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## **An Act To Make Certain Statutory Changes in Light of the New Maine Rules of Unified Criminal Procedure**

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

**Sec. 1. 1 MRSA §71, sub-§12**, as amended by PL 1983, c. 606, is further amended to read:

**12. Statutory time periods.** The statutory time period for the performance or occurrence of any act, event or default ~~which~~that is a prerequisite to or is otherwise involved in or related to the commencement, prosecution or defense of any civil or criminal action or other judicial proceeding or any action or proceeding of the Public Utilities Commission ~~shall be~~is governed by and computed under Rule 6(a) of the Maine Rules of Civil Procedure as amended from time to time, when the nature of such action or proceeding is civil, and under Rule 45(a) of the Maine Rules of Unified Criminal Procedure, as amended from time to time, when the nature of such action or proceeding is criminal.

**Sec. 2. 14 MRSA §3142, sub-§3**, as amended by PL 2003, c. 193, §3, is further amended to read:

**3. Purge of contempt.** The court shall provide an opportunity for the defendant to purge the contempt by complying with the court's order to pay or ~~to~~with an amended order to pay. The provisions of the Maine Rules of Civil Procedure, Rule 66 and the ~~Maine Rules of Criminal Procedure, Rule 42~~ do not apply to proceedings initiated under this section.

**Sec. 3. 15 MRSA §1, sub-§2**, as amended by PL 2015, c. 100, §1, is repealed.

**Sec. 4. 15 MRSA §101-D, sub-§2**, as enacted by PL 2009, c. 268, §3, is amended to read:

**2. Insanity; abnormal condition of the mind.** The court may for cause shown order that the defendant be evaluated with reference to insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's mental state at the time of the crime with reference to criminal responsibility under Title 17-A, section 39 and abnormal condition of the mind under Title 17-A, section 38.

(1) When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances of the crime and provide a report of its evaluation to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's mental state at the time of the crime, the report must so state and must set forth recommendations as to the nature and scope of any further examination.

(2) The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination or unless the attorney for the State has agreed that the report need not be forwarded to the State except as set forth in subparagraph (3), to the attorney for the State.

(3) If the court orders an examination under this paragraph over the objection of the defendant, any report filed by the State Forensic Service may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a).

B. If the defendant enters a plea of not criminally responsible by reason of insanity, the court shall order evaluation under paragraph A.

C. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If further examination is ordered pursuant to paragraph D, the report of that examination must be filed within 90 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

D. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. An order for further evaluation may designate the specialty of the person to perform the evaluation. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination, to the attorney for the State.

The court may order an examination under this paragraph over the objection of the defendant, but any report filed by the State Forensic Service must be impounded and may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind

the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a).

**Sec. 5. 15 MRSA §224-A, sub-§2**, as amended by PL 2013, c. 566, §3, is further amended to read:

**2. Funding.** The Extradition and Prosecution Expenses Account in each prosecutorial district is funded by bail forfeited to and recovered by the State pursuant to the Maine Rules of Unified Criminal Procedure, Rule 46. Whenever bail is so forfeited and recovered by the State and if it is not payable as restitution pursuant to Title 17-A, section 1329, subsection 3-A, the district attorney shall determine whether it or a portion of it is deposited in the Extradition and Prosecution Expenses Account for that district attorney's prosecutorial district, but in no event may the account exceed \$30,000. Any bail so forfeited and recovered and not deposited in the Extradition and Prosecution Expenses Account must be deposited in the General Fund. Any unexpended balance in the Extradition and Prosecution Expenses Account of a prosecutorial district established by this section may not lapse but must be carried forward into the next year.

**Sec. 6. 15 MRSA §454**, as amended by PL 2007, c. 539, Pt. JJ, §6, is further amended to read:

**§ 454. Murder or felony murder; filing copies of proceedings; expenses**

Whenever any person is convicted of murder or felony murder, a copy of the Maine Rules of Unified Criminal Procedure, Rule 11, if applicable, trial testimony and charge of the presiding justice, certified by the Official Court Reporter who created a transcript of the reporter's stenographic notes or the transcriber who created a transcript from the electronically recorded record, must be filed with the clerk of the court where that trial is held, and the expense for the transcript must be paid by the State. A copy of the Maine Rules of Unified Criminal Procedure, Rule 11, if applicable, trial testimony and charge of the presiding justice, certified by the Official Court Reporter who created a transcript of the reporter's stenographic notes or the transcriber who created a transcript from the electronically recorded record, must be furnished by the clerk of court to the Secretary of State at no charge for use in any pardon hearing before the Governor, when the individual is indigent.

**Sec. 7. 15 MRSA §652, sub-§6**, as enacted by PL 2011, c. 214, §2 and affected by §6, is amended to read:

**6. Search warrants.** Warrants issued pursuant to section 55 and the Maine Rules of Unified Criminal Procedure, ~~Rule~~Rules 41, 41B and 41C and administrative inspection warrants issued pursuant to the Maine Rules of Civil Procedure, Rule 80E.

**Sec. 8. 15 MRSA §812, sub-§1**, as enacted by PL 1981, c. 685, is amended to read:

**1. Legislative intent and findings.** The Legislature finds that there is citizen dissatisfaction with plea bargaining ~~which~~that has resulted in some criticism of the criminal justice process. The Legislature further finds that part of the dissatisfaction is caused because victims of crimes and law enforcement officers who respond to those crimes have no subsequent contact with the cases as they proceed through the courts for judicial disposition. Victims and law enforcement officers are many times

not informed by prosecutors of plea agreements ~~which~~that are to be submitted to the court for approval or rejection under existing Maine Rules of Unified Criminal Procedure. It is the intent of this section to alleviate these expressions of citizen dissatisfaction and to promote greater understanding by prosecutors of citizens' valid concerns. This is most likely to be accomplished by citizens and law enforcement officers being informed of the results of plea negotiations before they are submitted to the courts. This notification will in no way affect the authority of the ~~judge~~court to accept, reject or modify the terms of the plea agreement.

**Sec. 9. 15 MRSA §1003, sub-§5-A**, as amended by PL 2003, c. 15, §1, is further amended to read:

**5-A. Failure to appear.** "Failure to appear" includes a failure to appear at the time or place required by a release order and the failure to surrender into custody at the time and place required by a release order or by the Maine Rules of Unified Criminal Procedure, Rule 32(a) and Rule ~~38(e)~~38(d).

**Sec. 10. 15 MRSA §1003, sub-§11** is enacted to read:

**11. Unified Criminal Docket.** "Unified Criminal Docket" means the unified criminal docket established by the Supreme Judicial Court.

**Sec. 11. 15 MRSA §1004**, as amended by PL 2011, c. 336, §1, is further amended to read:

#### **§ 1004. Applicability and exclusions**

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229, post-conviction review proceedings under sections 2121 to 2132, probation revocation proceedings under Title 17-A, sections 1205 to ~~1207~~1208, supervised release revocation proceedings under Title 17-A, section 1233 or administrative release revocation proceedings under Title 17-A, sections 1349 to 1349-F, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively. This chapter does not apply to a person arrested for a juvenile crime as defined in section 3103 or a person under 18 years of age who is arrested for a crime defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section 3103.

**Sec. 12. 15 MRSA §1028**, as amended by PL 2003, c. 66, §1, is further amended to read:

#### **§ 1028. De novo determination of bail under section 1026**

**1. By defendant in custody.** Any defendant who is in custody as a result of a decision of ~~a Judge of the District Court~~ or a bail commissioner acting under section 1026 may file a petition ~~the Superior Court~~with the Unified Criminal Docket for a de novo determination of bail. ~~The District Court Judge~~ or bail commissioner making the decision shall advise the defendant of the right to obtain a de novo determination ~~in the Superior Court~~.

A. If the defendant chooses to have a de novo determination of bail, the defendant must be furnished with a petition and, upon execution of the petition and without the issuance of any writ or other process, the sheriff of the county in which the decision was made shall provide for the transportation of the defendant together with the petition and all papers relevant to the petition or copies of the petition or papers to the ~~Superior Court~~ court.

If no ~~Justice of the Superior Court~~ justice or judge will be available within 48 hours, excluding Saturdays, Sundays and holidays, arrangements must be made for a de novo determination of bail in the nearest county in which a ~~Justice of the Superior Court~~ justice or judge is then sitting. The defendant's custodian shall provide transportation to the ~~Superior Court~~ court as required by this chapter without the issuance of any writ or other process.

If there is no ~~Justice of the Superior Court~~ justice or judge available, the defendant must be retained in custody until the petition can be considered.

B. The petition and such other papers as may accompany it must be delivered to the clerk of the ~~Superior Court~~ Unified Criminal Docket to which the defendant is transported and upon receipt the clerk shall notify the attorney for the State. The ~~Superior Court~~ Justice court shall review the petition de novo and set bail in any manner authorized by section 1026.

C. Upon receipt of a pro se petition or upon oral or written request of the attorney for the defendant, the clerk shall set a time for hearing and provide oral or written notice to the attorney for the State. The hearing must be scheduled for a time not less than 24 hours nor more than 48 hours after the clerk notifies the attorney for the State.

**2. By defendant not in custody.** Any defendant who is not in custody but who is aggrieved by a decision of a ~~Judge of the District Court~~ or a bail commissioner acting under section 1026 as to the amount or conditions of bail set may file a petition ~~the Superior Court~~ with the Unified Criminal Docket for a de novo determination of bail. ~~The Superior Court Justice~~ A justice or judge shall review the petition de novo and set bail in any manner authorized by section 1026. The petition must be considered as scheduled by the clerk.

**3. No further relief.** The de novo determination by the ~~Superior Court~~ a justice or judge under this section is final and no further relief is available.

**Sec. 13. 15 MRSA §1028-A** is enacted to read:

**§ 1028-A. De novo determination of bail set by a justice or judge acting under section 1026**

**1. By defendant.** Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file a petition with the Unified Criminal Docket for a de novo determination of bail by another

justice or judge in accordance with the procedures set forth in Rule 46(d) of the Maine Rules of Unified Criminal Procedure. The court making the initial decision shall advise the defendant of the right to obtain a de novo determination of bail.

**2. No further relief.** The de novo determination by a justice or judge under this section is final and no further relief is available.

**Sec. 14. 15 MRSA §1029, sub-§1**, as enacted by PL 1987, c. 758, §20, is repealed and the following enacted in its place:

**1. Petition for review.** Any defendant in custody following a Harnish bail proceeding under section 1027 may petition a single Justice of the Supreme Judicial Court for review under this section and the additional procedures set forth in the Maine Rules of Unified Criminal Procedure, Rule 46(e)(1).

**Sec. 15. 15 MRSA §1030, last ¶**, as amended by PL 1995, c. 356, §7, is further amended to read:

An attorney for the State or a law enforcement officer familiar with the charges must be present in District Court at all proceedings governed by the Maine Rules of Unified Criminal Procedure, Rule 5, at which bail is being set.

**Sec. 16. 15 MRSA §1094, 2nd ¶**, as enacted by PL 1991, c. 393, §4, is amended to read:

If the obligation of the defendant or any surety has been reduced to judgment pursuant to the Maine Rules of Unified Criminal Procedure, Rule 46, the following provisions apply to the enforcement of the obligation.

**Sec. 17. 15 MRSA §1097, sub-§3**, as amended by PL 1999, c. 731, Pt. ZZZ, §13 and affected by §42, is further amended to read:

**3. Appeal.** A defendant in custody as a result of an order issued under this section ~~by the District Court may appeal to the Superior Court and a defendant in custody as a result of an order issued under this section by the Superior Court may appeal to a single Justice of the Supreme Judicial Court.~~ The appeal must be in accordance with the procedures set forth in ~~section 1028, as far as applicable, except that the~~ Maine Rules of Unified Criminal Procedure, Rule 46(e)(2). The review is limited to a review of the record to determine whether the order was rationally supported by the evidence. The determination by the ~~court or single justice~~ is final and no further relief is available.

**Sec. 18. 15 MRSA §1097, sub-§4**, as enacted by PL 1995, c. 356, §19, is amended to read:

**4. Limitations on bail.** ~~When a District Court judge~~court has, after revocation on a complaint, ordered the defendant held without bail, the defendant is not entitled to have bail set when the same or more serious charges are brought by indictment or, if waived, by information or complaint, for the same underlying conduct. ~~If the defendant has not previously appealed the District Court bail revocation, the Superior Court may, upon request of the defendant, entertain the appeal at the defendant's arraignment.~~If different and lesser charges are later brought by the State for the same underlying conduct, the new lesser charges may constitute a change of circumstances pursuant to section 1026, subsection 3, paragraph C.

**Sec. 19. 15 MRSA §1121, sub-§2**, as enacted by PL 2011, c. 39, §1, is amended to read:

**2. Custody of sexually explicit material.** Sexually explicit material subject to a criminal investigation or proceeding must remain in the care, custody and control of the attorney for the State or the court. ~~Notwithstanding provisions of the Maine Rules of Criminal Procedure, Rule 16 to the contrary, in~~In any criminal proceeding the attorney for the State may not release to the defendant a copy, photograph, duplicate or any other reproduction of any sexually explicit material, as long as the attorney for the State makes the sexually explicit material reasonably available to the defendant.

**Sec. 20. 15 MRSA §2115-A, sub-§2-A**, as repealed and replaced by PL 1999, c. 731, Pt. ZZZ, §19 and affected by §42, is repealed.

**Sec. 21. 15 MRSA §2115-A, sub-§2-B**, as amended by PL 1999, c. 731, Pt. ZZZ, §20 and affected by §42, is further amended to read:

**2-B. Appeal from the denial of a Rule 35 motion.** If a motion for correction or reduction of a sentence brought by the attorney for the State under Rule 35 of the Maine Rules of Unified Criminal Procedure is denied in whole or in part, an appeal may be taken by the State from the adverse order of ~~the trial court~~ to the Supreme Judicial Court sitting as the Law Court.

**Sec. 22. 15 MRSA §2115-A, sub-§4**, as amended by PL 2001, c. 17, §4, is further amended to read:

**4. Time.** The time for taking and the manner and any conditions for the taking of an appeal pursuant to subsection 1, ~~2, 2-A~~ or 2-B are as the Supreme Judicial Court provides by rule, and an appeal taken pursuant to subsection 1 must also be taken before the defendant has been placed in jeopardy. An appeal taken pursuant to this subsection must be diligently prosecuted.

**Sec. 23. 15 MRSA §2115-A, sub-§5**, as amended by PL 1995, c. 47, §3, is further amended to read:

**5. Approval of Attorney General.** In any appeal taken pursuant to subsection 1, ~~2, 2-A~~ or 2-B, the written approval of the Attorney General is required; ~~provided~~except that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted, the written approval may be filed at a later date.

**Sec. 24. 15 MRSA §2138, sub-§1**, as enacted by PL 2001, c. 469, §1, is amended to read:

**1. Filing motion.** A person authorized in section 2137 who chooses to move for DNA analysis shall file the motion in the underlying criminal proceeding. The motion must be assigned to the trial judge or justice who imposed the sentence unless that judge or justice is unavailable, in which case the appropriate chief judge or chief justice shall assign the motion to another judge or justice. Filing and service must be made in accordance with Rule 49 of the Maine Rules of Unified Criminal Procedure.

**Sec. 25. 15 MRSA §2138, sub-§10**, as repealed and replaced by PL 2005, c. 659, §5 and affected by §6, is amended to read:

**10. Standard for granting new trial; court's findings; new trial granted or denied.**

If the results of the DNA testing under this section show that the person is not the source of the evidence, the person authorized in section 2137 must show by clear and convincing evidence that:

A. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person show that the person is actually innocent. If the court finds that the person authorized in section 2137 has met the evidentiary burden of this paragraph, the court shall grant a new trial;

B. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial; or

C. All of the prerequisites for obtaining a new trial based on newly discovered evidence are met as follows:

(1) The DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial;

(2) The proffered DNA test results have been discovered by the person since the trial;

(3) The proffered DNA test results could not have been obtained by the person prior to trial by the exercise of due diligence;

(4) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are material to the issue as to who is responsible for the crime for which the person was convicted; and

(5) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are not merely cumulative or impeaching, unless it is clear that such impeachment would have resulted in a different verdict.

The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person authorized in section 2137 a new trial under this section. If the court finds that the person authorized in section 2137 has met the evidentiary burden of paragraph A, the court shall grant a new trial.

For purposes of this subsection, "all the other evidence in the case, old and new," means the evidence admitted at trial; evidence admitted in any hearing on a motion for new trial pursuant to Rule 33 of the Maine Rules of Unified Criminal Procedure; evidence admitted at any collateral proceeding, state or federal; evidence admitted at the hearing conducted under this section relevant to the DNA testing and analysis conducted on the sample; and evidence relevant to the identity of the source of the DNA sample.

**Sec. 26. 15 MRSA §2151, sub-§2**, as amended by PL 1999, c. 731, Pt. ZZZ, §23 and affected by §42, is further amended to read:

**2. Plea agreements.** In any case in which the particular disposition involving imprisonment was imposed as a result of a court accepting a recommendation of the type specified in the Maine Rules of Unified Criminal Procedure, Rule 11A, subsection (a)(2) or (a)(4); or

**Sec. 27. 15 MRSA §3102**, as amended by PL 1989, c. 741, §1, is further amended to read:

### **§ 3102.Venue**

Proceedings in cases brought under the provisions of section 3101 must be commenced in accordance with Rule 21 of the Maine Rules of Unified Criminal Procedure.

**Sec. 28. 15 MRSA §3202**, as amended by PL 2005, c. 328, §8, is further amended to read:

### **§ 3202.Arrest warrants for juveniles**

An arrest warrant for a juvenile must be issued in the manner provided by Rule 4 of the Maine Rules of Unified Criminal Procedure, except that affidavits alone must be presented and a petition is not necessary. Following arrest, the juvenile is subject to the procedures specified in sections 3203-A and 3301.

**Sec. 29. 15 MRSA §3302**, as amended by PL 1989, c. 741, §11, is further amended to read:

### **§ 3302.Petition, form and contents**

The form and content of a petition in any proceeding brought under chapter 503 must be substantially the same as the form and content of a complaint under Rule 3, ~~of the~~ Maine Rules of Unified Criminal Procedure.

**Sec. 30. 15 MRSA §3305, first ¶**, as amended by PL 2013, c. 234, §9, is further amended to read:

A juvenile must personally appear, and the juvenile or the juvenile's counsel may enter an answer asserting the absence of criminal responsibility by reason of insanity or denying, admitting or not contesting the allegations of the petition, in accordance with Rules 11 and 11A, ~~of the~~ Maine Rules of Unified Criminal Procedure, except that, if the case has been continued for investigation and for a bind-over hearing pursuant to section 3101, subsection 4, paragraph A, the court may not accept an answer to the petition other than a denial or assertion of the absence of criminal responsibility by reason of insanity until the court has conducted a bind-over hearing and has decided to retain jurisdiction of the juvenile in the Juvenile Court or until the prosecuting attorney has withdrawn the request to have the juvenile tried

as an adult. An answer may be both a denial and an assertion of the absence of criminal responsibility by reason of insanity. If the juvenile or the juvenile's counsel declines to enter an answer, the court shall enter an answer of denial.

**Sec. 31. 15 MRSA §3309**, as amended by PL 1989, c. 741, §16, is further amended to read:

### **§ 3309.Procedure**

To the extent not inconsistent with or inapplicable to Part 6, procedure in juvenile proceedings must be in accordance with the Maine Rules of Unified Criminal Procedure. The Supreme Judicial Court may promulgate rules for juvenile proceedings as provided under Title 4, section 8.

**Sec. 32. 15 MRSA §3311-C, sub-§4**, as enacted by PL 2011, c. 384, §3, is amended to read:

**4. Rights of juvenile at hearing.** The juvenile at a hearing under this section or section 3311-B must be afforded the opportunity to confront and cross-examine witnesses against the juvenile, to present evidence on the juvenile's own behalf and to be represented by counsel. If the juvenile who was granted deferred disposition pursuant to section 3311-B cannot afford counsel, the court shall appoint counsel for the juvenile. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

**Sec. 33. 15 MRSA §5826, sub-§2**, as amended by PL 1999, c. 408, §3, is further amended to read:

**2. Commencement of criminal forfeiture action.** Property subject to forfeiture may be proceeded against by indictment of the grand jury or by complaint in the District Court in any related criminal proceeding in which a person with an interest in the property has been simultaneously charged with a violation of Title 17-A, chapter 45. At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that property is subject to criminal forfeiture. Discovery in the criminal action must be as provided for by the Maine Rules of Unified Criminal Procedure.

**Sec. 34. 16 MRSA §53-C, sub-§3, ¶E**, as enacted by PL 1999, c. 369, §1, is amended to read:

E. Evidence of an exculpatory nature must be disclosed to the criminal defendants pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16.

**Sec. 35. 17-A MRSA §101, sub-§1**, as amended by PL 1997, c. 185, §1, is further amended to read:

**1.** The State is not required to negate any facts expressly designated as a "defense," or any exception, exclusion or authorization that is set out in the statute defining the crime by proof at trial, unless the existence of the defense, exception, exclusion or authorization is in issue as a result of evidence admitted at the trial that is sufficient to raise a reasonable doubt on the issue, in which case the State must disprove its existence beyond a reasonable doubt. This subsection does not require a trial ~~judge~~court to instruct on an issue that has been waived by the defendant. The subject of waiver is addressed by the Maine Rules of Unified Criminal Procedure.

**Sec. 36. 17-A MRSA §960, sub-§2**, as enacted by PL 2001, c. 461, §2, is amended to read:

2. Property subject to forfeiture that is not yet the subject of a final order pursuant to section 959 may be proceeded against by indictment or superseding indictment of a grand jury in any related criminal proceeding in which one or more persons with an interest in the property have been simultaneously indicted for one or more violations of this chapter. At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that that property is subject to criminal forfeiture. Upon commencement of a criminal forfeiture by indictment or information of any property that may be the subject of any pending civil action commenced pursuant to section 959, the civil action must be immediately stayed and subrogated to the criminal forfeiture action. Discovery in the criminal action must be as provided by the Maine Rules of Unified Criminal Procedure.

**Sec. 37. 17-A MRSA §1172, sub-§1, ¶B-1**, as enacted by PL 1997, c. 615, §1, is amended to read:

B-1. The proposed dismissal or filing of an indictment, information or complaint pursuant to the Maine Rules of Unified Criminal Procedure, Rule 48, before that action is taken;

**Sec. 38. 17-A MRSA §1173**, as enacted by PL 1995, c. 680, §5, is amended to read:

### **§ 1173. Plea agreement procedure**

When a plea agreement is submitted to the court pursuant to the Maine Rules of Unified Criminal Procedure, Rule 11A (b), the attorney for the State shall disclose to the court any and all attempts made to notify each victim of the plea agreement and any objection to the plea agreement by a victim. A victim who is present in court at the submission of the plea may address the court at that time.

**Sec. 39. 17-A MRSA §1176, sub-§4**, as enacted by PL 2007, c. 475, §13, is amended to read:

**4. Limited disclosure pursuant to discovery.** ~~Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an~~ 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.

**Sec. 40. 17-A MRSA §1206, sub-§4**, as amended by PL 1993, c. 234, §1, is further amended to read:

4. If a hearing is held, the person on probation must be afforded the opportunity to confront and cross-examine witnesses against the person, to present evidence on that person's own behalf and to be represented by counsel. If the person on probation can not afford counsel, the court shall appoint counsel for the person. Assignment of counsel, to the extent not covered in this subsection, and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

**Sec. 41. 17-A MRSA §1207**, as amended by PL 2003, c. 17, §5, is repealed and the following enacted in its place:

### **§ 1207. Review**

**1. Discretionary appeal to the Law Court.** Review of a revocation of probation pursuant to section 1206 must be by appeal to the Law Court. A person whose probation is revoked may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

**2. Assignment and withdrawal of counsel.** Assignment and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

**Sec. 42. 17-A MRSA §1253, sub-§13,** as enacted by PL 2003, c. 711, Pt. A, §18, is amended to read:

**13.** If a court imposes a sentencing alternative pursuant to section 1152 that includes a term of imprisonment, in setting the appropriate length of that term, as well as an unsuspended portion of that term, if any, the court may not consider the potential impact of deductions under subsections 2, 3, 3-B, 4, 5, 8, 9 and 10 except in the context of a plea agreement in which both parties are recommending to the court a particular disposition under the Maine Rules of Unified Criminal Procedure, Rule 11-A.

**Sec. 43. 17-A MRSA §1348-B, sub-§4,** as enacted by PL 2003, c. 711, Pt. A, §19, is amended to read:

**4.** The person at a hearing under this section or section 1348-A must be afforded the opportunity to confront and cross-examine witnesses against the person, to present evidence on that person's own behalf and to be represented by counsel. If the person who was granted deferred disposition pursuant to section 1348-A can not afford counsel, the court shall appoint counsel for the person. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

**Sec. 44. 22 MRSA §3022, sub-§13, ¶B,** as enacted by PL 2001, c. 221, §5, is amended to read:

B. A person may inspect and obtain a copy of communications identified in subsection 8, paragraphs C and D, except work product as defined in Rule ~~16(b)(3)~~16(a)(3) of the Maine Rules of Unified Criminal Procedure, as long as the communications would otherwise be open to inspection and release if in the possession or custody of the Department of the Attorney General or the office of a district attorney.

**Sec. 45. 25 MRSA §1542-A, sub-§1, ¶D,** as enacted by PL 1987, c. 512, §3, is amended to read:

D. Named in a Maine Rules of Unified Criminal Procedure 16A order ~~which~~that directs that such person's fingerprints be taken;

## SUMMARY

This bill implements the recommendations of the Criminal Law Advisory Commission and makes the following changes to the Maine Revised Statutes.

1. It replaces all references and citations to the former Maine Rules of Criminal Procedure with references and citations to the new Maine Rules of Unified Criminal Procedure.

2. It repeals, amends or enacts provisions to provide that the Superior Court will no longer be called upon to exercise its jurisdiction to hear appeals and petitions from the District Court.

3. It removes the reference to Rule 42 of the Maine Rules of Criminal Procedure in the Maine Revised Statutes, Title 14, section 3142, subsection 3.

4. It replaces the word "judge" with the word "court" in certain provisions in Title 15 and Title 17-A because modern usage does not employ the word "judge" to refer simultaneously to both a justice and a judge. Instead, the word "court" is employed.

5. It removes references to Rule 16 of the Maine Rules of Criminal Procedure in certain provisions in Title 15 and Title 17-A.

6. It amends certain provisions in Title 15 to enhance clarity and consistency.