language regarding the use of bail for deferred disposition.

Senate Amendment "A" to Committee Amendment "A" (S-601) proposed to change the date by which the courts, in consultation with the district attorneys, are requested to report to the Legislature from May 1, 2005 to September 30, 2005. This amendment proposed to eliminate the appropriation that was associated with preparation of that report in fiscal year 2004-05 and to move those costs to fiscal year 2005-06. The amendment proposed to strike sections 23 and 24 from Part A of the Committee Amendment and to require the Office of Substance Abuse and the Department of Public Safety, in consultation with the district attorneys, to prepare a preliminary report regarding deferred disposition and administrative release.

Enacted Law Summary

Public Law 2003, chapter 711 combines the recommendations of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, which was established pursuant to Public Law 2003, chapter 451 and the recommendations of the Commission to Improve Community Safety and Sex Offender Accountability, which was established pursuant to Resolve 2003, chapter 75. Public Law 2003, chapter 711 also incorporates proposed changes to LD 617, "An Act Amending the Time by Which a Sex Offender or Sexually Violent Predator Must Register" and LD 1729, "An Act to Strengthen the Sex Offender Registration and Notification Act of 1999."

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Public Law 2003, chapter 711 makes the following changes to the laws regarding sentencing, corrections and sex offender registration and notification.

1. It expands the responsibility of the judicial branch's Drug Coordinator to include all criminal diversion programs and changes the title of the position to "Coordinator of Diversion and Rehabilitation Programs."
2. It repeals and replaces the section of law regarding the crime of burglary of a motor vehicle, breaking the crime into a Class C offense if the burglary involves a forcible entry and a Class D offense if there is no force used in entering the vehicle.
3. It amends the section of law regarding the Class C crime of escape by removing from the crime an inmate's failure to appear for work, school or a meeting with the inmate's supervising officer while that inmate is on intensive supervision or supervised community confinement. Failure to do any of these becomes an administrative violation under the Department of Corrections.
4. It creates 2 new sentencing alternatives. Deferred disposition may be used for certain persons who have pled guilty to a Class C, Class D or Class E crime. Administrative release may be used for certain persons who have been convicted of a Class D or Class E crime. The court may convert probation to administrative release and authorize the use of bail for deferred disposition.
5. It restricts the use of probation for Class D and Class E crimes to those crimes involving domestic violence, sex offenses and repeat OUI offenses.
6. It reduces for all crimes, except those involving domestic violence and sex offenses, the length of time a person may be sentenced to probation to 4 years for Class A crimes, 3 years for Class B crimes and 2 years for Class C crimes. Sex offenses and crimes involving domestic violence continue to be eligible for probation not to exceed 6 years for Class A crimes and not to exceed 4 years for Class B crimes and Class C crimes.
7. It clarifies that, once a period of probation has commenced, the court has authority to terminate that probation at any time.
8. It provides that a person who is entitled to a deduction from that person's sentence for time spent in detention may be given additional detention credit of up to 2 days per month for good behavior during the time spent in detention.
9. Except for persons who commit murder, sex offenses or crimes involving domestic violence, it increases the amount of good behavior good time that may be awarded from 2 to 4 days. The increase in good time may be applied to persons who commit crimes on or after August 1, 2004. Persons convicted of the excepted crimes continue to be eligible for a total of only 5 days of good time per month as allowed under current law. The 5-day total includes a combination of good behavior and meritorious good time.
10. Except for persons who commit murder, sex offenses or crimes involving domestic violence, it expands the concept of good time earned for work to include good time earned for education and rehabilitation and increases the amount that may be awarded from 3 to 5 days for prisoners in state facilities participating in community programs. The increase in good time may be applied to persons who commit crimes on or after August 1, 2004. Again, persons convicted of the excepted crimes continue to be eligible for a total of only 5 days of good time per month as allowed under current law. The 5-day total includes a combination of good behavior and

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meritorious good time. Those eligible for the increases in good time may earn up to a total of 9 days per month.

11. It precludes a court, in setting the appropriate length of a term of imprisonment, from factoring in the potential impact of good time deductions provided under the Maine Revised Statutes, Title 17-A, section 1253, except in cases in which the parties jointly recommend a "time served" sentence or recommend a sentence in which the total term of imprisonment or an unsuspended portion of that term has been calculated to achieve a specific projected release date.
12. It amends language regarding community corrections funds to direct each county to provide documentation verifying to the Department of Corrections that 20% of its funds under the County Jail Prisoner Support and Community Corrections Fund were expended on community corrections in order to receive that 20% of its distribution in the following year. If a county cannot verify the required expenditure, that county's 20% will be distributed to the counties that are in compliance, based on the percentage distribution rate described in Title 34-A, section 1210-A, subsection 3.
13. It gives the Commissioner of Corrections authority to place on supervised community confinement a prisoner with 2 years of incarceration remaining, if that prisoner meets all other eligibility requirements for supervised community confinement. However, the commissioner may not use this expanded authority until the average statewide probation caseload is no more than 90 probationers to one probation officer.
14. It directs the Department of Corrections and the Department of Behavioral and Developmental Services to create a plan of action to address mental illness in the criminal justice system. The departments must report to the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners by July 1, 2004 and report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by January 2005.
15. It requests that, by September 30, 2005, the courts, in consultation with the district attorneys, report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters the following: how often the sentencing alternatives of deferred disposition and administrative release were used and an assessment of the effectiveness of these alternatives in ensuring the accountability and rehabilitation of offenders, as well as any impact on recidivism rates; the impact of the use of deferred disposition and administrative release on the resources of the courts; the impact of the use of deferred disposition and administrative release on the resources of the district attorneys; and any recommendations regarding how to improve the procedures for imposing and enforcing the sentencing alternatives of deferred disposition and administrative release. It also requires that by February 1, 2005 the Office of Substance Abuse, in consultation with the district attorneys, make a preliminary report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the implementation of the sentencing alternatives.
16. It repeals the chapter dealing with sexual exploitation of minors, Title 17, chapter 93-B and reenacts it as Title 17-A, chapter 12 and corrects cross-references.
17. It raises the classification of sex crimes committed against children who have not attained 12 years of age. Without imposing new minimum mandatory sentences, Public Law 2003, chapter 711 provides courts, when victims are under 12 years of age, with an increased potential range of penalties by raising by one class the following crimes:

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- A. Unlawful sexual contact when the actor is at least 3 years older than the victim, from a Class C crime to a Class B crime, and when the actor is at least 3 years older than the victim and there is penetration, from a Class B crime to a Class A crime;
 - B. Visual sexual aggression against a child, only when the person acts for the purpose of arousing or gratifying sexual desire, from a Class D crime to a Class C crime;
 - C. Sexual misconduct with a child, from a Class D crime to a Class C crime;
 - D. Solicitation of a child by computer to commit a prohibited act, from a Class D crime to a Class C crime;
 - E. Sexual exploitation of a minor, from a Class B crime to a Class A crime;
 - F. Dissemination of sexually explicit materials, from a Class C crime to a Class C crime for the first offense and from a Class B crime to a Class A crime for a subsequent offense; and
 - G. Possession of sexually explicit materials, from a Class D crime to a Class C crime and from a Class C crime to a Class B crime for a subsequent offense.
18. It increases the period of probation for persons convicted of sex crimes committed against children who have not attained 12 years of age. Without imposing minimum mandatory sentences, Public Law 2003, chapter 711 provides courts, when victims are under 12 years of age, with an increased potential range of penalties by increasing periods of probation for persons convicted under Title 17-A, chapter 11 or 12 as follows:
- A. For a person convicted of a Class A crime, a period of probation not to exceed 18 years;
 - B. For a person convicted of a Class B crime, a period of probation not to exceed 12 years; and
 - C. For a person convicted of a Class C crime, a period of probation not to exceed 6 years.
19. It authorizes the court to sentence a person to probation for life if the person commits gross sexual assault against a person under 12 years of age and that person has a prior conviction for committing gross sexual assault, rape or gross sexual misconduct against a victim who had not attained 12 years of age at the time of the offense. Public Law 2003, chapter 711 also requires the court to attach, as a condition of probation, the requirement that the person participate in counseling or treatment to the satisfaction of the probation officer.
20. It requires the court, when exercising its sentencing discretion, to give serious consideration to the fact that a person convicted of a Class A crime of gross sexual assault also has a previous conviction for a Class B or Class C crime of unlawful sexual contact, if the State pleads and proves that fact.
21. It requires the court, when exercising its sentencing discretion, to give serious consideration to the fact that a person convicted of a crime under Title 17-A, section 253, subsection 1, paragraph C or Title 17-A, section 282, subsection 1, paragraph C or F committed the crime against a person who had not attained 12 years of age, if the State pleads and proves that fact.
22. It renames "dangerous sexual offender," defined in Title 17-A, section 1252, subsection 4-B, as "repeat sexual assault offender."

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23. It changes the names of registration categories in the Sex Offender Registration and Notification Act of 1999, also known as the "SORNA of 1999," from "sexually violent predators" and "sex offenders" to "lifetime registrants" and "10-year registrants," respectively and corrects references in other titles.
24. It moves the 2 Class D unlawful sexual contact offenses that currently require lifetime registration to the 10-year registration category.
25. In the SORNA of 1999 it amends the definition of "domicile" and creates the new definition "residence" for the purpose of better tracking and verifying the location of persons who must register. It amends the definitions of "sex offense" and "sexually violent offense" to more accurately comply with the federal registration guidelines, including adding to the list of registerable offenses the former crime of rape, restoring the former crimes of unlawful sexual contact and solicitation of a child by computer to commit a prohibited act, moving from the definition of "sex offense" to "sexually violent offense" the crimes of unlawful sexual contact that involve penetration and adding newly created offenses. It also specifies that for purposes of registration, criminal restraint and kidnapping committed by a parent are not registerable offenses. Public Law 2003, chapter 711 also adds the following new definitions: "another state," "registrant," "jurisdiction," and "tribe" to be more consistent with federal law.
26. It decreases the time period that registrants must register or update registration information with the State Bureau of Identification from 10 days to 5 and adds the requirement that a registrant must notify the law enforcement agency having jurisdiction where the person must register or update registration information within 24 hours.
27. It authorizes the State to suspend the requirement that a sex offender or sexually violent predator register during any period in which the registrant leaves the State, establishes a domicile in another state and remains physically absent from the State.
28. It directs the Department of Behavioral and Developmental Services, the Department of Human Services, the Department of Corrections and the Department of Public Safety, in cooperation with the Child Abuse Action Network and the Maine Coalition Against Sexual Assault to:
 - A. Identify the subpopulation of potential offenders or young persons at risk of offending because they have been sexually or physically abused or face a significant mental health disability, with recognition of the fact that over 95% of sex offenders are male;
 - B. Identify the types of prevention and treatment currently known to work with these young persons;
 - C. Coordinate prevention and education efforts with the goal of seeking coordinated services to transition at-risk youth to healthy adulthood; and
 - D. Report findings to the joint standing committees of the Legislature having jurisdiction over health and human services matters and criminal justice and public safety matters.

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LD 1936

**An Act To Amend the Laws Governing Blood Tests for Persons
Suspected of Operating Under the Influence**

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
GAGNE-FRIEL GAGNON	ONTP	

LD 1936 proposed to require qualified hospital personnel to perform a blood test on a person suspected of operating under the influence of alcohol or other intoxicants when that person is transported to a hospital by a law enforcement officer. The bill also proposed to require the Commissioner of Public Safety to adopt routine technical rules establishing a rate of reimbursement for a person administering a blood test at the scene of an OUI stop or an accident.

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