

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1567

H.P. 1149

House of Representatives, April 14, 2003

**An Act To Implement Recommendations of the MCJUSTIS Policy
Board Concerning the Drafting of Crimes and Civil Violations
Pursuant to Resolve 1997, Chapter 105, as Amended**

Reported by Representative NORBERT of Portland for the MCJUSTIS Board pursuant to
Resolve 2001, chapter 45.

Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule
218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

2 C. A person who procures any license as provided in this
3 chapter wrongfully or by fraud commits a Class E crime.

4 **Sec. S-19. 32 MRSA §14805, sub-§§9 and 10** are enacted to read:

6 9. **Strict liability.** Except as otherwise specifically
7 provided, violation of this section is a strict liability crime
8 as defined in Title 17-A, section 34, subsection 4-A.

10 10. **Injunctive relief.** The State may bring an action in
11 Superior Court to enjoin a person from violating this chapter,
12 regardless of whether proceedings have been or may be instituted
13 in the District Court or whether civil proceedings to impose a
14 fine have been or may be instituted.

16 **PART T**

18 **Sec. T-1. 34-A MRSA §11227**, as amended by PL 2001, c. 553,
20 §9, is repealed and the following enacted in its place:

22 **§11227. Violation**

24 1. **Failure to register or update information.** A sex
25 offender or sexually violent predator who fails to register or
26 update the information required under this chapter commits a
27 Class D crime.

28 2. **Failure to register or update information; 2nd offense.**
29 A sex offender or sexually violent predator who has one prior
30 conviction for failure to register or update the information
31 required under this chapter commits a Class D crime.

34 3. **Failure to register or update information; 3rd or**
35 **subsequent offense.** A sex offender or sexually violent predator
36 who fails to register or update the information required under
37 this chapter when the sex offender or sexually violent predator
38 has 2 or more prior convictions in this State for violation of
39 this chapter commits a Class C crime.

40 4. **Strict liability.** Violation of this section is a strict
41 liability crime as defined in Title 17-A, section 34, subsection
42 4-A.

44 5. **Prior conviction.** Title 17-A, section 9-A governs the
45 use of prior conviction when determining a sentence.

48 6. **Affirmative defense.** It is an affirmative defense that
49 the failure to register or update information resulted from just

2 cause, except that sex offenders and sexually violent predators
3 convicted from June 30, 1992 to September 17, 1999 may not raise
4 a defense under just cause that they were not aware of the
5 registration requirement.

6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48

PART U

Sec. U-1. 35-A MRSA §703, sub-§4, as amended by PL 1987, c. 490, Pt. A, §2, is repealed and the following enacted in its place:

4. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section by knowingly soliciting, accepting or receiving an unlawful preference from a utility commits a civil violation for which a fine of not more than \$1,000 must be adjudged for each offense.

B. A public utility that offers or grants an unlawful preference commits a civil violation for which a fine of not more than \$1,000 may be adjudged for each offense.

Sec. U-2. 35-A MRSA §7701, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

2. Offense. A person is guilty of unlawful interference with a party line if he that person:

A. Willfully Intentionally or knowingly refuses to surrender the use of a party line to another person in accordance with subsection 1; or

B. Requests the use of a party line on pretext that an emergency exists, knowing that an emergency does not exist.

41 42 43 44 45 46 47 48

PART V

Sec. V-1. 36 MRSA §184, as amended by PL 1989, c. 880, Pt. D, §1, is repealed and the following enacted in its place:

§184. Criminal offenses

1. Failure to collect, account for or pay over tax. A person who is required under this Title to collect, truthfully account for and pay over any tax imposed by this Title and who intentionally fails to collect or truthfully account for or pay

2 liability crime as defined in Title 17-A, section 34, subsection
4 4-A. Notwithstanding Title 17-A, section 1301, the maximum fine
6 under this subsection is not more than \$25,000 per violation.

8 PART Y

10 **Sec. Y-1. 14 MRSA §5604** is enacted to read:

12 **§5604. Monetary sanctions**

14 1. Designation. A monetary sanction authorized by law and
16 imposed by the court for a civil violation may be designated a
18 "fine," "penalty," "forfeiture," "surcharge" or "assessment" or
20 may be designated by another similar term.

22 2. Civil violation. Use of the terminology under
24 subsection 1 in describing a monetary sanction for a civil
26 violation does not limit or prohibit the application of Title
28 17-A, section 4-B, subsection 3.

30 **Sec. Y-2. Effective date.** This Act takes effect July 1, 2004.

32 SUMMARY

34 This bill is the report of the Maine Criminal Justice
36 Information System, MCJUSTIS, Policy Board pursuant to Resolve
38 2001, chapter 45.

40 MCJUSTIS is an information clearinghouse, the purpose of
42 which is to provide access to shared uniform information on
44 criminal defendants and crime data. In order for the information
46 to be uniform and accurate, it must be entered and accessed by
48 all participants in the same way. To ensure that crimes are
entered accurately, the statutes defining each crime must be
precise and narrow enough to ensure that citing to the specific
statutory unit will be the same as describing the elements and
class of that exact crime. There must be a one-to-one
relationship between each crime and the statutory unit that
defines it. The 120th Legislature enacted Public Law 2001,
chapter 383, which revised the Maine Criminal Code to establish
that one-to-one relationship for each crime and its unique
statutory cite. This bill revises crimes and civil violations in
all other Titles of the Maine Revised Statutes that require
amendment to ensure that each crime and civil violation has its
own unique statutory cite.

2 The original resolve directed the MCJUSTIS policy board to
propose only those changes to the laws that are necessary to
4 result in a unique statutory cite for each violation. In working
through each crime and civil violation in the Maine Revised
6 Statutes, the MCJUSTIS policy board and staff used drafting
standards that were adopted in Public Law 2001, chapter 383 and
8 sought input from state department and agency representatives,
including assistance from the Attorney General's office.
10 Comments and drafting suggestions from these departments were
incorporated into this bill.

12 In addition to the MCJUSTIS formatting changes, Public Law
2001, chapter 383 identified several drafting changes that were
14 substantive in nature and necessary to accomplish the MCJUSTIS
policy board's directive. These changes also apply in this
16 bill. Specifically, the category of substantive changes that are
necessary relates to how to handle facts about a crime that are
18 not technically elements of the crime but are currently used for
determining the class of crime for sentencing purposes. The
20 statute currently does not require that such "enhancers" be
proved beyond a reasonable doubt by the prosecution. The Law
22 Court has required, however, that the prosecution must prove such
facts beyond a reasonable doubt if the facts are to be used to
24 make the underlying crime a higher class than it would otherwise
be or would require a specific punishment. This bill
26 incorporates each enhancer into the elements of the crime that it
enhances. This results in the statutory requirement that the
28 enhancer be proved beyond a reasonable doubt in order to secure a
conviction for that crime at that class. The enhancers that this
30 bill includes are for prior convictions. When a person has a
prior conviction for committing the same or another crime, that
32 prior conviction may sometimes be used to enhance the penalty,
but the State must plead and prove to a jury that the prior
34 conviction did occur, instead of the court making that
determination in order to enhance a crime at the point of
36 sentencing.

38 The bill adopts the standard language used in Public Law
2001, chapter 383 for referring to prior convictions when prior
40 convictions are used to affect one class of a newly committed
crime. Provisions in the bill that include these prior
42 convictions cite the Maine Revised Statutes, Title 17-A, section
9-A, which provides general rules for using prior convictions to
44 enhance a new crime. These general rules are consistent with
most existing provisions concerning the use of prior
46 convictions.

48 The bill rewrites as an element of a crime any fact
regarding the crime that is used to establish the class for the
50 crime or the appropriate sentence. This is a substantive change,

2 although it will make little difference in how cases are
currently prosecuted.

4 Civil violations are frequently prosecuted in a different
manner than crimes. It is not uncommon for a prosecution for a
6 civil violation to be initiated after the violator has committed
several civil violations. At the time that violator comes to
8 court, the prosecutor may charge the violator with more than one
violation. These violations may be used to enhance the
10 violator's penalty if the violator is adjudicated as having
committed multiple violations. Instead of using the prior
12 conviction language explained above for committing multiple
crimes, the bill specifies that enhanced penalties for civil
14 violations may be applied if the violator has previously violated
that statute or another statute, as specified.

16 The bill identifies those crimes that do not require a
culpable state of mind as strict liability crimes as defined in
18 Title 17-A, section 34, subsection 4-A. This distinction is not
made for civil violations.

22 The bill includes language to make the statutes gender
neutral and to correct and update grammar. "Exceeds" is changed
24 to "more than," and "under" is changed to "less than." These
changes are made for consistency and are not intended to be
26 substantive.

28 The bill changes reference to all monetary sanctions
authorized by law, including fines, forfeitures, penalties or
30 surcharges imposed by the court for a civil violation, to "fine"
unless the sanction is payable to an entity other than the State,
32 in which case the sanction continues to be identified as a civil
penalty. A general provision that indicates this change is added
34 to Title 14. Current law distinguishes between monetary
sanctions for civil violations based on the amount of the
36 penalty. If the sanction is less than \$1,000, it is called a
civil forfeiture. If the sanction is more than \$1,000, it is
38 called a civil penalty. Because "forfeiture" frequently carries
a different meaning under the statutes and because a distinction
40 based upon the monetary amount of a sanction appears to be
unknown to many and often used inconsistently even by those aware
42 of the distinction, the bill instead uses "fine" to refer to all
monetary sanctions for civil violations, just as the term is used
44 for crimes. Again, the only exception to this in the bill is
when the monetary sanction is to be paid to someone other than
46 the State, in which case "civil penalty" continues to be used to
distinguish to whom the sanction is paid.

48

2 The bill also adds an effective date of July 1, 2004 in
order to give district attorneys, the courts and others adequate
time to update their charging instruments and computer systems.