

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA §3141, sub-§2, as enacted by PL 1987, c. 414, §2, is repealed.

Sec. 2. 14 MRSA §3141, sub-§4, as amended by PL 1989, c. 875, Pt. E, §17, is further amended to read:

4. Installment payments. If the court concludes that the defendant has the ability to pay the fine, but that requiring the defendant to make immediate payment in full would cause a severe and undue hardship for the defendant and the defendant's dependents, the court may authorize payment of the fine by means of installment payments in accordance with this subsection. When a court authorizes payment of a fine by means of installment payments, it shall issue, without a separate disclosure hearing, an order that the fine be paid in full by a date certain, that the defendant has a legal duty to move the court for a modification of time or method of payment to avoid a default and that in default of payment the defendant must appear in court to explain the failure to pay.

In fixing the date of payment, the court shall issue an order which that will complete payment of the fine as promptly as possible without creating a severe and undue hardship for the defendant and the defendant's dependents.

Sec. 3. 15 MRSA §103-A is enacted to read:

§ 103-A. Commitment affected by certain sentences

1. Commencement of commitment. When a person subject to an undischarged straight term of imprisonment or to an unsuspended portion of a split sentence for a Maine conviction is, as to a different Maine offense, found not criminally responsible by reason of insanity or is the recipient of a negotiated insanity plea, the person must first serve the undischarged term of imprisonment or the unsuspended portion of the split sentence before commencing the commitment to the custody of the Commissioner of Health and Human Services ordered by the court pursuant to section 103.

2. Interruption of commitment. When a person while in the custody of the Commissioner of Health and Human Services pursuant to a commitment order under section 103 is found by a court to be in violation of the person's conditional release for a Maine conviction, if any, and new institutional confinement is ordered, or a person commits a Maine crime for which the person is subsequently convicted and the sentence imposed includes a straight term of imprisonment or a split sentence, the person must be placed in execution of that punishment, and custody pursuant to the commitment order under section 103 must automatically be interrupted thereby. In the event execution of that punishment is stayed pending appeal, the commitment under section 103 continues for the stay's duration. The person

must be returned to the custody of the Commissioner of Health and Human Services pursuant to the commitment order under section 103 when the new institutional confinement ordered or the straight term of imprisonment or the unsuspended portion of the split sentence imposed has been fully served.

3. Mental health treatment while imprisoned. While a person is imprisoned in execution of the punishment described in subsection 1 or 2, the county jail or state facility shall provide necessary mental health treatment pursuant to Title 30-A, section 1561 or Title 34-A, section 3031, subsection 2, including, when appropriate, seeking involuntary psychiatric hospitalization pursuant to section 2211-A, subsection 2 or Title 34-A, section 3069, subsection 1.

Sec. 4. 15 MRSA §812, sub-§2, as amended by PL 1995, c. 680, §1, is further amended to read:

2. Notification to victims and law enforcement officers. ~~Before~~Whenever practicable, before submitting a negotiated plea to the court, the attorney for the State shall ~~advise~~make a good faith effort to inform the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime or a violation of Title 17-A, chapter 9, 11, 12 or 13 and, ~~with respect to victims, shall advise victims of their rights under~~with respect to victims, shall advise victims of their rights under Title 17-A, section ~~1173~~1172, subsection 1, paragraphs A and B relative to informing victims of the details of and their right to comment on a plea agreement.

Sec. 5. 15 MRSA §3101, sub-§4, ¶C-2, as enacted by PL 1997, c. 645, §2, is amended to read:

C-2. With respect to the finding of appropriateness required by paragraph E, subparagraph (2), the State has the burden of proof, except that in a case involving a juvenile who is charged with one or more juvenile crimes that, if the juvenile were an adult, would constitute murder, aggravated attempted murder, attempted murder, felony murder, Class A manslaughter other than the reckless or criminally negligent operation of a motor vehicle, elevated aggravated assault on a pregnant person, elevated aggravated assault, arson that recklessly endangers any person, causing a catastrophe, Class A robbery or Class A gross sexual assault in which the victim submits as a result of compulsion, the juvenile has the burden of proof.

Sec. 6. 15 MRSA §3304, sub-§6-A, ¶B, as enacted by PL 2003, c. 142, §1 and affected by §3, is amended to read:

B. If the parent, guardian or legal custodian fails to appear with the juvenile and the court has not found good cause for not appearing, the court, after notice and hearing on the issue of contempt, may find the parent, guardian or legal custodian in contempt of court in accordance with the Maine Rules of ~~Criminal~~Civil Procedure, Rule 42(d)~~66~~66(d).

Sec. 7. 15 MRSA §3314-B, sub-§3, as enacted by PL 2003, c. 142, §2 and affected by §3, is amended to read:

3. Enforcement. After notice and hearing and in accordance with the Maine Rules of ~~Criminal~~Civil Procedure, Rule 42(d)~~66~~66(d), the court may invoke its contempt powers to enforce its counseling, treatment, education, case management or other order that applies to the juvenile, the juvenile's parent, guardian or legal custodian or any other person before the court who is subject to an order to participate in counseling, treatment, education or case management.

Sec. 8. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 2003, c. 102, §1, is further amended to read:

A. Any person who the officer has probable cause to believe has committed or is committing:

(1) Murder;

(2) Any Class A, Class B or Class C crime;

(3) Assault while hunting;

(4) Any offense defined in chapter 45;

(5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;

(5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 19-A, section 4002, subsection 4;

(6) Theft as defined in section 357, when the value of the services is \$1,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(8) Negotiating a worthless instrument if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(9) A violation of a condition of probation when requested by a probation officer or juvenile community corrections officer;

(10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;

(11) Theft involving a detention under Title 17, section 3521;

(12) Harassment, as set forth in section 506-A;

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769, subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011, subsection 3; and Title 19-A, section 4012, subsection 5; or

(14) A violation of a sex offender registration provision under Title 34-A, chapter 15; and/or

(15) A violation of a requirement of administrative release when requested by the attorney for the State; and

Sec. 9. 17-A MRSA §32, as enacted by PL 1981, c. 324, §14, is amended to read:

§ 32. Elements of crimes defined

~~No~~A person may not be convicted of a crime unless each element of the crime is proved by the State beyond a reasonable doubt. "Element of the crime" means the forbidden conduct; the attendant circumstances specified in the definition of the crime; the intention, knowledge, recklessness or negligence as may be required; and any required result.

Sec. 10. 17-A MRSA §101, sub-§3, as amended by PL 1999, c. 358, §1, is further amended to read:

3. Conduct that is justifiable under this chapter constitutes a defense to any crime; ~~provided~~except that, if a person is justified in using force against another, but the person recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness. If a defense provided under this chapter is precluded solely because the requirement that the person's belief be reasonable has not been met, the person may be convicted only of a crime for which recklessness or criminal negligence suffices, ~~and then, only if holding the belief, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, is grossly deviant from what a reasonable and prudent person would believe in the same situation.~~

Sec. 11. 17-A MRSA §351, as amended by PL 1981, c. 317, §7, is further amended to read:

§ 351. Consolidation

Conduct denominated theft in this chapter constitutes a single crime embracing the separate crimes such as those heretofore known as larceny, larceny by trick, larceny by bailee, embezzlement, false pretenses, extortion, blackmail, shoplifting and receiving stolen property. An accusation of theft may be proved by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the complaint, information or indictment, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate

relief if the conduct of the defense would be prejudiced by lack of fair notice or by surprise. If the evidence is sufficient to permit a finding of guilt of theft in more than one manner, no election among those manners is required.

Sec. 12. 17-A MRSA §355, sub-§1, as amended by PL 2001, c. 383, §37 and affected by §156, is further amended to read:

1. A person is guilty of theft if ~~the person obtains or exercises control over the property of another as a result of extortion and with intent to deprive the other person of the property.:~~

A. The person obtains or exercises control over the property of another as a result of extortion and with intent to deprive the other person of the property. Violation of this paragraph is a Class C crime; or

B. The person violates paragraph A and the value of the property is more than \$10,000. Violation of this paragraph is a Class B crime.

Sec. 13. 17-A MRSA §355, sub-§3, as enacted by PL 2001, c. 383, §39 and affected by §156, is repealed.

Sec. 14. 17-A MRSA §908, sub-§1, ¶I, as enacted by PL 2001, c. 383, §110 and affected by §156, is amended to read:

I. ~~Violates paragraph D and the person has 2 or more prior Maine convictions for violation of under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction.~~ Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime; or

Sec. 15. 17-A MRSA §908, sub-§1, ¶J, as enacted by PL 2001, c. 383, §110 and affected by §156, is amended to read:

J. ~~Violates paragraph E and the person has 2 or more prior Maine convictions for violation of under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction.~~ Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.;

Sec. 16. 17-A MRSA §908, sub-§1, ¶K is enacted to read:

K. Violates paragraph A and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$10,000. Violation of this paragraph is a Class B crime;

Sec. 17. 17-A MRSA §908, sub-§1, ¶L is enacted to read:

L. Violates paragraph A and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$1,000 but not more than \$10,000. Violation of this paragraph is a Class C crime;

Sec. 18. 17-A MRSA §908, sub-§1, ¶M is enacted to read:

M. Violates paragraph B and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$10,000. Violation of this paragraph is a Class B crime;

Sec. 19. 17-A MRSA §908, sub-§1, ¶N is enacted to read:

N. Violates paragraph B and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$1,000 but not more than \$10,000. Violation of this paragraph is a Class C crime;

Sec. 20. 17-A MRSA §908, sub-§1, ¶O is enacted to read:

O. Violates paragraph C and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$10,000. Violation of this paragraph is a Class B crime;

Sec. 21. 17-A MRSA §908, sub-§1, ¶P is enacted to read:

P. Violates paragraph C and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$1,000 but not more than \$10,000. Violation of this paragraph is a Class C crime;

Sec. 22. 17-A MRSA §908, sub-§1, ¶Q is enacted to read:

Q. Violates paragraph D and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$10,000. Violation of this paragraph is a Class B crime; or

Sec. 23. 17-A MRSA §908, sub-§1, ¶R is enacted to read:

R. Violates paragraph D and, as a result of the fraud, the victim in fact suffers a pecuniary loss of more than \$1,000 but not more than \$10,000. Violation of this paragraph is a Class C crime.

Sec. 24. 17-A MRSA §908, sub-§2, as enacted by PL 1995, c. 681, §1, is repealed.

Sec. 25. 17-A MRSA §1176, as enacted by PL 2005, c. 389, §1, is repealed and the following enacted in its place:

§ 1176. Confidentiality of victim records

1. General rule of confidentiality. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

2. Disclosure to law enforcement or victim services agencies. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

A. A state agency if necessary to carry out the statutory duties of that agency;

B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;

C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or

D. A person or agency upon request of the victim.

3. Limited disclosure as part of court order or bail condition. A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim, only when it is clear that the defendant already knows the victim's current address or location, or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

4. Limited disclosure pursuant to discovery. Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an attorney for the State may withhold the current address or location of a victim from a defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

5. Disclosure of victim's request for notice prohibited. In no case may a victim's request for notice of release of a defendant be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those employees to perform their official duties.

Sec. 26. 17-A MRSA §1201, sub-§1, ¶A-1, as amended by PL 2005, c. 265, §7, is further amended to read:

A-1. The conviction is for a Class D or Class E crime other than:

(1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode and, as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;

(2) A Class D crime committed against a family or household member under chapter 9 or 13 or section 506-B, 554, 555 or 758. As used in this subparagraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4;

(3) A Class D or Class E crime in chapter 11 or 12;

(4) A Class D crime under section 210-A;

(4-A) A Class E crime under section 552;

(5) A Class D or Class E crime under section 556, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;

(6) A Class D crime in chapter 45 relating to a schedule W drug; or

(7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B.

Sec. 27. 17-A MRSA §1202, sub-§1-A, ¶A-1, as enacted by PL 2003, c. 711, Pt. A, §12, is amended to read:

A-1. If the State pleads and proves that the person was convicted of committing against a family or household member a crime under chapter 9 or 13 or section 554 or if the person was convicted under chapter 11 or 12 or section 556, the period of probation may not exceed:

(1) Six years for a Class A crime; or

(2) Four years for a Class B or Class C crime.

As used in this paragraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; and

Sec. 28. 17-A MRSA §1202, sub-§1-A, ¶D is enacted to read:

D. The period of probation for a person sentenced for the crime of nonsupport of dependents under section 552 is as provided under section 552, subsection 4.

SUMMARY

This bill is proposed by the Criminal Law Advisory Commission and does the following.

The bill repeals Title 14, section 3141, subsection 2 because experience has demonstrated that mandatory notice at the time of the defendant's initial appearance is ineffective in securing fine payment in full at the time of sentence imposition. Second, it adds a requirement in section 3141, subsection 4 that the order issued by the court include a clear directive to the defendant that the defendant has a legal duty to move the court for a modification of time or method of payment to avoid a default.

The bill enacts the Maine Revised Statutes, Title 15, section 103-A, which directs that in the event a person who is found not criminally responsible by reason of insanity or is the recipient of a negotiated insanity plea as to a Maine crime is subject to an undischarged straight term of imprisonment or an unsuspended portion of a split sentence for a different Maine crime, the person must serve the undischarged term of imprisonment or the unsuspended portion of the split sentence before commencing the commitment to the Commissioner of Health and Human Services ordered by the court pursuant to section 103. Once having fully served the term of imprisonment or unsuspended portion of a split

sentence, the person must commence the commitment ordered notwithstanding being on conditional release.

Title 15, section 103-A also directs that in the event a person who has entered into the custody of the Commissioner of Health and Human Services pursuant to a commitment order either violates a condition of release and new institutional confinement is ordered or commits a Maine crime for which the person is subsequently convicted and the sentence imposed includes a straight term of imprisonment or a split sentence, the person must be placed in execution of that punishment and custody pursuant to the commitment order is automatically interrupted. In the event execution of that punishment is stayed pending appeal, the commitment will be automatically interrupted once that stay terminates and the person is placed in execution of the punishment. The commitment will be resumed when the new institutional confinement ordered or the straight term of imprisonment or the unsuspended portion of the split sentence imposed has been fully served.

Title 15, section 103-A directs that, while a person is imprisoned in execution of the punishment described in section 103-A, the county jail or state facility in which the person is incarcerated must provide the necessary mental health treatment required under law, including, when appropriate, seeking involuntary psychiatric hospitalization.

The bill conditions the present duty of prosecutors to inform law enforcement officers of the details of certain plea agreements reached before submitting that plea to the court on such notice being practicable. The bill adds Title 17-A, chapter 12 crimes to those triggering notice to law enforcement officers and, with respect to victim notification, it removes an incorrect reference to Title 17-A, section 1173 and replaces it with reference to Title 17-A, section 1172, subsection 1, paragraphs A and B.

The bill adds the Class A crimes of aggravated attempted murder and elevated aggravated assault on a pregnant person to the juvenile crimes for which the juvenile has the burden of proof with respect to the finding of appropriateness required by the "bind over" statute.

The bill amends Title 15, sections 3304 and 3314-B by replacing an outdated reference to Rule 42 of the Maine Rules of Criminal Procedure with a reference to Rule 66 of the Maine Rules of Civil Procedure.

The bill allows a law enforcement officer to make a warrantless arrest of any person who the officer has probable cause to believe has committed or is committing a violation of a requirement of administrative release when requested to do so by the attorney for the State.

The bill amends Title 17-A, section 32 to indicate that it is the State's burden to prove each element of the crime charged beyond a reasonable doubt.

The bill eliminates the current precondition for a conviction for a crime for which recklessness or criminal negligence suffices that the State, in addition to proving beyond a reasonable doubt that the person's belief is unreasonable, prove beyond a reasonable doubt that the person's holding of that belief "when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, is grossly deviant from what a reasonable and prudent person would believe in the same situation."

The bill adds for purposes of completeness in Title 17-A, section 351 a reference to a "complaint" in the second sentence.

The bill elevates the crime of theft by extortion to a Class B crime if the value of the property stolen is more than \$10,000.

The bill adds to the 4 basic Class D forms of home repair fraud 2 aggravated forms of each based on the pecuniary loss suffered by the victim as a result of the fraud. If the loss is more than \$10,000, the basic crime is elevated to Class B. If the loss is more than \$1,000 but not more than \$10,000, the basic crime is elevated to Class C.

The bill removes the current directive in Title 17-A, section 908, subsection 2 that the trial court rather than the jury determine the materiality question. Since whether a fact relating to the terms of the agreement or contract is material is an element of the crime of home repair fraud, a defendant has the constitutional right to have the jury rather than the trial court determine the question of materiality.

The bill clarifies the requirement that a victim's address be kept confidential. It provides a general rule of confidentiality. It allows victim address information to be disclosed to state, criminal justice, juvenile justice and victim services agencies in limited circumstances and to other persons or agencies upon request of the victim. It allows criminal justice personnel and the court to disclose such information upon victim request as part of a court order restricting contact with the victim, or when the defendant already knows that victim's current address or location. It allows an attorney for the State to withhold such information upon a good faith belief that disclosure may compromise victim safety. It prohibits disclosure of a victim request for notice of the defendant's release except as required to carry out the request. The bill protects the confidentiality of victim information but does not prevent access to the information required for the administration of the criminal justice system, juvenile justice system or provision of victim services.

The bill allows a person convicted of nonsupport of dependents to be placed on probation under the supervision of the Department of Health and Human Services for a period extending to the time when the youngest dependent attains 18 years of age.