

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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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**

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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 A-1. An employer of a person who violates subsection 1, 2,  
3 3 or 4 commits a civil violation for which a fine of not  
4 less than \$50 and not more than \$1,500, plus court costs,  
5 must be adjudged. The fine may not be suspended.

6 B. A person who violates subsection 5 5-A or 5-C commits a  
7 civil violation for which the following ~~forfeitures~~ fines  
8 may be adjudged.

10 (1) For a first offense, a ~~forfeiture~~ fine of not less  
11 than \$100 and not more than \$300 may be imposed. The  
12 judge, as an alternative to or in addition to the  
13 ~~forfeiture~~ fine permitted by this subparagraph, may  
14 assign the violator to perform specified work for the  
15 benefit of the State, the municipality or other public  
16 entity or a charitable institution.

18 (2) For a 2nd offense, a ~~forfeiture~~ fine of not less  
19 than \$200 and not more than \$500 may be imposed. The  
20 judge, as an alternative to or in addition to the  
21 ~~forfeiture~~ fine permitted by this subparagraph, may  
22 assign the violator to perform specified work for the  
23 benefit of the State, the municipality or other public  
24 entity or a charitable institution.

26 (3) For all subsequent offenses, a ~~forfeiture~~ fine of  
27 \$500 must be imposed and that ~~forfeiture~~ fine may not  
28 be suspended. The judge, in addition to the ~~forfeiture~~  
29 fine permitted by this subparagraph, may assign the  
30 violator to perform specified work for the benefit of  
31 the State, the municipality or other public entity or a  
32 charitable institution.

34 C. A person who violates subsection 6 commits a civil  
35 violation for which a ~~forfeiture~~ fine of not less than \$50  
36 ~~ne~~ and not more than \$200 may be adjudged for any one  
37 offense.

38 **Sec. L-10. 22 MRSA §1593**, as enacted by PL 1977, c. 696,  
39 §186, is repealed and the following enacted in its place:

42 **§1593. Sale and use of fetuses**

44 **1. Prohibition.** A person may not use, transfer, distribute  
45 or give away a live human fetus, whether intrauterine or  
46 extrauterine, or any product of conception considered live born,  
47 for scientific experimentation or for any form of experimentation.  
48

2       2. Consenting, aiding or assisting. A person may not  
consent to violating subsection 1 or aid or assist another in  
violating subsection 1.

4  
6       3. Penalty. A person who violates this section commits a  
Class C crime. Violation of this section is a strict liability  
crime as defined in Title 17-A, section 34, subsection 4-A.

8  
10       **Sec. L-11. 22 MRSA §1597-A, sub-§8,** as enacted by PL 1989, c.  
573, §2, is repealed and the following enacted in its place:

12       8. Violations; penalties. The following penalties apply to  
violations of this section.

14  
16       A. A person may not knowingly perform or aid in the  
performance of an abortion in violation of this section. A  
person who violates this paragraph commits a Class D crime.

18  
20       B. An attending physician or counselor may not knowingly  
fail to perform any action required by this section. A  
person who violates this paragraph commits a civil violation  
for which a fine of not more than \$1,000 may be adjudged for  
each violation.

24  
26       **Sec. L-12. 22 MRSA §2155,** as amended by PL 1995, c. 276, §2,  
is repealed.

28       **Sec. L-13. 22 MRSA §2155-A** is enacted to read:

30       **§2155-A. Prohibitions and penalties**

32       1. Prohibitions. A person may not:

34       A. Manufacture, sell or deliver, hold or offer for sale any  
food that is adulterated or misbranded;

36  
38       B. Violate paragraph A after having previously violated  
this subsection;

40       C. Adulterate or misbrand any food;

42       D. Violate paragraph C after having previously violated  
this subsection;

44  
46       E. Receive in commerce any food that is adulterated or  
misbranded, or deliver or proffer delivery of adulterated or  
misbranded food for pay or otherwise;

48  
50       F. Violate paragraph E after having previously violated  
this subsection;

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.