



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1399

H.P. 1028

House of Representatives, April 4, 2011

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

Reported by Representative PLUMMER of Windham for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

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

2 **Sec. 1. 15 MRSA §101-D, sub-§5, ¶A,** as enacted by PL 2009, c. 268, §3, is
3 amended to read:

4 A. Commit the defendant to the custody of the Commissioner of Health and Human
5 Services to be placed in an appropriate institution for the care and treatment of people
6 with mental illness or mental retardation for observation, care and treatment. At the
7 end of 30 days or sooner, and again in the event of recommitment, at the end of 60
8 days and one year, the State Forensic Service shall forward a report to the
9 Commissioner of Health and Human Services relative to the defendant's competence
10 to stand trial and its reasons. The Commissioner of Health and Human Services shall
11 without delay file the report with the court having jurisdiction of the case. The court
12 shall without delay set a date for and hold a hearing on the question of the defendant's
13 competence to stand trial and receive all relevant testimony bearing on the question.
14 If the court determines that the defendant is not competent to stand trial, but there
15 does exist a substantial probability that the defendant will be competent to stand trial
16 in the foreseeable future, the court shall recommit the defendant to the custody of the
17 Commissioner of Health and Human Services to be placed in an appropriate
18 institution for the care and treatment of people with mental illness or mental
19 retardation for observation, care and treatment. When a person who has been
20 evaluated on behalf of the court by the State Forensic Service is committed into the
21 custody of the Commissioner of ~~the Department of~~ Health and Human Services under
22 this paragraph, the court shall order that the State Forensic Service share any
23 information that it has collected or generated with respect to the person with the
24 institution in which the person is placed. If the defendant is charged with an offense
25 under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and
26 the court determines that the defendant is not competent to stand trial and there does
27 not exist a substantial probability that the defendant can be competent in the
28 foreseeable future, the court shall dismiss all charges against the defendant and,
29 unless the defendant is subject to an undischarged term of imprisonment, order the
30 Commissioner of Health and Human Services to commence involuntary commitment
31 proceedings pursuant to Title 34-B, chapter 3, subchapter 4 or chapter 5, subchapter
32 3. If the defendant is charged with offenses not listed in the previous sentence and
33 the court determines that the defendant is not competent to stand trial and there does
34 not exist a substantial probability that the defendant can be competent in the
35 foreseeable future, the court shall dismiss all charges against the defendant and,
36 unless the defendant is subject to an undischarged term of imprisonment, notify the
37 appropriate authorities who may institute civil commitment ~~procedures~~ proceedings
38 for the individual. If the defendant is subject to an undischarged term of
39 imprisonment, the court shall order the defendant into execution of that sentence and
40 the correctional facility to which the defendant must be transported shall execute the
41 court's order; or

42 **Sec. 2. 15 MRSA §101-D, sub-§9,** as enacted by PL 2009, c. 268, §3, is amended
43 to read:

1 **9. Examination after sentencing.** If the issue of insanity, competency, abnormal
2 condition of mind or any other issue involving the mental condition of the defendant is
3 raised after sentencing, the court may for cause shown order the convicted person to be
4 examined by the State Forensic Service. If at the time an examination order is entered by
5 the court the sentenced person is in execution of a sentence of imprisonment imposed for
6 any criminal conduct, the time limits and bail provisions of this section do not apply. For
7 examinations that take place outside the correctional facility, the correctional facility shall
8 provide transportation and security for the examination.

9 **Sec. 3. 15 MRSA §3103, sub-§1, ¶B,** as corrected by RR 2009, c. 2, §34, is
10 amended to read:

11 B. Offenses involving illegal drugs or drug paraphernalia as follows:

- 12 (1) The possession of a useable amount of marijuana, as provided in Title 22,
13 section 2383, unless the juvenile is authorized to possess marijuana for medical
14 use pursuant to Title 22, chapter 558-C;
- 15 (2) The use or possession of drug paraphernalia as provided in Title 17-A,
16 section 1111-A, subsection ~~4, paragraphs A and B~~ 4-B; and
- 17 (3) Illegal transportation of drugs by a minor as provided in Title 22, section
18 2389, subsection 2;

19 **Sec. 4. 17-A MRSA §15, sub-§1, ¶A,** as amended by PL 2009, c. 142, §3, is
20 further amended to read:

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

- 23 (1) Murder;
- 24 (2) Any Class A, Class B or Class C crime;
- 25 (3) Assault while hunting;
- 26 (4) Any offense defined in chapter 45;
- 27 (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably
28 believes that the person may cause injury to others unless immediately arrested;
- 29 (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief,
30 obstructing the report of a crime or injury or reckless conduct if the officer
31 reasonably believes that the person and the victim are family or household
32 members, as defined in Title 19-A, section 4002, subsection 4;
- 33 (5-B) Domestic violence assault, domestic violence criminal threatening,
34 domestic violence terrorizing, domestic violence stalking or domestic violence
35 reckless conduct;
- 36 (6) Theft as defined in section 357, when the value of the services is \$1,000 or
37 less if the officer reasonably believes that the person will not be apprehended
38 unless immediately arrested;

- 1 (7) Forgery, if the officer reasonably believes that the person will not be
2 apprehended unless immediately arrested;
- 3 (8) Negotiating a worthless instrument if the officer reasonably believes that the
4 person will not be apprehended unless immediately arrested;
- 5 (9) A violation of a condition of probation when requested by a probation officer
6 or juvenile community corrections officer;
- 7 (10) Violation of a condition of release in violation of Title 15, section 1026,
8 subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051,
9 subsection 2; and Title 15, section 1092;
- 10 (11) Theft involving a detention under Title 17, section 3521;
- 11 (12) Harassment, as set forth in section 506-A;
- 12 (13) Violation of a protection order, as specified in Title 5, section 4659,
13 subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769,
14 subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011,
15 subsection 3; and Title 19-A, section 4012, subsection 5;
- 16 (14) A violation of a sex offender registration provision under Title 34-A,
17 chapter 15;
- 18 (15) A violation of a requirement of administrative release when requested by the
19 attorney for the State;
- 20 (16) A violation of a condition of supervised release for sex offenders when
21 requested by a probation officer;
- 22 (17) A violation of a court-imposed deferment requirement of a deferred
23 disposition when requested by the attorney for the State;
- 24 (18) A violation of a condition of release as provided in Title 15, section
25 3203-A, subsection 9;
- 26 (19) A violation of a condition of supervised community confinement granted
27 pursuant to Title 34-A, section 3036-A when requested by a probation officer;
- 28 (20) A violation of a condition of placement on community reintegration status
29 granted pursuant to Title 34-A, sections 3810 and 4112 when requested by a
30 juvenile community corrections officer; ~~or~~
- 31 (21) A violation of a condition of furlough or other rehabilitative program
32 authorized under Title 34-A, section 3035 when requested by a probation officer
33 or juvenile community corrections officer; ~~and~~ or
- 34 (22) A violation of a condition of release from a community confinement
35 monitoring program pursuant to Title 30-A, section 1659-A; and

36 **Sec. 5. 17-A MRSA §253, sub-§2, ¶I**, as amended by PL 2001, c. 383, §16 and
37 affected by §156, is further amended to read:

- 38 I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports
39 to be a psychiatrist, a psychologist or licensed as a social worker to the other person

1 and the other person, not the actor's spouse, is a patient or client for mental health
2 therapy of the actor. As used in this paragraph, "mental health therapy" means
3 psychotherapy or other treatment modalities intended to change behavior, emotions
4 or attitudes, which therapy is based upon an intimate relationship involving trust and
5 dependency with a substantial potential for vulnerability and abuse. Violation of this
6 paragraph is a Class C crime; or

7 **Sec. 6. 17-A MRSA §254, sub-§1, ¶A-3** is enacted to read:

8 A-3. The person intentionally subjects another person, not the actor's spouse, who is
9 either 14 or 15 years of age to any sexual contact and the actor is at least 10 years
10 older than the other person. Violation of this paragraph is a Class D crime.

11 **Sec. 7. 17-A MRSA §254, sub-§1, ¶D**, as amended by PL 2003, c. 138, §2, is
12 further amended to read:

13 D. The person violates paragraph C and the actor knows that the student is related to
14 the actor within the 2nd degree of consanguinity. Violation of this paragraph is a
15 Class D crime; or

16 **Sec. 8. 17-A MRSA §254, sub-§1, ¶E**, as amended by PL 2003, c. 138, §2, is
17 further amended to read:

18 E. The person violates paragraph C and the actor is at least 10 years older than the
19 student. Violation of this paragraph is a Class D crime; ~~or~~.

20 **Sec. 9. 17-A MRSA §254, sub-§1, ¶F**, as enacted by PL 2003, c. 138, §3, is
21 repealed.

22 **Sec. 10. 17-A MRSA §254, sub-§2**, as amended by PL 2003, c. 138, §4, is
23 further amended to read:

24 **2.** It is a defense to a prosecution under subsection 1, paragraphs A, A-1, A-2 and ~~F~~
25 A-3, that the actor reasonably believed the other person is at least 16 years of age.

26 **Sec. 11. 17-A MRSA §255-A, sub-§1, ¶U**, as enacted by PL 2005, c. 450, §2, is
27 amended to read:

28 U. The actor is a psychiatrist, a psychologist or licensed as a social worker or
29 purports to be a psychiatrist, a psychologist or licensed as a social worker to the other
30 person and the other person, not the actor's spouse, is a patient or client of the actor
31 ~~for mental health therapy. As used in this paragraph, "mental health therapy" means~~
32 ~~psychotherapy or other treatment modalities intended to change behavior, emotions~~
33 ~~or attitudes and based upon an intimate relationship involving trust and dependency~~
34 ~~with a substantial potential for vulnerability and abuse.~~ Violation of this paragraph is
35 a Class D crime; or

36 **Sec. 12. 17-A MRSA §255-A, sub-§1, ¶V**, as enacted by PL 2005, c. 450, §2, is
37 amended to read:

1 V. The actor is a psychiatrist, a psychologist or licensed as a social worker or
2 purports to be a psychiatrist, a psychologist or licensed as a social worker to the other
3 person and the other person, not the actor's spouse, is a patient or client of the actor
4 for mental health therapy and the sexual contact includes penetration. ~~As used in this~~
5 ~~paragraph, "mental health therapy" means psychotherapy or other treatment~~
6 ~~modalities intended to change behavior, emotions or attitudes and based upon an~~
7 ~~intimate relationship involving trust and dependency with a substantial potential for~~
8 ~~vulnerability and abuse.~~ Violation of this paragraph is a Class C crime.

9 **Sec. 13. 17-A MRSA §260, sub-§1, ¶K**, as enacted by PL 2005, c. 450, §5, is
10 amended to read:

11 K. The actor is a psychiatrist, a psychologist or licensed as a social worker or
12 purports to be a psychiatrist, a psychologist or licensed as a social worker to the other
13 person and the other person, not the actor's spouse, is a patient or client of the actor
14 for mental health therapy. ~~As used in this paragraph, "mental health therapy" means~~
15 ~~psychotherapy or other treatment modalities intended to change behavior, emotions~~
16 ~~or attitudes and based upon an intimate relationship involving trust and dependency~~
17 ~~with a substantial potential for vulnerability and abuse.~~ Violation of this paragraph is
18 a Class D crime.

19 **Sec. 14. 17-A MRSA §284, sub-§5**, as enacted by PL 2009, c. 608, §4, is
20 amended to read:

21 **5.** For purposes of this section, any element of age of the person depicted means the
22 age of the person at the time the sexually explicit conduct occurred, not the age of the
23 person depicted at the time of ~~dissemination~~ the transporting, exhibiting, purchasing or
24 possession of the sexually explicit visual image or material.

25 **Sec. 15. 17-A MRSA §506**, as amended by PL 1981, c. 317, §20, is further
26 amended to read:

27 **§506. Harassment by telephone or by electronic communication device**

28 **1.** A person is guilty of harassment by telephone or by electronic communication
29 device if:

30 A. By means of telephone ~~he~~ or electronic communication device the person makes
31 any comment, request, suggestion or proposal ~~which~~ that is, in fact, offensively
32 coarse or obscene, without the consent of the person called or contacted;

33 B. ~~He~~ The person makes a telephone call or makes a call or contact by means of an
34 electronic communication device, whether or not oral or written conversation ensues,
35 without disclosing ~~his~~ the person's identity and with the intent to annoy, abuse,
36 threaten or harass any person at the called or contacted number or account;

37 C. ~~He~~ The person makes or causes the telephone or electronic communication device
38 of another repeatedly or continuously to ring or activate or receive data, with the
39 intent to harass any person at the called or contacted number or account;

1 D. ~~He~~ The person makes repeated telephone calls or repeated calls or contacts by
2 means of an electronic communication device, during which oral or written
3 conversation ensues, with the intent to harass any person at the called or contacted
4 number or account; or

5 E. ~~He~~ The person knowingly permits any telephone or electronic communication
6 device under ~~his~~ the person's control to be used for any purpose prohibited by this
7 section.

8 2. The crime defined in this section may be prosecuted and punished in the county
9 in which the defendant was located when ~~he~~ the defendant used the telephone or
10 electronic communication device, or in the county in which the telephone called or made
11 to ring or the electronic communication device called or made to ring or be activated or
12 receive data by the defendant was located.

13 2-A. As used in this section, "electronic communication device" means any
14 electronic or digital product that communicates at a distance by electronic transmission
15 impulses or by fiber optics, including any software capable of sending and receiving
16 communication, allowing a person to electronically engage in the conduct prohibited
17 under this section.

18 3. Harassment by telephone or by electronic communication device is a Class E
19 crime.

20 **Sec. 16. 17-A MRSA §755, sub-§1-E** is enacted to read:

21 1-E. A person is guilty of escape from the community confinement monitoring
22 program granted pursuant to Title 30-A, section 1659-A if without official permission the
23 person intentionally:

24 A. Leaves or fails to return within 12 hours to that person's residence or other
25 designated area in which that person is monitored. Violation of this paragraph is a
26 Class C crime; or

27 B. Violates paragraph A and at the time of the escape the person uses physical force
28 against another person, threatens to use physical force or is armed with a dangerous
29 weapon. Violation of this paragraph is a Class B crime.

30 A sentence imposed for a violation of this section is subject to the requirements of section
31 1256, subsection 1.

32 **Sec. 17. 17-A MRSA §755, sub-§3-A, ¶F** is enacted to read:

33 F. Prosecution for escape or attempted escape from the community confinement
34 monitoring program must be in the county in which the institution from which the
35 transfer to the community confinement monitoring program was granted is located or
36 in any county to which the transfer to the community confinement monitoring
37 program was granted.

38 **Sec. 18. 17-A MRSA §757, sub-§2**, as amended by PL 2009, c. 608, §6, is
39 further amended to read:

1 2. As used in this section, "official custody" has the same meaning as in section
2 755. As used in this section, "contraband" means a dangerous weapon, any tool or other
3 item that may be used to facilitate a violation of section 755 or anything that a person
4 confined in official custody is prohibited by statute from making, possessing or
5 trafficking in or a scheduled drug as defined in section 1101, subsection 11, unless the
6 drug was validly prescribed to the person in official custody and was approved for use by
7 the person pursuant to the procedures of the custodial agency.

8 **Sec. 19. 17-A MRSA §1055**, as enacted by PL 1975, c. 499, §1, is amended to
9 read:

10 **§1055. Possession or distribution of dangerous knives**

11 1. A person is guilty of ~~trafficking in~~ possession or distribution of dangerous
12 knives; if ~~providing he, when the person~~ has no right to do so, ~~he~~ the person knowingly
13 manufactures or causes to be manufactured, or knowingly possesses, displays, offers,
14 sells, lends, gives away or purchases any knife ~~which that~~ has a blade ~~which that~~ opens
15 automatically by hand pressure applied to a button, spring or other device in the handle of
16 the knife, or any knife having a blade ~~which that~~ opens or falls or is ejected into position
17 by the force of gravity, or by an outward, downward or centrifugal thrust or movement.

18 2. ~~Trafficking in~~ Possession or distribution of dangerous knives is a Class D crime.

19 **Sec. 20. 17-A MRSA §1107-A, sub-§4**, as enacted by PL 2005, c. 252, §1, is
20 amended to read:

21 4. It is an affirmative defense to prosecution under subsection 1, paragraph B,
22 subparagraphs (3) to (6) and paragraphs C to F that the person possessed a valid
23 prescription for the scheduled drug or controlled substance that is the basis for the charge
24 and that, at all times, the person intended the drug to be used only for legitimate medical
25 use in conformity with the instructions provided by the prescriber and dispenser.

26 **Sec. 21. 17-A MRSA §1111-A**, as amended by IB 2009, c. 1, §2 and corrected by
27 RR 2009, c. 2, §39, is further amended to read:

28 **§1111-A. Use of drug paraphernalia**

29 1. As used in this section the term "drug paraphernalia" means all equipment,
30 products and materials of any kind that are used or intended for use in planting,
31 propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,
32 producing, processing, preparing, testing, analyzing, packaging, repackaging, storing,
33 containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the
34 human body a scheduled drug in violation of this chapter or Title 22, section 2383, except
35 that this section does not apply to a person who is authorized to possess marijuana for
36 medical use pursuant to Title 22, chapter 558-C, to the extent the drug paraphernalia is
37 used for that person's medical use of marijuana. It includes, but is not limited to:

38 A. Kits used or intended for use in planting, propagating, cultivating, growing or
39 harvesting of any species of plant which is a scheduled drug or from which a
40 scheduled drug can be derived;

- 1 B. Kits used or intended for use in manufacturing, compounding, converting,
2 producing, processing or preparing scheduled drugs;
- 3 C. Isomerization devices used or intended for use in increasing the potency of any
4 species of plant that is a scheduled drug;
- 5 D. Testing equipment used or intended for use in identifying or in analyzing the
6 strength, effectiveness or purity of scheduled drugs;
- 7 E. Scales and balances used or intended for use in weighing or measuring scheduled
8 drugs;
- 9 F. Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite,
10 dextrose and lactose, used or intended for use in cutting scheduled drugs;
- 11 G. Separation gins and sifters, used or intended for use in removing twigs and seeds
12 from, or in otherwise cleaning or refining, marijuana;
- 13 H. Blenders, bowls, containers, spoons and mixing devices used or intended for use
14 in compounding scheduled drugs;
- 15 I. Capsules, balloons, envelopes and other containers used or intended for use in
16 packaging small quantities of scheduled drugs;
- 17 J. Containers and other objects used or intended for use in storing or concealing
18 scheduled drugs; and
- 19 K. Objects used or intended for use in ingesting, inhaling or otherwise introducing
20 marijuana, cocaine, hashish or hashish oil into the human body, such as:
- 21 (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without
22 screens, permanent screens, hashish heads or punctured metal bowls;
- 23 (2) Water pipes;
- 24 (3) Carburetion tubes and devices;
- 25 (4) Smoking and carburetion masks;
- 26 (5) Roach clips, meaning objects used to hold burning material, such as a
27 marijuana cigarette that has become too small or too short to be held in the hand;
- 28 (6) Miniature cocaine spoons and cocaine vials;
- 29 (7) Chamber pipes;
- 30 (8) Carburetor pipes;
- 31 (9) Electric pipes;
- 32 (10) Air-driven pipes;
- 33 (11) Chillums;
- 34 (12) Bongs; or
- 35 (13) Ice pipes or chillers.

1 **2.** For purposes of this section, drug paraphernalia does not include hypodermic
2 apparatus. Possession of, furnishing or trafficking in hypodermic apparatus constitute
3 separate offenses under sections 1110 and 1111.

4 **3.** In determining whether an object is drug paraphernalia, a court or other authority
5 shall consider, in addition to all other logically relevant factors, the following:

- 6 A. Statements by an owner or by anyone in control of the object concerning its use;
- 7 B. One or more prior convictions, if any, of an owner, or of anyone in control of the
8 object, for any offense under this chapter or for engaging in substantially similar
9 conduct to that of the Maine offenses under this chapter in another jurisdiction;
- 10 C. The proximity of the object, in time and space, to a direct violation of this
11 chapter;
- 12 D. The proximity of the object to scheduled drugs;
- 13 E. The existence of any residue of scheduled drugs on the object;
- 14 F. Direct or circumstantial evidence of the intent of an owner, or of anyone in control
15 of the object, to deliver it to persons whom the owner knows, or should reasonably
16 know, intend to use the object to facilitate a violation of this chapter; the innocence of
17 an owner, or of anyone in control of the object, as to a direct violation of this chapter
18 may not prevent a finding that the object is intended for use as drug paraphernalia;
- 19 G. Instructions, oral or written, provided with the object concerning its use;
- 20 H. Descriptive materials accompanying the object which explain or depict its use;
- 21 I. National and local advertising concerning its use;
- 22 J. The manner in which the object is displayed for sale;
- 23 K. Whether the owner, or anyone in control of the object, is a legitimate supplier of
24 like or related items to the community, such as a licensed distributor or dealer of
25 tobacco products;
- 26 L. Direct or circumstantial evidence of the ratio of sales of the object to the total
27 sales of the business enterprise;
- 28 M. The existence and scope of legitimate uses for the object in the community; and
- 29 N. Expert testimony concerning its use.

30 ~~**4.** A person is guilty of the sale and use of drug paraphernalia if:~~

31 ~~A. The person uses drug paraphernalia to plant, propagate, cultivate, grow, harvest,~~
32 ~~manufacture, compound, convert, produce, process, prepare, test, analyze, pack,~~
33 ~~repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the~~
34 ~~human body a scheduled drug in violation of this chapter or Title 22, section 2383.~~
35 ~~Violation of this paragraph is a civil violation for which a fine of \$300 must be~~
36 ~~adjudged, none of which may be suspended;~~

37 ~~B. The person possesses with intent to use drug paraphernalia to plant, propagate,~~
38 ~~cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare,~~

1 test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise
2 introduce into the human body a scheduled drug in violation of this chapter or Title
3 22, section 2383. Violation of this paragraph is a civil violation for which a fine of
4 \$300 must be adjudged, none of which may be suspended;

5 ~~C. The person trafficks in or furnishes drug paraphernalia knowing, or under~~
6 ~~circumstances when one reasonably should know, that it will be used to plant,~~
7 ~~propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,~~
8 ~~process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,~~
9 ~~inhale or otherwise introduce into the human body a scheduled drug in violation of~~
10 ~~this chapter or Title 22, section 2383, and the person to whom that person is~~
11 ~~trafficking or furnishing drug paraphernalia is:~~

12 ~~(1) At least 16 years of age. Violation of this subparagraph is a Class E crime;~~
13 ~~or~~

14 ~~(2) Less than 16 years of age. Violation of this subparagraph is a Class D crime;~~
15 ~~or~~

16 ~~D. The person places in a newspaper, magazine, handbill or other publication an~~
17 ~~advertisement knowing, or under circumstances when one reasonably should know,~~
18 ~~that the purpose of the advertisement, in whole or in part, is to promote the sale of~~
19 ~~objects intended for use as drug paraphernalia. Violation of this paragraph is a Class~~
20 ~~E crime.~~

21 This subsection does not apply to a person who is authorized to possess marijuana for
22 medical use pursuant to Title 22, chapter 558-C to the extent the drug paraphernalia is
23 required for that person's medical use of marijuana.

24 4-A. Except as provided in Title 22, chapter 558-C, a person is guilty of use of drug
25 paraphernalia if:

26 A. The person trafficks in or furnishes drug paraphernalia knowing, or under
27 circumstances when that person reasonably should know, that it will be used to plant,
28 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
29 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
30 inhale or otherwise introduce into the human body a scheduled drug in violation of
31 this chapter or Title 22, section 2383, and the person to whom that person is
32 trafficking or furnishing drug paraphernalia is:

33 (1) At least 16 years of age. Violation of this subparagraph is a Class E crime;
34 or

35 (2) Less than 16 years of age. Violation of this subparagraph is a Class D crime;
36 or

37 B. The person places in a newspaper, magazine, handbill or other publication an
38 advertisement knowing, or under circumstances when that person reasonably should
39 know, that the purpose of the advertisement, in whole or in part, is to promote the
40 sale of objects intended for use as drug paraphernalia. Violation of this paragraph is
41 a Class E crime.

1 4-B. Except as provided in Title 22, chapter 558-C, a person commits a civil
2 violation if:

3 A. The person in fact uses drug paraphernalia to plant, propagate, cultivate, grow,
4 harvest, manufacture, compound, convert, produce, process, prepare, test, analyze,
5 pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into
6 the human body a scheduled drug in violation of this chapter or Title 22, section
7 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be
8 adjudged, none of which may be suspended; or

9 B. The person possesses with intent to use drug paraphernalia to plant, propagate,
10 cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare,
11 test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise
12 introduce into the human body a scheduled drug in violation of this chapter or Title
13 22, section 2383. Violation of this paragraph is a civil violation for which a fine of
14 \$300 must be adjudged, none of which may be suspended.

15 **9.** Drug paraphernalia possessed in violation of this section is declared to be
16 contraband and may be seized and confiscated by the State.

17 **10.** It is an affirmative defense to prosecution under this section that the drug
18 paraphernalia used or possessed is used or possessed for the propagation, cultivation or
19 processing of industrial hemp.

20 **Sec. 22. 17-A MRSA §1253, sub-§2,** as amended by PL 2005, c. 507, §16, is
21 further amended to read:

22 **2.** Each person sentenced to imprisonment who has previously been detained for the
23 conduct for which the sentence is imposed in any state facility or county institution or
24 facility or in any local lockup awaiting trial, during trial, post-trial awaiting sentencing or
25 post-sentencing prior to the date on which the sentence commenced to run either to await
26 transportation to the place of imprisonment specified, or pursuant to court order, and not
27 in execution of any other sentence of confinement, is entitled to receive a day-for-day
28 deduction from the total term of imprisonment required under that sentence. Each person
29 is entitled to receive the same deduction for any such period of detention in any federal,
30 state or county institution, local lockup or similar facility in another jurisdiction,
31 including any detention resulting from being a fugitive from justice, as defined by Title
32 15, section 201, subsection 4, unless the person has simultaneously been detained for
33 non-Maine conduct. A person who has been simultaneously detained for conduct for
34 which the person is sentenced to a consecutive sentence is not entitled to receive a day-
35 for-day deduction from the consecutive sentence for the period of simultaneous detention
36 except for any period of detention that is longer than the total term of imprisonment
37 required under the prior sentence.

38 For the purpose of calculating the day-for-day deduction specified by this subsection, a
39 "day" means 24 hours, except that for a person who commits a crime on or after October
40 15, 2011, who has previously been detained for the conduct for which the person is
41 sentenced to a term of imprisonment of 96 hours or less, for the purposes of calculating
42 the day-for-day deduction specified in this subsection, any portion of a day detained short

1 of 24 hours will also be deducted from the total term of imprisonment required under that
2 sentence.

3 The total term required under the sentence of imprisonment is reduced by the total
4 deduction of this subsection prior to applying any of the other deductions specified in this
5 section or in Title 30-A, section 1606.

6 The sheriff or other person upon whom the legal duty is imposed to deliver a sentenced
7 person who has been detained as specified in this subsection shall, within 30 days of
8 delivery, furnish to the custodian a statement showing the length of that detention. In
9 addition, the transporter shall furnish to the attorney for the State the same statement.
10 The custodian shall use the statement furnished to determine the day-for-day deduction to
11 which the person is entitled, if any, unless, within 15 days of its receipt, the attorney for
12 the State furnishes a revised statement to the custodian.

13 A. For any person who commits a crime on or after August 1, 2004, is subsequently
14 sentenced to a term of imprisonment for that crime and is entitled to receive a
15 day-for-day deduction pursuant to this subsection, up to 2 additional days per
16 calendar month may be credited to that deduction if the person's conduct during that
17 period of detention was such that the credit is determined to be warranted in the
18 discretion of the chief administrative officer of the facility in which the person has
19 previously been detained.

20 Credits under this paragraph must be calculated as follows for partial calendar
21 months:

22

23	Days of partial month	Maximum credit available
24	1 to 15 days	up to 1
25	16 to 31 days	up to 2

26 The sheriff or other person required to furnish a statement showing the length of
27 detention shall also furnish a statement showing the number of days credited pursuant
28 to this paragraph.

29 Detention awaiting trial, during trial, post-trial awaiting sentencing or post-sentencing
30 prior to the date on which a sentence commences to run is not punishment.

31 **Sec. 23. 17-A MRSA §1301, sub-§6**, as enacted by PL 2005, c. 386, Pt. DD, §2,
32 is amended to read:

33 **6.** In addition to any other authorized sentencing alternative, the court shall impose
34 a minimum fine of \$400, none of which may be suspended, for a person convicted of a
35 crime under section 1103; 1104; 1105-A; 1105-B; 1105-C; 1105-D; 1106; 1107-A; 1108;
36 1109; 1110; 1111; 1111-A, subsection 4, ~~paragraph C or D~~ 4-A; 1116; 1117; or 1118.

37 **Sec. 24. 17-A MRSA §1326-A**, as amended by PL 2009, c. 608, §12, is further
38 amended to read:

1 **§1326-A. Time and method of restitution**

2 When restitution is authorized, and the offender is not committed to the Department
3 of Corrections and does not receive a sentence that includes a period of probation, the
4 time and method of payment or of the performance of the services must be specified by
5 the court and monetary compensation may be ordered paid to the office of the prosecuting
6 attorney who is prosecuting the case or to the clerk of the court. If the offender is
7 committed to the Department of Corrections or receives a sentence that includes a period
8 of probation, monetary compensation must be paid to the Department of Corrections and
9 the time and method of payment must be determined by the Department of Corrections
10 during the term of commitment or the period of probation unless at the time of sentencing
11 the court has specified the time and method of payment. Once any term of commitment
12 to the Department of Corrections or period of probation is completed and if the restitution
13 ordered has not been paid in full, the offender is subject to the provisions of section
14 1326-F and, in the event of a default, the provisions of section 1329. The state agency
15 receiving the restitution shall deposit any money received in the account maintained by
16 the Treasurer of State for deposit of state agency funds, from which funds are daily
17 transferred to an investment account and invested. Interest accrued on that money is the
18 property of and accrues to the State for deposit in the General Fund. The agency
19 receiving the restitution shall make the disbursement to the victim or other authorized
20 claimant as soon as possible after the agency receives the money.

21 **Sec. 25. 17-A MRSA §1330, sub-§3**, as enacted by PL 1997, c. 752, §30, is
22 amended to read:

23 **3. Restitution; absolute.** The requirements imposed on a prisoner by this section to
24 pay restitution and fines during incarceration apply regardless of whether ~~the court order~~
25 ~~to pay restitution or fines constitutes a sentence or is imposed as a condition of probation,~~
26 ~~regardless of whether payment has been stayed in the court order and regardless of~~
27 ~~whether the prisoner's incarceration resulted from a revocation of probation.;~~

28 A. The court order to pay restitution or fines constitutes a sentence or is imposed as a
29 condition of probation;

30 B. Payment has been stayed in the court order;

31 C. The court has specified a time and method of payment pursuant to section 1303,
32 subsection 1 or section 1326-A; or

33 D. The person's incarceration resulted from a revocation of probation.

34 **Sec. 26. 17-A MRSA §1346**, as enacted by PL 1999, c. 24, §5, is amended to
35 read:

36 **§1346. Sentencing alternative of unconditional discharge**

37 A convicted person who is either eligible for the imposition of a sentence alternative
38 that includes a period of probation under section 1201, subsection 1 or is ineligible for the
39 imposition of such a sentence alternative solely by operation of section 1201, subsection
40 1, paragraph A-1 and for whom a court determines that no other authorized sentencing
41 alternative is appropriate punishment must be sentenced by the court to an unconditional

1 discharge. A sentence of unconditional discharge is for all purposes a final judgment of
2 conviction.

3 **Sec. 27. 30-A MRSA §1659-A, sub-§5**, as enacted by PL 2009, c. 391, §6, is
4 repealed and the following enacted in its place:

5 **5. Crimes.** The following penalties apply to violations of this section.

6 A. An inmate is guilty of the crime of violating a condition of release from the
7 community confinement monitoring program if the inmate intentionally or knowingly
8 violates a condition of release. Violation of this paragraph is a Class D crime.

9 B. An inmate is guilty of the crime of escape from the community confinement
10 program as provided pursuant to Title 17-A, section 755, subsection 1-E.

11 SUMMARY

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

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

25 It authorizes a warrantless arrest based on probable cause for a violation of a
26 condition of release from a community confinement monitoring program pursuant to Title
27 30-A, section 1659-A, subsection A.

28 It amends each of the forms of the Maine Criminal Code crimes of gross sexual
29 assault, unlawful sexual contact and unlawful sexual touching in which the actor is a
30 psychiatrist, psychologist or licensed social worker, or a person purporting to be a
31 psychiatrist, psychologist or licensed social worker, by deleting the current elemental
32 requirement that the patient or client be receiving "mental health therapy" from the actor.

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

38 It amends Title 17-A, section 284, subsection 5 by striking the term "dissemination,"
39 which has no relevance to the crime of possession of sexually explicit material, and by

1 adding the terms "transporting," "exhibiting" and "purchasing," which, like the term
2 "possession," constitute the alternative prohibited conduct elements regarding the
3 sexually explicit visual image or material.

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

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

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

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

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

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

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

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

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

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