



# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1765

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S.P. 700

In Senate, February 11, 2014

### An Act To Establish the Criminal Law Revision Commission

(EMERGENCY)

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Reported by Senator GERZOFSKY of Cumberland for the Criminal Code Revision Planning Committee pursuant to Joint Order, S.P. 31.

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** certain criminal laws within the Maine Revised Statutes are ambiguous  
4 and in some cases contradictory, making them ineffective or unduly burdensome for the  
5 judicial system; and

6           **Whereas,** the Criminal Law Advisory Commission does not have the resources or  
7 the clear authority to conduct a comprehensive review of Maine's criminal laws and make  
8 policy recommendations for changes to those laws; and

9           **Whereas,** the immediate creation of an organization to review and revise Maine's  
10 criminal laws is essential to ensure Maine's criminal justice system functions fairly and  
11 effectively and the Legislature's policy goals are achieved; and

12           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
13 the meaning of the Constitution of Maine and require the following legislation as  
14 immediately necessary for the preservation of the public peace, health and safety; now,  
15 therefore,

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

17           **Sec. 1. 5 MRSA §12004-I, sub-§52-C** is enacted to read:

18           **52-C.**

19 <u>Judiciary:</u>	<u>Criminal Law</u>	<u>Legislative Per</u>	<u>17-A MRSA §1371</u>
20 <u>Criminal Law</u>	<u>Revision</u>	<u>Diem and Expenses</u>	
21	<u>Commission</u>	<u>for Legislators and</u>	
22		<u>Expenses Only for</u>	
23		<u>Other Members</u>	

24           This subsection is repealed October 1, 2017.

25           **Sec. 2. 17-A MRSA c. 56** is enacted to read:

26   **CHAPTER 56**

27   **CRIMINAL LAW REVISION COMMISSION**

28           **§1371. Establishment**

29           The Criminal Law Revision Commission, referred to in this chapter as "the  
30 commission," is established in Title 5, section 12004-I, subsection 52-C.

31           **§1372. Purposes**

32           The commission is established to examine all criminal statutes within the Maine  
33 Revised Statutes and the administration of those statutes to assess their clarity and

1 consistency, the proportionality of penalties to offenses and the effectuation of policy  
2 objectives.

3 **§1373. Membership; terms; vacancies**

4 **1. Members.** The commission consists of the following members:

5 **A.** The following 11 voting members:

6 (1) Two members of the Senate, representing 2 political parties, who are  
7 members of the joint standing committee of the Legislature having jurisdiction  
8 over criminal justice matters, one appointed by the President of the Senate and  
9 one appointed by the Senate Minority Leader;

10 (2) Two members of the House of Representatives, representing 2 political  
11 parties, who are members of the joint standing committee of the Legislature  
12 having jurisdiction over criminal justice matters, one appointed by the Speaker of  
13 the House and one appointed by the House Minority Leader;

14 (3) Two members appointed by the Governor;

15 (4) The Attorney General or the Attorney General's designee;

16 (5) A member of the judicial branch who is not a judge or a justice, appointed by  
17 the Chief Justice of the Supreme Judicial Court;

18 (6) The chair of the Criminal Law Advisory Commission or the chair's designee;

19 (7) A representative of the statewide criminal defense association with the  
20 largest membership of criminal defense attorneys in the State, appointed by the  
21 President of the Senate; and

22 (8) A representative of a statewide prosecutors association, appointed by the  
23 Speaker of the House; and

24 **B.** Two nonvoting members who are active or retired judges or justices, appointed by  
25 the Chief Justice of the Supreme Judicial Court.

26 **2. Chairs.** The Senate member appointed by the President of the Senate and the  
27 House of Representatives member appointed by the Speaker of the House are cochairs of  
28 the commission. The commission may appoint other officers as necessary and make rules  
29 for orderly procedure.

30 **3. Terms and vacancies.** Except for Legislators and the Attorney General, who  
31 serve terms coincident with their elective offices or appointment terms, all members serve  
32 for 3-year terms and may be reappointed. A vacancy must be filled by the same  
33 appointing authority that made the original appointment. Members may continue to  
34 serve until their replacements are designated. A member may designate an alternate to  
35 serve on a temporary basis.

36 **4. Quorum.** Six voting members of the commission constitute a quorum.

1           **§1374. Powers and duties**

2           **1. Duties.** The commission:

3           A. Shall meet at least twice annually;

4           B. Shall examine the State's criminal laws for the purposes of their clarification to  
5           facilitate just and expedient resolutions of criminal prosecutions and to resolve or  
6           prevent statutory or policy conflicts;

7           C. Shall examine statutory definitions of crimes for the purpose of their  
8           consolidation;

9           D. Shall examine mandatory minimum and administrative penalties and costs related  
10           to crimes for policy continuity and issues surrounding the fair administration and  
11           implementation of those penalties;

12           E. Except for sentencing guidelines, may examine any other aspects of the State's  
13           criminal laws that may be relevant, including, but not limited to, substantive,  
14           procedural and administrative matters; and

15           F. Whenever the commission determines appropriate, shall seek the advice of  
16           experts, including, but not limited to, representatives of executive branch departments  
17           and nongovernmental entities, in fields related to the commission's duties and may  
18           establish advisory groups to provide research, technical and policy support.

19           **2. Legislation.** The commission may submit legislation to the Legislature to  
20           effectuate its recommendations pursuant to section 1375.

21           **§1375. Report to Legislature and other entities**

22           The commission shall submit to each second regular session of the Legislature its  
23           findings and recommendations for changes to the criminal laws and related provisions as  
24           the commission determines appropriate, including policy recommendations. The  
25           commission may also make recommendations to the Chief Justice of the Supreme  
26           Judicial Court, the Advisory Committee on Criminal Rules and the Criminal Law  
27           Advisory Commission and to any other organization or committee whose affairs pertain  
28           to the criminal justice system.

29           **§1376. Chief counsel; support staff; adequate funding requirement**

30           The Legislature, through the commission, shall contract for the following:

31           **1. Chief counsel.** A chief counsel, who has the responsibility for legal research and  
32           drafting as required in connection with the review and revision of the State's criminal  
33           laws, under the direction and supervision of the commission. The chief counsel must by  
34           virtue of prior training, experience, ability and reputation clearly demonstrate the ability  
35           to perform tasks assigned by the commission; and

36           **2. Support staff.** Support staff, which, to the extent funding permits, must provide  
37           year-round staffing support to the commission and the chief counsel. In the event  
38           funding does not permit adequate support staff, the commission may request support staff

1 from the Legislative Council, except that Legislative Council staffing support is not  
2 authorized when the Legislature is in regular or special session. The commission may not  
3 request staffing support from the Legislative Council unless a chief counsel has been  
4 contracted pursuant to this section.

5 Notwithstanding the requirements of this chapter, if a majority of the commission  
6 determines that adequate funding and staffing support are not available to fully and  
7 effectively carry out the commission's duties, the commission shall postpone operations  
8 until such time as sufficient funding and staffing become available. The commission shall  
9 notify the Legislature in writing at least 30 days prior to postponing activities that it no  
10 longer has sufficient funding to continue its work.

11 **§1377. Accounting; outside funding**

12 All funds appropriated, allocated or otherwise provided to the commission must be  
13 deposited in an account separate from all other funds of the Legislature and are  
14 nonlapsing. Funds in the account may be used only for the purposes of the commission.  
15 The commission may seek and accept outside funding, including, but not limited to,  
16 federal funds, to fulfill commission duties. Prompt notice of solicitation and acceptance  
17 of funds must be sent to the Legislative Council. All funds accepted must be forwarded to  
18 the Executive Director of the Legislative Council, along with an accounting that includes  
19 the amount received, the date that amount was received, from whom that amount was  
20 received, the purpose of the donation and any limitation on use of the funds. The  
21 executive director shall administer all funds received in accordance with this section. At  
22 the beginning of each fiscal year, and at any other time at the request of the cochairs of  
23 the commission, the executive director shall provide to the commission an accounting of  
24 all funds, including funds for staffing, available to the commission.

25 **§1378. Compensation**

26 Legislators who are members of the commission are entitled to receive the legislative  
27 per diem and expenses as defined in Title 3, section 2 for their attendance to their duties  
28 under this chapter. Other members are entitled to receive reimbursement of necessary  
29 expenses if they are not otherwise reimbursed by their employers or others whom they  
30 represent.

31 **§1379. Repeal**

32 This chapter is repealed on October 1, 2017.

33 **Sec. 3. Initial work.** Notwithstanding the Maine Revised Statutes, Title 17-A,  
34 chapter 56, which specifies the Criminal Law Revision Commission must examine all the  
35 State's criminal statutes within the Maine Revised Statutes, the commission shall initially  
36 examine only Title 17-A and report its findings and recommendations to the Second  
37 Regular Session of the 127th Legislature.

38 **Sec. 4. Staggered terms and specific appointments.** Notwithstanding the  
39 Maine Revised Statutes, Title 17-A, section 1373, members initially appointed to the  
40 Criminal Law Revision Commission are appointed as follows.



1 to report its findings and recommendations to the second regular session of each  
2 Legislature starting with the 127th Legislature and authorizes the commission to submit  
3 legislation to effectuate its recommendations;

4 4. Provides that operations and staffing of the commission are dependent on  
5 adequate funding and that the commission must postpone its operations if funding and  
6 staffing levels are not sufficient to allow the commission to fully and effectively carry out  
7 its duties. The commission must notify the Legislature in writing at least 30 days prior to  
8 postponing activities that it no longer has sufficient funding to continue its work;

9 5. Provides that, if funding is not available for staffing support, the commission may  
10 request staffing assistance from the Legislative Council, subject to certain restrictions;

11 6. Provides an appropriation of \$155,000 in fiscal year 2013-14 and \$2,500 every  
12 year thereafter to contract for a chief counsel and staffing support; and

13 7. Repeals the Criminal Law Revision Commission on October 1, 2017.