

Joint Standing Committee on Criminal Justice and Public Safety

LD 10 **Resolve, To Fund a Study Regarding Health Care for Maine's Firefighters** **DIED ON ADJOURNMENT**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM MAJ	H-723
	ONTP MIN	

LD 10 proposed to appropriate \$75,000 to the Maine Fire Protection Services Commission to contract for services to conduct a study regarding the provision of health care benefits to firefighters in this State.

LD 10 was carried over by H.P. 1203 to the next regular or special session of the 122nd Legislature. The Maine Fire Protection Services Commission, with the help of the Department of Administrative and Financial Services, Bureau of Health Insurance, was directed to work on the bill during that interim.

Committee Amendment “A” (H-723) was the majority report of the Criminal Justice and Public Safety Committee. The amendment proposed to amend the resolve to provide funding in fiscal year 2006-07 to the Maine Fire Protection Services Commission to conduct a study regarding the provision of health care benefits to firefighters in this State. Committee Amendment “A” was never removed from the Special Appropriations Table and died on adjournment.

LD 17 **An Act To Ensure Fair Reimbursement for the Medical Care Provided to State Inmates** **DIED ON ADJOURNMENT**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
RECTOR	OTP-AM MAJ	
SNOWE-MELLO	ONTP MIN	

LD 17 proposed to repeal the language that established MaineCare rates as the reimbursement rate for medical services provided to state inmates outside of correctional or detention facilities. By repealing this section, the bill proposed to require the State or its contracted medical provider to negotiate fair reimbursement rates for medical care provided to state inmates.

Committee Amendment “A” (H-118) proposed to replace the bill and was the majority report of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to limit the damages that could be awarded against a medical service provider on a tort claim arising out of the provision of medical services to a person being held in a state, county or municipal correctional or detention facility and would have applied to services provided inside the facility and outside the facility. This amendment would have been analogous to the provisions limiting damages awards against governmental employees and entities found in the Maine Tort Claims Act, including a provision that would make its limits applicable to wrongful death actions. The amendment also proposed to provide that the Maine Health Security Act's provisions, including those governing the mandatory prelitigation screening process, continue to apply.

The amendment also proposed to require that a payment for a medical service provided to a person residing in a Department of Corrections facility that is provided outside the facility and for which the department or its

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contracted medical provider is liable must be made within 30 days of receipt of proof of the service rendered. This amendment was not adopted.

House Amendment “A” to Committee Amendment “A” (H-127) proposed to provide that the Department of Corrections or the department's contracted medical service provider shall pay to a provider of a medical service for a person residing in a correctional or detention facility an amount no less than 150% of the reimbursement rate applicable to that provider and that service as established for the Medicare program. The amendment also proposed to add an appropriations and allocations section. This amendment was not adopted.

House Amendment “B” to Committee Amendment “A” (H-247) proposed to provide that the Department of Corrections or the department's contracted medical service provider shall pay to a provider of a medical service for a person residing in a correctional or detention facility an amount no less than 125% of the reimbursement rate applicable to that provider and that service as established for the Medicare program. The amendment also proposed to add an appropriations and allocations section. This amendment was not adopted.

LD 17 was carried over on the Special Appropriations Table by S.P. 640 to the next special or regular session of the 122nd Legislature. The bill was substituted for the Committee Amendment.

LD 17 was never removed from the Special Appropriations Table and died on adjournment.

LD 1018 An Act To Require a Criminal Background Check for the Initial PUBLIC 681 Licensure of Emergency Medical Services Personnel

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SYKES	OTP-AM MAJ OTP-AM MIN	H-472

LD 1018 proposed to specify that a criminal background check is required only for an applicant for initial licensure as an emergency medical services person. For purposes of EMS licensing now, pursuant to board policy a person must renew a background check every 3 years. The board is authorized by law to establish EMS licensing requirements.

Committee Amendment “A” (H-472) was the majority report of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to clarify what is intended by a criminal history record check and conform the language and the process to other statutes regarding the use of criminal history record information for employment or licensing purposes. In order to ensure that all licensed emergency medical services providers are subject to a criminal history record check, the amendment also proposed to specify that those persons who already have a license to provide emergency medical services but never had a criminal history record check must submit to a check at the time they apply for license renewal. Applicants who were subject to a criminal history record check at initial licensure would not be subject to a check at renewal.

Committee Amendment “B” (H-473) was the minority report of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to clarify what is intended by a criminal history record check and conform the language and the process to other statutes regarding the use of criminal history record information for employment or licensing purposes. This amendment was not adopted.

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LD 1018 was carried over on the Special Appropriations Table by S.P. 640 to the next special or regular session of the 122nd Legislature. LD 1018 was removed from the Special Appropriations Table and enacted.

Enacted law summary

Public Law 2005, chapter 681 specifies that a criminal background check is required only for an applicant for initial licensure as an emergency medical services person. For purposes of EMS licensing until now, pursuant to board policy a person was required to renew a background check every 3 years. Public Law 2005, chapter 681 supersedes this board-adopted licensing requirement. Public Law 2005, chapter 681 also clarifies what is intended by a criminal history record check and conforms the language and the process to other statutes regarding the use of criminal history record information for employment or licensing purposes. In order to ensure that all licensed emergency medical services providers are subject to a criminal history record check, Public Law 2005, chapter 681 also specifies that those persons who already have a license to provide emergency medical services but never had a criminal history record check must submit to a check at the time they apply for license renewal.

LD 1140

**Resolve, Directing the State Police and the County Sheriff's
Departments To Enter into a Call-sharing Agreement**

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MCKENNEY	ONTP MAJ OTP-AM MIN	

LD 1140 proposed to direct the Department of Public Safety, Bureau of State Police and the county sheriff's departments to enter into a call-sharing agreement.

Committee Amendment "A" (H-724) was the minority report of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to direct the Department of Public Safety, Bureau of State Police to enter into a call-sharing agreement with each county sheriff's department. In order to recognize the different levels of staffing and the law enforcement needs of each county, the amendment proposed to authorize the parties to base each agreement on factors that are mutually agreeable to each party. Instead of requiring the call-sharing agreement to be restricted only to assigning responsibility of 1/2 of the coverage to the county for a period and 1/2 to the State Police and then switching, the amendment proposed to give the parties the flexibility to determine what would work best in each county. The amendment also proposed to add a mandate preamble. This amendment was not adopted.

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LD 1709

An Act To Provide for the Issuance of a Bench Warrant upon Failure To Appear for a Hearing on Nonpayment of a County Jail Reimbursement Fee

PUBLIC 502

<u>Sponsor(s)</u> CROSTHWAITE RAYE	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-792
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LD 1709 proposed that if a person’s default on payment of jail reimbursement fees is a violation of a condition of probation, that probation may be revoked, and that if a payment of the fee is not a condition of probation, the State may file a motion to enforce payment of the fee. LD 1709 also proposed to provide for the issuance of a bench warrant in the event that a defendant does not appear after notice of a hearing on a motion to enforce payment of a jail reimbursement fee. LD 1709 proposed to conform the language regarding collection of jail reimbursement fees to the language regarding actions to collect unpaid fines and unpaid restitution.

Committee Amendment “A” (H-792) proposed to insert “attorney for the county” where appropriate in the Maine Revised Statutes, Title 17-A, section 1341, subsections 5 and 6. This change proposed to authorize those counties that “outsource” legal work to use private counsel instead of the district attorney’s office to handle the defaulted jail reimbursement fees. The amendment also proposed to delete ambiguous language regarding the procedure for reporting to the court. This proposed change would eliminate confusion regarding the action required of the courts if an attorney for the State or an attorney for the county reported a default but did not file a motion.

Enacted law summary

Public Law 2005, chapter 502 specifies that if a person’s default on payment of jail reimbursement fees is a violation of a condition of probation, that probation may be revoked. If a payment of the fee is not a condition of probation, the attorney for the county may file a motion to enforce payment of the fee. Public Law 2005, chapter 502 also provides for the issuance of a bench warrant in the event that a defendant does not appear after notice of a hearing on a motion to enforce payment of a jail reimbursement fee. Public Law 2005, chapter 502 eliminates ambiguity in the law and conforms the language regarding collection of jail reimbursement fees to the language regarding actions to collect unpaid fines and unpaid restitution.

LD 1716

An Act To Require Presentence Investigations of All Persons Convicted of a Sex Offense

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 1716 proposed to require that every person who is convicted of a sex offense under the Maine Revised Statutes, Title 17-A, chapter 11 or 12, undergo a presentence investigation conducted by the Department of Corrections prior to the court’s imposing a sentence.

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LD 1717

An Act Regarding the Sentencing of Persons Convicted of Gross Sexual Assault against Victims under 12 Years of Age

PUBLIC 673

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM MAJ	H-1058
	OTP-AM MIN	

LD 1717 proposed to create a 25-year minimum mandatory sentence of imprisonment followed by probation for life for persons convicted of gross sexual assault against persons who have not attained 12 years of age and to require that these persons, when released from prison, be subject to supervision by the Department of Corrections that includes electronic monitoring for the duration of the probation. The bill also proposed to create a mandatory life sentence of imprisonment for a person convicted of gross sexual assault against another person who has not attained 12 years of age if that person has a prior conviction for gross sexual assault, rape or gross sexual misconduct against a victim who had not attained 12 years of age.

Committee Amendment “C” (H-1058) was the final majority report of the Joint Standing Committee on Criminal Justice and Public Safety. This amendment was adopted after the bill was recommitted to the committee. This amendment proposed to replace the bill and to make the following changes to the sentencing laws.

The amendment proposed to amend the Maine Revised Statutes, Title 17-A, chapter 50, which deals with the supervised release of sex offenders, by specifying that supervised release is not discretionary but required for persons convicted of committing gross sexual assault against a person under 12 years of age. The period of supervised release commences on the date the person is released from confinement, runs for the duration of the person's life and must include the best available monitoring technology. The amendment also proposed to specify that if the court revokes a period of supervised release, the court shall require the person to serve time in prison under the custody of the Department of Corrections. This time in prison may equal all or part of the period of supervised release, without credit for time served on post-release supervision and without any limitations based on the prior term of imprisonment, as current law requires. The remaining portion of the period of supervised release that is not required to be served in prison remains in effect to be served after the person's release and again is subject to revocation, if warranted.

The amendment also proposed to specify that if the State pleads and proves that the crime of gross sexual assault was committed against a person who had not yet attained 12 years of age, the court shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process, pursuant to Title 17-A, section 1252-C, subsection 1, the amendment proposed that the court shall select a term of at least 20 years.

Committee Amendment “D” (H-1059) was the minority report of the Joint Standing Committee on Criminal Justice and Public Safety after the bill was recommitted to the committee. This amendment was the same amendment as the minority report, Committee Amendment “A” (H-794) and was not adopted.

Committee Amendment “A” (H-794) was one of 2 initial minority reports of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to correct a drafting error in the bill in order to reflect the bill's original intent, which was to create a 25-year minimum mandatory sentence of imprisonment followed by probation for life for a first offense gross sexual assault against a person who has not attained 12 years of age. This amendment was not adopted.

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Committee Amendment “B” (H-795) proposed to replace the bill and was one of 2 initial minority reports of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to create at least a 25-year minimum mandatory sentence of imprisonment for a 2nd offense of gross sexual assault against a person who has not attained 12 years of age. This amendment was not adopted.

House Amendment “A” (H-837) proposed to replace the bill and to make the following changes to the sentencing laws.

1. The amendment proposed to direct the court to impose a sentencing alternative of a term of imprisonment for any term of years or a term of life for a person convicted of committing gross sexual assault against a person who has not attained 12 years of age.
2. The amendment proposed to require that, if a person does not receive a sentence of imprisonment for life for committing gross sexual assault against a person who has not attained 12 years of age, the court shall then impose a period of supervised release for life following the period of imprisonment. For this offense, a person would be sentenced to supervised release instead of having a sentencing alternative of probation.
3. The amendment proposed to amend the Maine Revised Statutes, Title 17-A, chapter 50, which deals with the supervised release for sex offenders, by specifying that supervised release after release from prison is not discretionary but required for persons convicted of committing gross sexual assault against a person under 12 years of age. The amendment also specifies that if the court revoked a period of supervised release the court would have to require the person to serve time in prison under the custody of the Department of Corrections. This time in prison could equal all or part of the period of supervised release, without credit for time served on post-release supervision and without any limitations based on the prior term of imprisonment, as current law requires. The remaining portion of the period of supervised release that was not required to be served in prison would remain in effect to be served after the person's release and again would be repeatedly subject to revocation, if warranted. This amendment was not adopted.

House Amendment “A” to Committee Amendment “A” (H-1021) proposed to replace the bill with the essential elements of LD 2108.

As amended, the bill proposed to require a court, in a case involving gross sexual assault against a victim who has not yet attained 12 years of age, to specify a term of imprisonment for any term of years, including a term that exceeds 30 years, which is the maximum allowed for a Class A crime. In making its determination, the court would be required to start with a basic period of imprisonment of 20 years; using that term as a starting point, the court could then increase or decrease the term of imprisonment based upon all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case. These sentencing factors include, but are not limited to, the character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest.

This amendment also proposed to impose probation for life for persons convicted of gross sexual assault against persons who have not attained 12 years of age and to require that these persons, when released from prison, be subject to supervision by the Department of Corrections that includes electronic monitoring for the duration of the probation. This amendment was not adopted.

House Amendment “A” to Committee Amendment “C” (H-1062) proposed to create a 25-year minimum mandatory sentence of imprisonment followed by probation for life for persons convicted of gross sexual assault against persons who have not attained 12 years of age and to require that these persons, when released from prison, be subject to supervision by the Department of Corrections that includes electronic monitoring for the

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duration of the probation. The amendment also proposed to create a mandatory life sentence of imprisonment for a person convicted of gross sexual assault against another person who has not attained 12 years of age if that person has a prior conviction for gross sexual assault, rape or gross sexual misconduct against a victim who had not attained 12 years of age. This amendment was not adopted.

House Amendment “B” (H-970) proposed to replace the bill and create the new crime of aggravated gross sexual assault. A person would have been guilty of aggravated gross sexual assault if that person engaged in a sexual act with another person who had not yet attained 12 years of age and who submitted as a result of the use of physical force, a threat to use physical force or a combination thereof that made the other person unable to physically repel the actor or produced in that other person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that other person or another human being. The amendment proposed that a violation of aggravated gross sexual assault would be subject to a minimum sentence of incarceration of 25 years, none of which could be suspended. When released from prison, a person convicted of aggravated gross sexual assault would be subject to supervision, including electronic monitoring, by the Department of Corrections for the duration of the probation. This amendment was not adopted.

House Amendment “B” to Committee Amendment “C” (H-1070) proposed to prohibit a person who is convicted and sentenced as a 10-year registrant or as a lifetime registrant under the Sex Offender Registration and Notification Act of 1999 from establishing or maintaining a residence or a domicile in a municipality that does not have its own police department or other law enforcement agency that is capable of responding to any call within 5 minutes. This amendment was not adopted.

House Amendment “C” (H-978) proposed to retain the mandatory minimum sentences of imprisonment specified in the bill of 25 years for a person who is convicted of gross sexual assault when the victim is less than 12 years of age and life for a repeat offender, except that this amendment proposed to allow the court to impose a minimum sentence of 10 years for a first-time offender and a minimum sentence of 25 years for a repeat offender if the prosecuting attorney and the legal guardian of the victim submit a statement that, while a longer term of imprisonment is appropriate, the harm to the victim from requiring the victim to testify exceeds the benefit to society of incarcerating the defendant for a longer period of time. This amendment was not adopted.

House Amendment “C” to Committee Amendment “C” (H-1071) proposed to change the names of the crimes of gross sexual assault and sexual abuse of a minor to rape and child molestation. The amendment also proposed to require the Department of Public Safety, State Bureau of Identification to distribute information contained in the sex offender registry to town clerks of towns that do not have police departments. The amendment also proposed to require a law enforcement agency to notify the bureau by electronic mail if the law enforcement agency has a registrant in its custody. This amendment was not adopted.

House Amendment “D” (H-979) proposed to strike the provisions of the bill that apply a 25-year sentence of imprisonment to a person who commits gross sexual assault against a victim who has not yet attained 12 years of age and a life sentence of imprisonment for a person who has previously been convicted of committing gross sexual assault against a victim who has not yet attained 12 years of age. Under the bill, neither sentence may be suspended by the court.

The amendment proposed instead to authorize a term of imprisonment for any term of years, including a term that exceeds 30 years, the maximum term of imprisonment for a Class A crime.

This amendment proposed to specify that the basic period of imprisonment for a person who commits gross sexual assault against a victim who has not yet attained 12 years of age is 20 years. Under current law, the court may increase or decrease the term of imprisonment based upon all other relevant sentencing factors, both

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aggravating and mitigating, appropriate to that case. These sentencing factors include, but are not limited to, the character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest. This amendment was not adopted.

House Amendment “D” to Committee Amendment “C” (H-1072) proposed to prohibit a registrant under the Sex Offender Registration and Notification Act of 1999 from residing within 1,000 feet of the residence of any child, a school, a licensed child care facility, a certified home day care provider or a playground. This amendment was not adopted.

House Amendment “E” to Committee Amendment “C” (H-1073) proposed to provide a procedure for the commitment of a person determined to be a sexually violent predator if a court finds that the person has a mental abnormality or personality disorder that makes it likely that the person will engage in predatory acts of sexual violence if not confined in a secure facility. The amendment proposed to provide protections, care and treatment to a person who is committed and to provide an annual review of each case. The amendment proposed that notice of release or discharge is required for victims, witnesses and other persons identified by the prosecuting attorney. This amendment proposed to designate the Commissioner of Corrections and the Commissioner of Health and Human Services as responsible for providing secure facilities for sexually violent predators. This amendment proposed to coordinate release from a secure facility for sexually violent predators with supervised release for sex offenders under the Maine Revised Statutes, Title 17-A, chapter 50. The amendment also proposed to add an appropriations and allocations section. This amendment was not adopted.

House Amendment “F” to Committee Amendment “C” (H-1075) proposed to create the new crime of aggravated gross sexual assault. A person would have been guilty of aggravated gross sexual assault if that person engaged in a sexual act with another person who had not yet attained 12 years of age and who submitted as a result of the use of physical force, a threat to use physical force or a combination thereof that made the other person unable to physically repel the actor or produced in that other person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that other person or another human being. The amendment proposed that a violation of aggravated gross sexual assault would be subject to a minimum sentence of incarceration of 25 years, none of which could be suspended. When released from prison, a person convicted of aggravated gross sexual assault would be subject to supervision, including electronic monitoring, by the Department of Corrections for the duration of the probation. This amendment was not adopted.

Enacted law summary

Public Law 2005, chapter 673 amends the Maine Revised Statutes, Title 17-A, chapter 50, which deals with the supervised release of sex offenders, by specifying that supervised release is not discretionary but required for persons convicted of committing gross sexual assault against a person under 12 years of age. The period of supervised release commences on the date the person is released from confinement, runs for the duration of the person's life and must include the best available monitoring technology. Public Law 2005, chapter 673 specifies that if the court revokes a period of supervised release, the court shall require the person to serve time in prison under the custody of the Department of Corrections. This time in prison may equal all or part of the period of supervised release, without credit for time served on post-release supervision and without any limitations based on the prior term of imprisonment, as current law requires. The remaining portion of the period of supervised release that is not required to be served in prison remains in effect to be served after the person's release and again is subject to revocation, if warranted.

Public Law 2005, chapter 673 also specifies that if the State pleads and proves that the crime of gross sexual assault was committed against a person who had not yet attained 12 years of age, the court shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the

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sentencing process, pursuant to Title 17-A, section 1252-C, subsection 1, the court shall select a term of at least 20 years.

LD 1718 **An Act To Amend the Law Relating to the Crime of Visual Sexual Aggression against a Child** **PUBLIC 655**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-766 H-826 BLANCHETTE

LD 1718 proposed to amend the violation of privacy law to make it a Class C crime if the victim of the crime has not in fact attained 16 years of age at the time of the offense. Violation of privacy is currently a Class D crime.

Committee Amendment “A” (H-766) proposed to replace the bill and amend the crime of visual sexual aggression against a child, instead of amending the crime of violation of privacy. This amendment proposed to create a new version of visual sexual aggression against a child that requires that, for the purpose of arousing or gratifying sexual desire, a person at least 18 years of age intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person in a private place. The crime also proposed to provide that the victim is not the actor's spouse and has not in fact attained 14 years of age, and that the act is carried out under circumstances in which a reasonable person would expect to be safe from such visual surveillance. The amendment proposed that the new crime is a Class D crime, unless committed against a person who has not attained 12 years of age, in which case it is a Class C crime.

The crime of visual sexual aggression against a child falls within chapter 11 of the Maine Criminal Code, which means that a person convicted of the Class D version, as well as the Class C version of this crime, may be subject to the sentencing alternative of probation. As proposed this amendment also makes the person convicted of this prohibited conduct subject to the requirements of the Sex Offender Registration and Notification Act of 1999.

House Amendment “A” to Committee Amendment “A” (H-826) proposed to restore language that was inadvertently omitted from the committee amendment.

Enacted law summary

Public Law 2005, chapter 655 creates a new version of visual sexual aggression against a child that requires that, for the purpose of arousing or gratifying sexual desire, a person at least 18 years of age intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person in a private place. The crime also provides that the victim is not the actor's spouse and has not in fact attained 14 years of age, and that the act is carried out under circumstances in which a reasonable person would expect to be safe from such visual surveillance. This new crime is a Class D crime, unless committed against a person who has not attained 12 years of age, in which case it is a Class C crime.

The crime of visual sexual aggression against a child falls within chapter 11 of the Maine Criminal Code, which means that a person convicted of the Class D version, as well as the Class C version of this crime, may be subject to the sentencing alternative of probation. This amendment also makes the person convicted of this prohibited conduct subject to the requirements of the Sex Offender Registration and Notification Act of 1999.

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LD 1721

**Resolve, Creating a Forensic Board To Manage the Release of
Certain Sex Offenders**

RESOLVE 132

Sponsor(s)

Committee Report
OTP

Amendments Adopted

LD 1721 proposed to direct the Department of Corrections, in cooperation with the Department of Health and Human Services, the judiciary branch and other interested parties, to develop a plan to create a forensic board to periodically review the safety of releasing persons convicted of certain sex offenses after those persons have served at least a minimum number of years of imprisonment. LD 1721 proposed that the Department of Corrections would recommend persons to serve on the forensic board and would recommend processes for the board to employ, including the use of recognized risk assessment tools and other measurements and standards, to determine whether a person would be appropriately released and under what conditions or to determine that the person must continue to remain incarcerated until the next forensic review. In addition to making recommendations regarding the development of a forensic board, the bill proposed that the Department of Corrections would identify the types of treatment that persons convicted of sex offenses receive while incarcerated and any data measuring the success and failure of such treatments. The bill proposed to direct the Department of Corrections to report its findings and recommendations, including proposed legislation to implement a forensic board, to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by December 30, 2006.

Enacted law summary

Resolve 2005, chapter 132 directs the Department of Corrections, in cooperation with the Department of Health and Human Services, the judiciary branch and other interested parties, to develop a plan to create a forensic board to periodically review the safety of releasing persons convicted of certain sex offenses after those persons have served at least a minimum number of years of imprisonment. The Department of Corrections will recommend persons to serve on the forensic board and will recommend processes for the board to employ, including the use of recognized risk assessment tools and other measurements and standards, to determine whether a person is appropriately released and under what conditions or to determine that the person must continue to remain incarcerated until the next forensic review. In addition to making recommendations regarding the development of a forensic board, the Department of Corrections must identify the types of treatment that persons convicted of sex offenses are receiving while incarcerated and any data measuring the success and failure of such treatments. Resolve 2005, chapter 132 directs the Department of Corrections to report its findings and recommendations, including proposed legislation to implement a forensic board, to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by December 30, 2006.

LD 1722

**An Act To Expand the List of Prior Crimes That May Be
Considered When Determining Whether a Person Is a Repeat
Sexual Assault Offender**

ONTP

Sponsor(s)

Committee Report
ONTP

Amendments Adopted

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LD 1772 proposed to expand the list of prior crimes in the definition of “repeat sexual assault offender” to include offenses that were initially charged by the prosecuting attorney as gross sexual assault, gross sexual misconduct, rape, attempted murder accompanied by sexual assault or murder accompanied by sexual assault, but the conviction was for a different crime.

LD 1759

An Act To Strengthen Maine's Timber Theft Laws

PUBLIC 546

<u>Sponsor(s)</u> NUTTING J		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> S-517
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LD 1759 proposed to require that a copy of the measurement tally sheet or stumpage sheet for each truckload or harvested forest products transported to a handling or processing facility, in accordance with Title 10, section 2364-A, subsection 2-G, be provided to the landowner when the person conducting a harvest operation pays the landowner. The bill proposed that full payment for each truckload of harvested forest products transported to a handling or processing facility must be made to the landowner within 30 days of delivery.

LD 1759 proposed to establish a penalty of not less than \$300 for the first offense and a fine of \$500 for any subsequent offense within 5 years of the first offense. The bill also proposed to make it a Class E crime if a person violates the section 2 or more times within 5 years.

Committee Amendment “A” (S-517) proposed to replace the bill and to do the following:

1. Clarify definition provisions;
2. Specify that, absent a written contract to the contrary, the person conducting the harvest operation shall provide the landowner with full payment for each truckload of harvested forest products transported to a handling or processing facility within 45 days of delivery;
3. Redraft the penalty section to establish a fine of not more than \$1,000 for the first violation, a fine of not more than \$2,000 for a 2nd violation within a 5-year period and a Class E crime if a person commits a violation 3 or more times within a 5-year period;
4. Create a restitution provision, which directs the court in accordance with the requirements of the Maine Revised Statutes, Title 17-A, chapter 54, when appropriate, to order restitution on the basis of an adequate factual foundation. The amendment proposed that the amount of restitution may be determined by using the measured volume of the harvested forest products as listed on the measurement tally sheet or stumpage sheet in accordance with Title 10, section 2364-A, subsection 2 and by the terms of the sales contract according to the measurement procedures set forth in Title 10, section 2363-A that are applicable to a sale of wood; and
5. Direct the Commissioner of Conservation to report by March 1, 2008 to the joint standing committee of the Legislature having jurisdiction over criminal justice matters, observations regarding the effectiveness of the new penalties in deterring timber theft.

Enacted law summary

Public Law 2005, chapter 546 specifies that, absent a written contract to the contrary, a person conducting a forest harvest operation shall provide the landowner with full payment for each truckload of harvested forest products

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transported to a handling or processing facility within 45 days of delivery. Public Law 2005, chapter 546 establishes a fine of not more than \$1,000 for the first violation, a fine of not more than \$2,000 for a 2nd violation within a 5-year period and a Class E crime if a person commits a violation 3 or more times within a 5-year period. Public Law 2005, chapter 546 also creates a restitution provision, which directs the court in accordance with the requirements of the Maine Revised Statutes, Title 17-A, chapter 54, when appropriate, to order restitution on the basis of an adequate factual foundation. The amount of restitution may be determined by using the measured volume of the harvested forest products as listed on the measurement tally sheet or stumpage sheet in accordance with Title 10, section 2364-A, subsection 2 and by the terms of the sales contract according to the measurement procedures set forth in Title 10, section 2363-A that are applicable to a sale of wood. Finally, Public Law 2005, chapter 546 directs the Commissioner of Conservation to report by March 1, 2008 to the joint standing committee of the Legislature having jurisdiction over criminal justice matters observations regarding the effectiveness of the new penalties in deterring timber theft.

LD 1771

An Act To Amend the Maine Criminal Code and Various Provisions Related to Juveniles

PUBLIC 507

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DIAMOND	OTP-AM MAJ ONTP MIN	S-472

LD 1771 was a Department of Corrections bill that proposed to do the following:

1. Eliminate confusion in the law by substituting in Title 15 and Titles 12 and 29-A concerning juveniles convicted of adult offenses the term “confinement” for the term “detention” when referring to a certain disposition. “Detention” refers to pre-adjudication or pre-conviction placement. “Confinement” refers to short term placement flowing a conviction or adjudication. “Commitment” refers to indeterminate correctional placement after adjudication for a juvenile offense. The bill also proposed to clarify the definition of “juvenile client” to capture all of these classifications of status;
2. Require that any credits for related time served in detention prior to sentencing be deducted from any order of confinement; however, good time provisions do not apply to detention for juveniles;
3. Specify that persons who are arrested on a juvenile warrant but are more than 21 years of age at the time of the arrest are to be detained in adult facilities until they appear before the court. Current law requires persons arrested on a juvenile warrant to be detained in juvenile facilities, but current law also specifies that juvenile facilities may not house persons over 18 years of age. The bill proposed to clarify that a person over 21 must be detained with adults, and if a juvenile who is between 18 and 21 years of age is bound over, detention with adults will continue to occur, if ordered by the court;
4. Clarify in Title 15 that the bail process is not available for a person under 18 years of age charged with an adult Title 12 or 29-A offense; however, juveniles are still subject to the rules of detention in the Juvenile Code;
5. Apply the pre-petition confidentiality provisions to juvenile crimes relating to the operation of a motor vehicle while under the influence of alcohol or drugs. This change proposed to clarify that the confidentiality provision regarding a juvenile against whom a petition has not been filed applies also to those juveniles

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against whom a petition may be filed without a recommendation from a juvenile community corrections officer;

6. Add to the Juvenile Code a cross-reference to a Criminal Code restitution provision that was recently enacted regarding joint and several responsibility, so that joint and several responsibility also applies to restitution in juvenile cases;
7. Add a cross-reference in the fine provision of the Maine Juvenile Code to a recently enacted juvenile crime law and clarify that mandatory minimum fine provisions are not applicable to juveniles;
8. Clarify in Title 17-A that when the running of the period of probation is tolled due to pending probation violation proceedings, the conditions of probation continue to apply during the tolled period; and
9. Codify in Title 17-A the Law Court's ruling that when there are consecutive sentences, detention time can only be counted once; this would also apply to probation revocations.

Committee Amendment “A” (S-472) was the majority report of the Joint Standing Committee on Criminal Justice and Public Safety. The amendment proposed to add the term “confined” in a provision that was inadvertently omitted from the bill. The amendment also proposed to add language to the Maine Bail Code that is consistent with the change proposed by the bill to the Maine Juvenile Code, making it clear that the bail process is not available for a juvenile charged with an adult crime under the Maine Revised Statutes, Title 12 or 29-A.

Enacted law summary

Public Law 2005, chapter 507 was proposed by the Department of Corrections and makes changes to the Maine Juvenile Code, Criminal Code and Bail Code. The changes are as follows.

To eliminate confusion, Public Law 2005, chapter 507 substitutes in Title 15 and Titles 12 and 29-A concerning juveniles convicted of adult offenses the term “confinement” for the term “detention” when referring to a certain disposition. “Detention” refers to pre-adjudication or pre-conviction placement. “Confinement” refers to short term placement following a conviction or adjudication. “Commitment” refers to indeterminate correctional placement after adjudication for a juvenile offense.

Public Law 2005, chapter 507 requires that any credits for related time served in detention prior to sentencing be deducted from any order of confinement. Good time provisions do not apply to detention for juveniles.

Public Law 2005, chapter 507 specifies that persons who are arrested on a juvenile warrant but are more than 21 years of age at the time of the arrest are to be detained in adult facilities until they appear before the court. Public Law 2005, chapter 507 clarifies that a person over 21 must be detained with adults, and if a juvenile who is between 18 and 21 years of age is bound over, detention with adults will continue to occur, if ordered by the court.

Public Law 2005, chapter 507 clarifies that the bail process is not available for a person less than 18 years of age charged with an adult Title 12 or Title 29-A offense; however, juveniles are still subject to the rules of detention in the Juvenile Code.

Public Law 2005, chapter 507 applies the pre-petition confidentiality provisions to juvenile crimes relating to the operation of a motor vehicle while under the influence of alcohol or drugs. The confidentiality provision

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regarding a juvenile against whom a petition has not been filed applies also to those juveniles against whom a petition may be filed without a recommendation from a juvenile community corrections officer.

Public Law 2005, chapter 507 adds to the Juvenile Code a cross-reference to a Criminal Code restitution provision that was recently enacted regarding joint and several responsibility, as joint and several responsibility also applies to restitution in juvenile cases.

Public Law 2005, chapter 507 adds a cross-reference in the fine provision of the Maine Juvenile Code to a recently enacted juvenile crime law and clarifies that mandatory minimum fine provisions are not applicable to juveniles.

Public Law 2005, chapter 507 clarifies in Title 17-A that when the running of the period of probation is tolled due to pending probation violation proceedings, the conditions of probation continue to apply during the tolled period.

Public Law 2005, chapter 507 codifies in Title 17-A the Law Court's ruling that when there are consecutive sentences, detention time can only be counted once; this interpretation also applies to probation revocations.

LD 1781

An Act To Require Mandatory Training for Law Enforcement Officers and Prosecutors Regarding Interaction with People with Developmental Disabilities, Including Autism Spectrum Disorders

ONTP

Sponsor(s)
BARTLETT

Committee Report
ONTP

Amendments Adopted

LD 1781 proposed to require the Board of Trustees of the Maine Criminal Justice Academy to include in the basic law enforcement mandatory training and the next available schedule of recertification training for law enforcement officers a block of instruction aimed at identifying and safely interacting with persons with developmental disabilities, reducing barriers to reporting crimes against people with developmental disabilities and addressing the challenges posed by cases that involve persons with developmental disabilities. The bill also proposed to require prosecutors to annually complete one hour of continuing legal education covering the same topics.

Although LD 1781 did not pass, the Maine Criminal Justice Academy plans to incorporate the training for law enforcement officers proposed in the bill into its curriculum. The joint standing committee having jurisdiction over criminal justice and public safety matters also anticipates a report back from a work group convened by the Maine Developmental Disabilities Council. The work group will include advocates and providers for persons with developmental disabilities. The group will share with the 123rd Legislature its recommendations regarding developing and implementing policy for training of law enforcement officers, other criminal justice and public safety officials and health care providers to help ensure equal access to and protection within the criminal justice and public safety systems for persons with developmental disabilities.

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LD 1789

An Act To Amend the Crime of Aggravated Criminal Mischief

PUBLIC 660

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NUTTING J	OTP-AM MAJ ONTP MIN	S-504

LD 1789 proposed to expand the current crime of terrorizing to establish the Class C crime of “environmental terrorizing.” The bill proposed that a person is guilty of this crime if the person commits a crime of violence dangerous to human life or destructive to property or business practices for the purpose of protesting the practice of a person or business with respect to a natural resource or environmental issue, and the act causes injury in fact to a person or damage to property or a business or purposefully causes a significant interruption in business or loss of products that results in loss of revenues or in compensable damages. The bill proposed to specify that the new crime does not apply to a person who is protesting during a labor dispute, a strike or a lockout at a business.

Committee Amendment “A” (S-504) was the majority report of the Joint Standing Committee on Criminal Justice and Public Safety and proposed to add to the Class C crime of aggravated criminal mischief a new form. To satisfy this new form, the amendment proposed that the State must prove beyond a reasonable doubt both that the actor intentionally damaged, destroyed or tampered with the property of another, having no reasonable ground to believe that the person had a right to do so, and that at the time of the actor's actions the actor's motive was to cause substantial harm to the health, safety, business, calling, career, financial condition, reputation or personal relationships of the person with the property interest or any other person. This list of harmful motives is modeled after the crime of theft by extortion in the Maine Revised Statutes, Title 17-A, section 355.

Senate Amendment “A” to Committee Amendment “A” (S-605) proposed to specify that a person commits aggravated criminal mischief if the person intentionally damages, destroys or tampers with the property of another, having no reasonable ground to believe that the person has a right to do so, for the purpose of harming substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships. This amendment was not adopted.

Enacted law summary

Public Law 2005, chapter 660 adds to the Class C crime of aggravated criminal mischief a new form. To satisfy this new form the State must prove beyond a reasonable doubt both that the actor intentionally damaged, destroyed or tampered with the property of another, having no reasonable ground to believe that the person had a right to do so, and that at the time of the actor's actions the actor's motive was to cause substantial harm to the health, safety, business, calling, career, financial condition, reputation or personal relationships of the person with the property interest or any other person. This list of harmful motives is modeled after the crime of theft by extortion in the Maine Revised Statutes, Title 17-A, section 355.

LD 1810

An Act Regarding Criminal History Record Checks

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DUNN	ONTP	

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LD 1810 proposed to require the State Bureau of Identification within the State Police under the Department of Safety to establish procedures by rule to ensure that information that is released as part of a criminal history record check is current and valid, identifies the correct individual and is released in accordance with law.

LD 1825

**An Act To Amend the Rule-making Authority of the
Commissioner of Public Safety Regarding the Construction,
Installation, Maintenance and Inspection of Chimneys, Fireplaces,
Vents and Solid Fuel Burning Appliances**

**PUBLIC 571
EMERGENCY**

<u>Sponsor(s)</u> THOMAS		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-943
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LD 1825 proposed to provide that a municipal fire department, volunteer fire association or fire ward that inspects a chimney or wood stove or any other heating device or appliance may not be held liable for any claim arising from death or injury or damage to property if any alterations are made to the chimney or wood stove or any other heating device or appliance after the inspection has taken place.

Committee Amendment “A” (H-943) proposed to replace the bill, change the title, add an emergency preamble and clause and amend the Commissioner of Public Safety's rule-making authority regarding the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. The amendment proposed to repeal the current directive to the Commissioner of Public Safety to adopt the National Fire Protection Association Code #211, “The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances,” and replace that with more general rule-making authority that directs the commissioner to adopt routine technical rules pertaining to the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. The amendment also proposed to authorize the commissioner to adopt major substantive rules pertaining to the inspection and maintenance of chimneys, fireplaces, vents and solid fuel burning appliances upon the sale or transfer of property.

The purpose of amending the current rule-making authority was specifically to address the regulatory requirement that Level II chimney inspections be conducted upon the sale or transfer of real estate pursuant to National Fire Protection Association Code #211. The amendment proposed to give the Commissioner of Public Safety the ability to tailor rules to the needs of the State.

The amendment also proposed to add a penalty provision that specifies that a person who violates a rule adopted pursuant to the Maine Revised Statutes, Title 25, section 2465 commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged. The amendment proposed that this penalty does not apply to a rule requiring an annual chimney inspection for a single-family home.

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Enacted law summary

Public Law 2005, chapter 571 amends the Commissioner of Public Safety's rule-making authority regarding the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. Public Law 2005, chapter 571 repeals the current directive to the Commissioner of Public Safety to adopt the National Fire Protection Association Code #211, "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances," and replaces that with more general rule-making authority that directs the commissioner to adopt routine technical rules pertaining to the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. Public Law 2005, chapter 571 also authorizes the commissioner to adopt major substantive rules pertaining to the inspection and maintenance of chimneys, fireplaces, vents and solid fuel burning appliances upon the sale or transfer of property.

Public Law 2005, chapter 571's amendment of the current rule-making authority is specifically to address the current regulatory requirement that Level II chimney inspections be conducted upon the sale or transfer of real estate pursuant to National Fire Protection Association Code #211. Public Law 2005, chapter 571 gives the Commissioner of Public Safety the ability to tailor rules to the needs of the State.

Public Law 2005, chapter 571 also adds a penalty provision that specifies that a person who violates a rule adopted pursuant to the Maine Revised Statutes, Title 25, section 2465 commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged. This penalty does not apply to a rule requiring an annual chimney inspection for a single-family home.

Public Law 2005, chapter 571 was enacted as an emergency measure effective April 12, 2006.

LD 1831 **An Act To Allow Law Enforcement Agencies To Maintain Sex Offender Websites for Public Use** **PUBLIC 545**

<u>Sponsor(s)</u> CURLEY SNOWE-MELLO	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-867
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LD 1831 proposed to maintain the requirement that the bureau maintain a sex offender registry on the Internet but also proposed to authorize other law enforcement agencies to maintain a sex offender registry that is accessible by the public. Current law requires the State Bureau of Identification to maintain a sex offender registry; other law enforcement agencies are permitted to maintain a sex offender registry, but only for internal use by those agencies.

Committee Amendment "A" (H-867) proposed to replace the bill. The amendment proposed to clarify that only the Department of Public Safety, State Bureau of Identification may maintain a state sex offender registry on the Internet but proposed to authorize law enforcement agencies to maintain their own sex offender websites for internal use and for use by the public if certain conditions are met. Specifically, in order to make a sex offender website available to the public, the amendment proposed that a law enforcement agency must post on its website that the website is not the official state sex offender registry and that the law enforcement agency posting the website is solely responsible for the website's content; provide a link to the bureau's Internet sex offender registry; post information regarding only 10-year and lifetime registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; update the information on the website as

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frequently as possible, but no less than every 7 days; and prominently display the date and time of the most recent update.

Enacted law summary

Public Law 2005, chapter 545 clarifies that only the Department of Public Safety, State Bureau of Identification may maintain a state sex offender registry on the Internet but authorizes law enforcement agencies to maintain their own sex offender websites for internal use and for use by the public if certain conditions are met. Specifically, in order to make a sex offender website available to the public, a law enforcement agency must post on its website that the website is not the official state sex offender registry and that the law enforcement agency posting the website is solely responsible for the website's content. The law enforcement agency must also provide a link to the State Bureau of Identification's Internet sex offender registry; post information regarding only 10-year and lifetime registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; update the information on the website as frequently as possible, but no less than every 7 days; and prominently display the date and time of the most recent update.

LD 1859

An Act To Inform and Protect the Public Regarding State Employees with Certain Criminal Records

ONTP

Sponsor(s)
SMITH N
MAYO

Committee Report
ONTP

Amendments Adopted

LD 1859 proposed to require an agency, department, board or commission of State Government that employs a person who has been convicted of a "serious crime", including murder, or a Class A, B or C crime, or who is required to register as a 10-year or lifetime registrant under the Sex Offender Registration and Notification Act of 1999 and who, as part of that person's duties, has direct contact with a member of the public in the home or business of that member of the public, to inform that member of the public of the date and crime for which the person was convicted and to provide the member of the public with the option of requesting a different person with whom to conduct business. The bill proposed to direct the Department of Administrative and Financial Services to adopt major substantive rules to implement these notification requirements.

LD 1859 also proposed to require the Department of Administrative and Financial Services to study and report by January 5, 2007 to the State and Local Government Committee of the 123rd Legislature regarding the number of state employees who have been convicted of a serious crime, the level of public exposure those employees have and the extent of the access those employees have to confidential information of members of the public. This bill was not enacted, as the Department of Administrative and Financial Services, Bureau of Employee Relations pledged to amend hiring policies to address concerns.

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LD 1861

**An Act To Improve the Ability of the Department of Corrections
To Share Information Related to Clients in Order To Improve
Treatment and Rehabilitative Services**

**PUBLIC 487
EMERGENCY**

Sponsor(s)
GROSE

Committee Report
OTP-AM

Amendments Adopted
H-751

LD 1861 proposed to allow the Department of Corrections to share with the Department of Health and Human Services information regarding juvenile clients who have been referred to Department of Corrections but for whom no petition has been filed. The purpose of authorizing the sharing of this information is to improve the overall delivery of services to clients and to assist in the placement of preadjudicated juveniles as an alternative to detention. Current law allows sharing of a juvenile’s information at this stage only with consent of a juvenile’s parent or guardian or without consent if only to a criminal justice agency for purposes of the administration of juvenile criminal justice.

LD 1861 also proposed to authorize the Department of Corrections to share confidential records of any Department of Corrections client, juvenile or adult, with any other state agency engaged in statistical analysis for the purpose of improving delivery of services to persons who may become clients of more than one agency. The bill proposed that the requesting agency must submit a plan to the Department of Corrections Commissioner, who must approve the plan and authorize disclosure. The bill also proposed that the receiving agency may not disclose or distribute the records in any way that would refer to a client by name or number or could otherwise lead to the client’s identification.

Committee Amendment “A” (H-751) proposed to add an emergency preamble and clause to the bill to more quickly facilitate the sharing of information between the Department of Corrections and the Department of Health and Human Services and other agencies.

Enacted law summary

Public Law 2005, chapter 487 allows the Department of Corrections to share with the Department of Health and Human Services information regarding juvenile clients who have been referred to the Department of Corrections but for whom no petition has been filed. The purpose of authorizing the sharing of this information is to improve the overall delivery of services to clients and to assist in the placement of preadjudicated juveniles as an alternative to detention. Without Public Law 2005, chapter 487 sharing of a juvenile’s information at this stage could happen only with consent of a juvenile’s parent or guardian or without consent if to a criminal justice agency only for purposes of the administration of juvenile criminal justice.

Public Law 2005, chapter 487 also authorizes the Department of Corrections to share confidential records of any client (juvenile or adult) with any other state agency engaged in statistical analysis for the purpose of improving delivery of services to persons who may become clients of more than one agency. The requesting agency must submit a plan to the Commissioner of Corrections, who must approve the plan and authorize the disclosure. The

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receiving agency may not disclose or distribute the records in any way that would refer to a client by name or number or could otherwise lead to the client's identification.

Public Law 2005, chapter 487 was enacted as an emergency measure effective March 13, 2006.

LD 1868 **An Act To Eliminate Administrative Preliminary Hearings for Probationers** **PUBLIC 661**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PLUMMER	OTP-AM	H-796 S-670 ROTUNDO

LD 1868 proposed to amend the Maine Criminal Code to eliminate the administrative preliminary hearings presently conducted by the Department of Corrections to determine probable cause for a probation violation and instead to require the courts to conduct probable cause hearings within 3 days after a probationer's arrest.

Committee Amendment "A" (H-796) proposed to require the court to hold probable cause hearings within 5 days after arrest instead of 3 days, as proposed by the bill. The amendment proposed to specify that evidence presented to establish probable cause may include affidavits and other reliable hearsay evidence as permitted by the court. The amendment also proposed to add an effective date of January 1, 2007.

Senate Amendment "A" to Committee Amendment "A" (S-670) proposed to add an appropriations and allocations section, which proposed to appropriate to the Judicial Department funds for court-appointed attorneys and deappropriate from the Department of Corrections savings resulting from reduced overtime of probation officers and savings resulting from a delay in ordering cars.

Enacted law summary

Public Law 2005, chapter 661 eliminates the administrative hearings presently conducted by the Department of Corrections to determine probable cause for a probation violation and instead requires probable cause hearings to be conducted by the courts within 5 days after arrest. Public Law 2005, chapter 661 also specifies that evidence presented to establish probable cause may include affidavits and other reliable hearsay evidence as permitted by the court. Public Law 2005, chapter 661 is effective January 1, 2007.

LD 1879 **An Act To Enhance Firefighter Safety** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DUPLESSIE BRYANT B	ONTP	

LD 1879 proposed to require structures that use trusses in the floor or roof or parts of the floor or roof to display an emblem on the building signifying truss construction and the materials used in the truss construction. The bill proposed that the owner of the structure would be required to install and maintain the emblem. The bill proposed that 2 exceptions to this requirement would be: 1) detached 1-family and 2-family residential structures with truss construction built before the effective date of the bill that are not part of a planned real estate development

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(however, municipalities may by local ordinance require that an emblem be affixed to these structures); and 2) individual structures and dwelling units with truss construction that are part of a planned real estate development, as long as an emblem is affixed at each entranceway to the development. LD 1879 proposed that a person who fails to comply with these requirements commits a Class E crime.

The bill also proposed to provide a voluntary statewide recommendation for uniform standards of identifying dangerous or vacant properties to further protect firefighters.

LD 1884

An Act To Improve the Prisoner Telephone System

**PUBLIC 506
EMERGENCY**

<u>Sponsor(s)</u> BLANCHETTE		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-793
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LD 1884 was an emergency bill introduced by the Department of Corrections that proposed to do the following:

1. Specify that a prisoner who has been ordered to pay restitution or fines may not participate in an industry program or any other program administered by the Department of Corrections or a sheriff by which a prisoner is able to generate money unless the prisoner consents to pay at least 25% of the prisoner's gross weekly wages or other money generated to the victim or the court until such time as full restitution has been made or the fine is paid in full;
2. Amend the payment of restitution provisions to specify that a prisoner's money that is subject to the 25% requirement applies to money "received" by the prisoner and not just to money that the prisoner "is able to generate" from any source. (i.e., a portion of gifts a prisoner receives may be applied to restitution and fines) The bill also proposed to exclude from this restitution and fine requirement any money received by the prisoner that is directly deposited into an account for the purpose of using the client telephone system. Any money that is left in the telephone account at the time of a prisoner's discharge or transfer would then be transferred into the department's general client account and that money is then subject to the 25% distribution for restitution and fines;
3. Amend the restitution and monetary sanctions to facilities provisions to be consistent with changes in the bill;
4. Amend the provisions governing clients' money to specify that money received by a client be deposited into "the department's general client account" instead of "the facility's clients' account" or in the department's telephone call account. The bill proposed that money deposited in either account is credited to the client receiving it, and that any money that is left in the telephone account at the time of a prisoner's discharge or transfer is then transferred into the department's general client account and that money is then subject to the 25% distribution for restitution and fines before distributed to the client;
5. Specify the reimbursement process of client funds to family members when a client is deceased;
6. Amend the reference to "clients' account" to "department's general client account" consistent with the other changes in the bill; and
7. Facilitate the use of prepaid minutes in the State's prisoner telephone system.

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Committee Amendment “A” (H-793) proposed to make the provisions for deductions from a prisoner's account for the payment of court filing fees consistent with the changes proposed in the bill for deductions for the payment of fines and restitution.

Enacted law summary

Public Law 2005, chapter 506 specifies that a prisoner who has been ordered to pay restitution or fines may not participate in an industry program or any other program administered by the Department of Corrections or a sheriff by which a prisoner is able to generate money unless the prisoner consents to pay at least 25% of the prisoner's gross weekly wages or other money generated to the victim or the court until such time as full restitution has been made or the fine is paid in full. Public Law 2005, chapter 506 also amends the payment of restitution provisions to specify that a prisoner's money that is subject to the 25% requirement applies to money “received” by the prisoner and not just to money that the prisoner “is able to generate” from any source. (i.e., a portion of gifts a prisoner receives may be applied to restitution and fines)

Public Law 2005, chapter 506 facilitates the use of prepaid minutes in the State's prisoner telephone system. Public Law 2005, chapter 506 also excludes from the 25% restitution and fine requirement any money received by the prisoner that is directly deposited into an account for the purpose of using the client telephone system.

Public Law 2005, chapter 506 further amends the provisions governing clients' money to specify that money received by a client be deposited into “the department's general client account” instead of “the facility's clients' account” or in the department's telephone call account. Money deposited in either account is credited to the client receiving it. Any money that is left in the telephone account at the time of a prisoner's discharge or transfer is then transferred into the department's general client account and that money is then subject to the 25% distribution for restitution and fines before distributed to the client. Finally, Public Law 2005, chapter 506 specifies the reimbursement process of client funds to family members when a client is deceased.

Public Law 2005, chapter 506 was enacted as an emergency measure effective March 24, 2006.

LD 1886

**An Act To Amend the Laws Pertaining to the Department of
Corrections**

**PUBLIC 488
EMERGENCY**

Sponsor(s)
BLANCHETTE
MAYO

Committee Report
OTP-AM

Amendments Adopted
H-754

LD 1886 was introduced by the Department of Corrections and proposed to make the following changes to the laws governing that department:

1. Clarify the appeals process with respect to juvenile detention orders by specifying that an order may include discovery of new and significant information, which is consistent with the Bail Code;
2. Add a requirement that, upon the request of a victim, the victim be notified when a prisoner is released to supervised release for sex offenders, a sentencing alternative in the Maine Revised Statutes, Title 17-A, section 1231 enacted by Public Law 1999, chapter 788, section 7;

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3. Change terminology to reflect the terminology used in the Sex Offender Registration and Notification Act of 1999, Title 34-A, chapter 15;
4. Eliminate the requirement that the Commissioner of the Department of Corrections notify the court of the initial place of confinement of a person committed to the Department of Corrections, since the commissioner notifies the sheriff now and the courts receive the same information from sheriffs;
5. Add correctional supervisors to those who may carry a concealed firearm with the permission of their employer;
6. Repeal the provision that requires the Commissioner of Corrections to promulgate rules for community services agreements;
7. Correct an error in terminology in the provision governing boards of visitors;
8. Change the title of the chief administrative officer of the Mountain View Youth Development Center from director to superintendent to make it identical to the title for the chief administrative officer of the Long Creek Youth Development Center;
9. Substitute the term “juvenile community corrections officers” for “juvenile caseworkers” in several provisions; and
10. Add references to “supervised release for sex offenders” to a provision regarding probation and parole officers and intensive supervision program officers.

Committee Amendment “A” (H-754) proposed to create an exception to a law that requires the elimination of all commissary-type facilities operated by state departments for the sale of food and food supplies to any person. This amendment proposed to allow the Department of Corrections to lawfully continue its long-time practice of operating a commissary for the sale of food to clients and employees in corrections facilities and to clarify that the chief administrative officer of a correctional or detention facility may, subject to the approval of the commissioner, purchase meals for or otherwise provide meals without charge to any facility employee who eats such meals within the scope of employment.

To remedy the department's unintended violation more quickly, this amendment also proposed to make the bill an emergency.

Enacted law summary

Public Law 2005, chapter 488 makes the following changes to the laws governing the Department of Corrections.

It clarifies the appeals process with respect to juvenile detention orders by specifying that an order may include discovery of new and significant information, which is consistent with the Bail Code.

It adds a requirement that, upon the request of a victim, the victim be notified when a prisoner is released to supervised release for sex offenders, a sentencing alternative in the Maine Revised Statutes, Title 17-A, section 1231 enacted by Public Law 1999, chapter 788, section 7.

It changes terminology to reflect the terminology used in the Sex Offender Registration and Notification Act of 1999, Title 34-A, chapter 15.

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It eliminates the requirement that the Commissioner of Corrections notify the court of the initial place of confinement of a person committed to the Department of Corrections, since the commissioner notifies the sheriff now and the courts receive the same information from sheriffs.

It adds correctional supervisors to those who may carry a concealed firearm with the permission of their employer.

It repeals the provision that requires the Commissioner of Corrections to promulgate rules for community services agreements.

It corrects an error in terminology in the provision governing boards of visitors.

It changes the title of the chief administrative officer of the Mountain View Youth Development Center from director to superintendent to make it identical to the title for the chief administrative officer of the Long Creek Youth Development Center.

It substitutes the term “juvenile community corrections officers” for “juvenile caseworkers” in several provisions.

It adds references to “supervised release for sex offenders” to a provision regarding probation and parole officers and intensive supervision program officers.

It creates an exception to a law that requires the elimination of all commissary-type facilities operated by state departments for the sale of food and food supplies to any person. Public Law 2005, chapter 488 allows the Department of Corrections to lawfully continue its long-time practice of operating a commissary for the sale of food to clients and employees in corrections facilities and clarifies that the chief administrative officer of a correctional or detention facility may, subject to the approval of the commissioner, purchase meals for or otherwise provide meals without charge to any facility employee who eats such meals within the scope of the employee’s employment.

Public Law 2005, chapter 488 was enacted as an emergency measure effective March 13, 2006.

LD 1906

An Act To Safeguard Maine's Highways

PUBLIC 606

<u>Sponsor(s)</u> CURLEY DIAMOND	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-1041
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LD 1906 proposed to provide stricter penalties for operating after license suspension or OAS. Specifically, the bill proposed to do the following:

1. Establish a graduated penalty scale for license suspensions, not related to the offense of operating under the influence, that occur within a 3-year period, beginning with a license suspension of one year and a \$1,000 fine for 3 suspensions within a 3-year period and increasing to a license suspension of 10 years and a \$5,000 fine for 7 or more license suspensions within a 3-year period;

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2. Provide for mandatory incarceration, which may not be suspended, if the person is convicted of OAS while that person's license was suspended due to multiple suspensions. The bill proposed that the length of the incarceration is graduated, beginning with 180 days for OAS after suspension for 3 suspensions and increasing to a Class B crime, punishable by 5 years incarceration, for OAS after suspension for 7 or more license suspensions within a 3-year period;
3. Amend the current law that allows a vehicle to be impounded when the driver has operated a motor vehicle while under the influence to allow a motor vehicle also to be impounded for an OAS offense. The vehicle impounded for an OAS offense would be released only after the offender's driver's license has been reinstated and the impound fees have been paid;
4. Create the new crime of contributing to an accident after license suspension or revocation. The bill proposed that if a person whose license has been suspended or revoked is involved in an accident, regardless of fault, and that accident results in bodily injury or death of another person, the person operating after suspension commits a Class C crime in the case of bodily injury or a Class B crime in the case of death. The bill proposed that the Class C crime is punishable by a minimum sentence of 3 years imprisonment and an additional license suspension of 5 years. The bill proposed that the Class B crime is punishable by a minimum sentence of imprisonment of 5 years and an additional license suspension of 10 years. The new crime would not apply if the person were convicted of the crime of operating under the influence and causing the death or bodily injury of another person, which is increased from a Class C to a Class B crime; and
5. Require the Secretary of State to confiscate the license of a person who is convicted of OAS for the duration of the suspension, including any additional suspension imposed for OAS.

Committee Amendment “A” (H-1041) proposed to replace the bill and do the following:

1. Amend the OUI law to be consistent with proposed changes in this law that create the distinct crimes of causing serious bodily injury or death while a driver's license is suspended or revoked;
2. Create new crimes of causing serious bodily injury or death while driving with a suspended or revoked license. The amendment proposed that a person commits the crime if the person knowingly operates with a suspended or revoked license and in fact causes serious bodily injury or death. The amendment proposed that causing injury in such a case is a Class C crime with penalties that include a possible 0-5 years of imprisonment and a mandatory 5-year license suspension, and causing death in such a case is a Class B crime with penalties that include a possible 0-10 years of imprisonment and a mandatory 10-year license suspension;
3. Expand the habitual offender statute by adding the offense of operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more to the list of 3 or more convictions or adjudications for distinct offenses within a 5-year period for which a person is an habitual offender;
4. Further expand the habitual offender statute by adding the accumulation of 10 or more moving violations within a 5-year period to the list of convictions or adjudications for distinct offenses within a 5-year period for which a person is an habitual offender;
5. Remove from the exceptions for which a person is not an habitual offender the case when all convictions or adjudications are based on operating after suspension when the license was originally suspended for failure to give or maintain proof of financial responsibility;

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6. Remove from the convictions for offenses that may not be included under the habitual offender provision convictions for operating after suspension when the suspension is based upon failure to appear in court or pay a fine;
7. Amend the penalties for operating after habitual offender revocation and expand the crime to include persons who have one or more prior convictions for operating after habitual offender revocation or aggravated operating after habitual offender revocation and who then operate after the license is suspended or revoked. The amendment proposed mandatory penalties that cannot be suspended, which include the following:
 - A. A person is guilty of a Class D crime if the person operates after habitual offender revocation and has not been convicted of operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has no prior convictions, the minimum mandatory fine for this Class D crime is \$500 and the minimum mandatory term of imprisonment is 30 days;
 - B. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has one conviction for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has one prior conviction, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 6 months;
 - C. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has 2 convictions for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has 2 prior convictions, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 9 months plus a day; and
 - D. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has 3 or more convictions for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has 3 or more prior convictions, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 2 years;
8. Create the new crime of aggravated operating after habitual offender revocation and impose new penalties. The amendment proposed that a person is guilty of aggravated operating after habitual offender revocation if that person operates after habitual offender revocation and at the time of that violation also commits one or more of the following: operating under the influence, driving to endanger, eluding an officer, passing a roadblock and operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more. The amendment proposed mandatory penalties that cannot be suspended, which include the following:
 - A. A person is guilty of a Class D crime if the person commits the crime of aggravated operating after habitual offender revocation. If the person has no prior convictions, the minimum fine for this Class D crime is \$500 and the minimum term of imprisonment is 6 months;
 - B. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender revocation and has one prior conviction for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has one prior conviction, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is one year;

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- C. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender and has 2 prior convictions for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has 2 prior convictions, the minimum fine for this Class C crime is \$2,000 and the minimum term of imprisonment is 2 years; and
 - D. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender and has 3 or more convictions for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has 3 or more prior convictions, the minimum fine for this Class C crime is \$3,000 and the minimum term of imprisonment is 5 years;
- 9. Direct the Secretary of State to take reasonable actions to confiscate suspended licenses; and
 - 10. Request that the Maine Sheriff's Association by January 30, 2007 report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the impact these increased motor vehicle penalties have on the county jail population and to make any suggested changes, if necessary.

House Amendment "A" to Committee Amendment "A" (H-1049) proposed to specify that a person who, while knowingly operating with a suspended or revoked license, in fact causes the death of another person is subject to a minimum term of imprisonment of 5 years. This amendment was not adopted.

Enacted law summary

Public Law 2005, chapter 606 makes the following changes to the motor vehicle statutes.

- 1. It amends the OUI law to be consistent with proposed changes in this law that create the distinct crimes of causing serious bodily injury or death while a driver's license is suspended or revoked.
- 2. It creates new crimes of causing serious bodily injury or death while driving with a suspended or revoked license. A person commits the crime if the person knowingly operates with a suspended or revoked license and in fact causes serious bodily injury or death. Causing injury in such a case is a Class C crime with penalties that include a possible 0-5 years of imprisonment and a mandatory 5-year license suspension. Causing death in such a case is a Class B crime with penalties that include a possible 0-10 years of imprisonment and a mandatory 10-year license suspension.
- 3. It expands the habitual offender statute by adding the offense of operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more to the list of 3 or more convictions or adjudications for distinct offenses within a 5-year period for which a person is an habitual offender.
- 4. It further expands the habitual offender statute by adding the accumulation of 10 or more moving violations within a 5-year period to the list of convictions or adjudications for distinct offenses within a 5-year period for which a person is an habitual offender.
- 5. It removes from the exceptions for which a person is not an habitual offender the case when all convictions or adjudications are based on operating after suspension when the license was originally suspended for failure to give or maintain proof of financial responsibility.

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6. It removes from the convictions for offenses that may not be included under the habitual offender provision convictions for operating after suspension when the suspension is based upon failure to appear in court or pay a fine.
7. It amends the penalties for operating after habitual offender revocation and expands the crime to include persons who have one or more prior convictions for operating after habitual offender revocation or aggravated operating after habitual offender revocation and who then operate after the license is suspended or revoked. Mandatory penalties that cannot be suspended include the following.
 - A. A person is guilty of a Class D crime if the person operates after habitual offender revocation and has not been convicted of operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has no prior convictions, the minimum fine for this Class D crime is \$500 and the minimum term of imprisonment is 30 days.
 - B. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has one conviction for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has one prior conviction, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 6 months.
 - C. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has 2 convictions for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has 2 prior convictions, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 9 months plus a day.
 - D. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has 3 or more convictions for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has 3 or more prior convictions, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 2 years.
8. It creates the new crime of aggravated operating after habitual offender revocation and imposes new penalties. A person is guilty of aggravated operating after habitual offender revocation if that person operates after habitual offender revocation and at the time of that violation also commits one or more of the following: operating under the influence, driving to endanger, eluding an officer, passing a roadblock and operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more. Mandatory penalties that cannot be suspended include the following.
 - A. A person is guilty of a Class D crime if the person commits the crime of aggravated operating after habitual offender revocation. If the person has no prior convictions, the minimum fine for this Class D crime is \$500 and the minimum term of imprisonment is 6 months.
 - B. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender revocation and has one prior conviction for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has one prior conviction, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is one year.
 - C. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender and has 2 prior convictions for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the

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previous 10 years. If a person has 2 prior convictions, the minimum fine for this Class C crime is \$2,000 and the minimum term of imprisonment is 2 years.

D. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender and has 3 or more convictions for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has 3 or more prior convictions, the minimum fine for this Class C crime is \$3,000 and the minimum term of imprisonment is 5 years.

9. It directs the Secretary of State to take reasonable actions to confiscate suspended licenses.

10. It requests that the Maine Sheriff's Association by January 30, 2007 report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the impact these increased motor vehicle penalties have on the county jail population and to make any suggested changes, if necessary.

LD 1938

An Act To Protect Victims of Domestic Violence

DIED BETWEEN BODIES

Sponsor(s)
STRIMLING
SIMPSON

Committee Report
OTP-AM

Amendments Adopted
S-525

LD 1938 proposed to require the Department of Public Safety, upon learning through a criminal background check that an individual subject to a protection from abuse order has illegally attempted to purchase a firearm, to promptly make every reasonable effort to share the information with the individual who is intended to be protected by the order and the local law enforcement agency where the individual resides, so that adequate precautions can be taken to minimize the risk of further domestic violence.

LD 1938 proposed that the State, a political subdivision of the State or a law enforcement officer may not be held liable for damage that may be caused by the failure or inability to inform an individual who is intended to be protected by the protection from abuse order.

Committee Amendment “A” (S-525) proposed to specify that, upon receiving information from a federal agency that through a criminal background check an individual subject to a protection from abuse order has illegally attempted to purchase a firearm, the Department of Public Safety shall share that information with the individual who is intended to be protected by the order and with another law enforcement agency with jurisdiction in the municipality in which that individual resides as quickly as practicable.

The amendment also proposed to specify that the Department of Public Safety may accomplish the notification process by notifying another law enforcement agency within the county in which the individual intended to be protected by the protection from abuse order resides. Committee Amendment “A” proposed that when the department makes notification through such a law enforcement agency, that agency then must make reasonable effort to notify as quickly as practicable the individual intended to be protected by the protection from abuse order. The amendment further proposed that if, when notifying another law enforcement agency, the department is informed by that agency that it cannot notify the individual intended to be protected by the protection from abuse order, the department must continue to make its own reasonable effort to notify that individual as quickly as

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practicable, and this may be accomplished through a different law enforcement agency within the county in which the individual resides.

The amendment also proposed to clarify that the immunity provision does not prohibit the State or a political subdivision of the State from pursuing legally authorized disciplinary action.

House Amendment “A” to Committee Amendment “A” (H-954), which was not adopted, proposed to do the following:

1. Amend the provision of law granting immunity from civil suit to governmental entities to hold a law enforcement agency liable for damage or loss of firearms seized, confiscated or received by that law enforcement agency pursuant to an order of the court in a protection from abuse proceeding;
2. Require a court to order a person seeking a protection from abuse order in bad faith to pay damages and reasonable attorney's fees to the defendant;
3. Require a law enforcement agency seizing, confiscating or receiving a firearm pursuant to an order of a court in a protection from abuse proceeding to provide the owner of the firearm with a signed and dated receipt, which must include the serial number and condition of the firearm and any firearm accessories obtained with the firearm; and
4. Prohibit a law enforcement agency seizing, confiscating or receiving a firearm pursuant to an order of a court in a protection from abuse proceeding from engraving, permanently marking or, unless reasonable suspicion exists to believe the firearm was used in the commission of a crime, test firing the firearm. The amendment proposed that a law enforcement agency that violates this prohibition is liable for any reduction in value of the firearm.

House Amendment “B” to Committee Amendment “A” (H-990), which was not adopted, proposed to do the following:

1. Amend the provision of law granting immunity from civil suit to governmental entities to hold a law enforcement agency liable for damage or loss of firearms seized, confiscated or received by that law enforcement agency pursuant to an order of the court in a protection from abuse proceeding;
2. Require a law enforcement agency seizing, confiscating or receiving a firearm pursuant to an order of a court in a protection from abuse proceeding to provide the owner of the firearm with a signed and dated receipt, which must include the serial number and condition of the firearm and any firearm accessories obtained with the firearm; and
3. Prohibit a law enforcement agency seizing, confiscating or receiving a firearm pursuant to an order of a court in a protection from abuse proceeding from engraving, permanently marking or, unless reasonable suspicion exists to believe the firearm was used in the commission of a crime, test firing the firearm. The amendment proposed that a law enforcement agency that violates this prohibition is liable for any reduction in value of the firearm.

House Amendment “C” to Committee Amendment “A” (H-1030), which was not adopted, proposed to do the following:

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1. Direct the Maine Criminal Justice Academy to provide training for municipal, county and state law enforcement officers regarding the proper handling, storage and safekeeping of firearms received pursuant to a protection from abuse order;
2. Provide that in developing materials for training in domestic violence issues, the Maine Criminal Justice Academy may consult with a statewide organization involved in advocacy for victims of domestic violence and with an organization having statewide membership representing the interests of firearms owners; and
3. Provide that a law enforcement officer who receives custody of a firearm pursuant to a protection from abuse order shall exercise reasonable care to avoid loss, damage or reduction in value of such firearm. Any liability for damage or reduction in value to such a firearm is governed by the Maine Tort Claims Act, Maine Revised Statutes, Title 14, chapter 741.

House Amendment “D” to Committee Amendment “A” (H-1044), which was not adopted, proposed to do the same as paragraphs 1 and 2 described in House Amendment “C” to Committee Amendment “A” above, except that this amendment also provides that a law enforcement officer who receives custody of a firearm pursuant to a protection from abuse order shall exercise reasonable care to avoid loss, damage or reduction in value of such firearm and may not permanently mark the firearm or fire the firearm unless there is reasonable suspicion that the firearm has been used in the commission of a crime. As in House Amendment “C”, this amendment also proposed that any liability for damage or reduction in value to such a firearm is governed by the Maine Tort Claims Act, Maine Revised Statutes, Title 14, chapter 741.

Senate Amendment “A” to Committee Amendment “A” (S-565), which was not adopted, proposed to do the same as House Amendment “A” to Committee Amendment “A” (H-954).

Senate Amendment “B” to Committee Amendment “A” (S-596), which was not adopted, proposed to do the same as House Amendment “A” to Committee Amendment “A” (H-954).

LD 1938 as amended by Committee Amendment “A” (H-954) died between the bodies but see LD 2116, “An Act to Provide Protection for Victims of Domestic Violence” and LD 2118, “An Act Related to the Handling of Firearms Confiscated by Law Enforcement Officers Pursuant to a Court Order.”

LD 1997 **An Act To Amend the Laws Dealing with a Work-restricted License** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
JACKSON	ONTP MAJ	
MARTIN	OTP MIN	

LD 1997 proposed to authorize the Secretary of State to consider a first-time OUI offender’s eligibility for a work-restricted license after 30 days of the suspension has passed. Current law authorizes the Secretary of State to consider issuing a work-restricted license to a first-time OUI offender after at least 2/3 of that offender’s license suspension has expired.

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LD 2001

**An Act To Implement Recommendations of the Criminal Law
Advisory Commission**

PUBLIC 527

Sponsor(s)

Committee Report

Amendments Adopted

OTP-AM

H-858

H-868 RINES

LD 2001 was introduced by the Criminal Law Advisory Commission and proposed a number of technical drafting changes, as well as changes for clarity. Specifically, the bill proposed to do the following:

1. Amend the law regarding possession by prohibited persons of firearms or crossbows to:
 - A. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in the Maine Revised Statutes, Title 17-A, sections 39 and 40 in the statute governing possession by prohibited persons of firearms or crossbows;
 - B. Add a reference to parole, supervised release for sex offenders and administrative release; and
 - C. Change a cross-reference for the definition of “not criminally responsible by reason of insanity” and remove language no longer needed because of this change;
2. Eliminate the need to specify in the charge and prove at trial the value of an audio or visual recording of all or any part of an illegally obtained motion picture. This is consistent with theft involving a firearm or an explosive device in which pecuniary loss is not an element and the absence of a pecuniary loss is not a defense;
3. Amend the crime of failure to report a sexual assault of a person in custody to clarify that the crime's forbidden conduct element of failing to report the sexual assault to an appropriate criminal justice agency has no accompanying culpable mental state element. This bill also proposed to provide an affirmative defense to prosecution under the section when the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter;
4. Amend the crime of possession of a firearm in a courthouse by:
 - A. Adding the word “unauthorized”;
 - B. Clarifying that the crime's forbidden conduct element of possessing a firearm in a courthouse has no accompanying culpable mental state element;
 - C. Adding “corrections supervisor” to the list of persons to whom the prohibition does not apply;
 - D. Requiring that the firearm be unloaded if possessed under the evidence exception;
 - E. Clarifying that the proceeding in which the firearm is to be offered as evidence may be either civil or criminal;
 - F. Adding a new provision that specifies that possession of a valid permit to carry a concealed firearm is not a defense to this crime; and

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- G. Making a number of nonsubstantive changes to the language for purposes of clarity;
5. Provide that the civil penalty for the sale and use of drug paraphernalia is \$300;
 6. Add to the list of sentencing alternatives the sentencing alternative of supervised release for sex offenders as authorized by the Maine Revised Statutes, Title 17-A, chapter 50. The bill also proposed to add a reference to this alternative since a fine may be imposed in addition to a chapter 50 sentencing alternative. Further, the bill proposed to repeal the option of a deferred disposition as authorized by Title 17-A, chapter 54-F since it is not a sentencing alternative. The bill proposed to make clear that every natural person convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so;
 7. Add to the list of sentencing alternatives applicable to an organization the sentencing alternative of a fine, suspended in whole or in part, with administrative release as authorized by Title 17-A, chapter 54-G. The bill proposed to add a reference to this alternative since a sanction authorized by section 1153 may be imposed in addition to a chapter 54-G sentencing alternative. The bill proposed to makes clear that every organization convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so;
 8. Amend the law regarding notification of a defendant's release to:
 - A. Conform the terminology regarding the affirmative defense of insanity to that recently adopted In Title 17-A, sections 39 and 40 pursuant to Public Law 2005, chapter 263, sections 5 to 7;
 - B. Replace the reference to “placed in institutional confinement” under both Title 15, section 103 and Title 15, section 104-A with “committed to the custody of the Commissioner of Health and Human Services”;
 - C. Add references to supervised release for sex offenders pursuant to Title 17-A, chapter 50 and administrative release pursuant to Title 17-A, chapter 54-G; and
 - D. Add “release from commitment under Title 15, section 101-B” in provisions addressing releases that are unconditional;
 9. Current law increasing the sentencing class one class higher for a Class B, C, D or E crime committed with the use of a dangerous weapon excludes from its application the crimes of aggravated assault and attempted aggravated assault. This exclusion was added because use of a dangerous weapon serves as a factual element of one form of the crime of aggravated assault. This bill proposed to broaden the exclusion to include any crime that contains “use of a dangerous weapon” as a factual element;
 10. Current law provides for the sentencing enhancement by one class if the defendant had 2 or more prior convictions of certain crimes, except for a conviction for stalking if the prior convictions have already served to enhance the sentencing class. The bill proposed to broaden this exclusion to include any crime in which a prior conviction has already served to enhance the class of the crime;
 11. Clarify that when 2 or more provisions in Title 17-A, section 1252 are pled and proved by the State to enhance the class of the crime these provisions may be applied successively as long as those to be made successive contain different class enhancement factors. For example, if the State pled and proved that the Class D crime of reckless conduct was committed with the use of a dangerous weapon and, at the time of its

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commission, the defendant had been convicted of 2 or more qualifying crimes, the class of the reckless conduct would be elevated successively from Class D to Class C and from Class C to Class B because subsections 4 and 4-A constitute enhancement factors reflecting different public policy concerns;

12. Remove the current exception for eligibility for deferred disposition, which is that the crime expressly provides that one or more punishment alternatives it authorizes may not be suspended. It also is important to remove this exception in order to allow the flexibility in sentencing options now available under Title 17-A, section 1348-B, subsection 1 and to recognize the fact that the Legislature also recently added a mandatory minimum fine to the Maine Criminal Code crime for assault and all drug crimes in Title 17-A, chapter 45; and
13. Remove that portion of the paragraph authorizing judicial fact-finding at the sentencing hearing and requires instead that “accompanied by sexual assault” be pleaded and proved beyond a reasonable doubt to the fact-finder at the trial. The change is required under both the United States Constitution and the Constitution of Maine because “accompanied by sexual assault” is a fact incident to attempted murder or murder that makes the person a “repeat sexual assault offender” who consequently is subject to a term of imprisonment for any term of years rather than a lesser definite term as specified under Title 17-A, section 1252, subsection 2. See Blakely v. Washington, 542 U.S. 296 (2004); State v. Schofield, 2005 ME 82, 876 A.2d 43.

Committee Amendment “A” (H-858) proposed to make 2 technical corrections, one for readability and one to clarify meaning.

House Amendment “A” (H-868) was presented on behalf of the Committee on Bills in the Second Reading and proposed to prevent a conflict by incorporating changes made to the Maine Revised Statutes, Title 17-A, section 1175, first paragraph in Public Law 2005, chapter 488, section 4.

Enacted law summary

Public Law 2005, chapter 527 was submitted by the Criminal Law Advisory Commission.

Public Law 2005, chapter 527 amends the law regarding possession by prohibited persons of firearms or crossbows to:

1. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in the Maine Revised Statutes, Title 17-A, sections 39 and 40;
2. Add a reference to parole, supervised release for sex offenders and administrative release; and
3. Change a cross-reference for the definition of “not criminally responsible by reason of insanity” and remove language no longer needed because of this change.

Public Law 2005, chapter 527 eliminates the need to specify in the charge and prove at trial the value of an audio or visual recording of all or any part of an illegally obtained motion picture. This is consistent with theft involving a firearm or an explosive device in which pecuniary loss is not an element, and the absence of a pecuniary loss is not a defense.

Public Law 2005, chapter 527 amends the crime of failure to report a sexual assault of a person in custody to clarify that the crime's forbidden conduct element of failing to report the sexual assault to an appropriate criminal justice agency has no accompanying culpable mental state element. Public Law 2005, chapter 527 also provides

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an affirmative defense to prosecution under the section when the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter.

Public Law 2005, chapter 527 amends the crime of possession of a firearm in a courthouse by:

1. Adding the word “unauthorized”;
2. Clarifying that the crime's forbidden conduct element of possessing a firearm in a courthouse has no accompanying culpable mental state element;
3. Adding “corrections supervisor” to the list of persons to whom the prohibition does not apply;
4. Requiring that the firearm be unloaded if possessed under the evidence exception;
5. Clarifying that the proceeding in which the firearm is to be offered as evidence may be either civil or criminal;
6. Adding a new provision that specifies that possession of a valid permit to carry a concealed firearm is not a defense to this crime; and
7. Making a number of nonsubstantive changes to the language for purposes of clarity.

Public Law 2005, chapter 527 provides that the civil penalty for the sale and use of drug paraphernalia is \$300.

Public Law 2005, chapter 527 adds to the list of sentencing alternatives the sentencing alternative of supervised release for sex offenders as authorized by the Maine Revised Statutes, Title 17-A, chapter 50. Public Law 2005, chapter 527 also adds a reference to this alternative since a fine may be imposed in addition to a chapter 50 sentencing alternative. Further, Public Law 2005, chapter 527 repeals the option of a deferred disposition as authorized by Title 17-A, chapter 54-F, since it is not a sentencing alternative. Public Law 2005, chapter 527 makes clear that every natural person convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so.

Public Law 2005, chapter 527 adds to the list of sentencing alternatives applicable to an organization the sentencing alternative of a fine, suspended in whole or in part, with administrative release as authorized by Title 17-A, chapter 54-G. Public Law 2005, chapter 527 adds a reference to this alternative since a sanction authorized by section 1153 may be imposed in addition to a chapter 54-G sentencing alternative. Public Law 2005, chapter 527 makes clear that every organization convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so.

Public Law 2005, chapter 527 amends the law regarding notification of a defendant's release to:

1. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in Title 17-A, sections 39 and 40 pursuant to Public Law 2005, chapter 263, sections 5 to 7;
2. Replace the reference to “placed in institutional confinement” under both Title 15, section 103 and Title 15, section 104-A with “committed to the custody of the Commissioner of Health and Human Services”;

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3. Add references to supervised release for sex offenders pursuant to Title 17-A, chapter 50 and administrative release pursuant to Title 17-A, chapter 54-G; and
4. Add “release from commitment under Title 15, section 101-B” in provisions addressing releases that are unconditional.

Current law increasing the sentencing class one class higher for a Class B, C, D or E crime committed with the use of a dangerous weapon excludes from its application the crimes of aggravated assault and attempted aggravated assault. This exclusion was added because use of a dangerous weapon serves as a factual element of one form of the crime of aggravated assault. Public Law 2005, chapter 527 broadens the exclusion to include any crime that contains “use of a dangerous weapon” as a factual element.

Current law provides for the sentencing enhancement by one class if the defendant had 2 or more prior convictions of certain crimes, except for a conviction for stalking if the prior convictions have already served to enhance the sentencing class. Public Law 2005, chapter 527 broadens this exclusion to include any crime in which a prior conviction has already served to enhance the class of the crime.

Public Law 2005, chapter 527 clarifies that when 2 or more provisions in Title 17-A, section 1252 are pled and proved by the State to enhance the class of the crime these provisions may be applied successively as long as those to be made successive contain different class enhancement factors. For example, if the State pled and proved that the Class D crime of reckless conduct was committed with the use of a dangerous weapon and, at the time of its commission, the defendant had been convicted of 2 or more qualifying crimes, the class of the reckless conduct would be elevated successively from Class D to Class C and from Class C to Class B, because subsections 4 and 4-A constitute enhancement factors reflecting different public policy concerns.

Public Law 2005, chapter 527 removes the current exception for eligibility for deferred disposition, which is that the crime expressly provides that one or more punishment alternatives it authorizes may not be suspended. It also is important to remove this exception in order to allow the flexibility in sentencing options now available under Title 17-A, section 1348-B, subsection 1 and to recognize the fact that the Legislature also recently added a mandatory minimum fine to the Maine Criminal Code crime for assault and to all drug crimes in Title 17-A, chapter 45.

Public Law 2005, chapter 527 removes that portion of the paragraph authorizing judicial fact-finding at the sentencing hearing and requires instead that “accompanied by sexual assault” be pleaded and proved beyond a reasonable doubt to the fact-finder at the trial. The change is required under both the United States Constitution and the Constitution of Maine because “accompanied by sexual assault” is a fact incident to attempted murder or murder that makes the person a “repeat sexual assault offender” who consequently is subject to a term of imprisonment for any term of years rather than a lesser definite term as specified under Title 17-A, section 1252, subsection 2. See Blakely v. Washington, 542 U.S. 296 (2004); State v. Schofield, 2005 ME 82, 876 A.2d 43.

LD 2016

**An Act To Extend the Corrections Alternatives Advisory
Committee**

**PUBLIC 667
EMERGENCY**

Sponsor(s)
BLANCHETTE
DIAMOND

Committee Report
OTP-AM

Amendments Adopted
H-859

Joint Standing Committee on Criminal Justice and Public Safety

LD 2016 proposed to amend Public Law 2005, chapter 386, Part J, which established the Corrections Alternatives Advisory Committee. The bill proposed to extend the life of the advisory committee to December 15, 2006, expand its membership and authorize additional meetings and a final report to the Legislature. The bill also proposed to authorize the advisory committee to carry forward any remaining funds in order to support its continued work.

Committee Amendment “A” (H-859) proposed to incorporate a fiscal note.

Enacted law summary

Public Law 2005, chapter 667 amends Public Law 2005, chapter 386, Part J, which established the Corrections Alternatives Advisory Committee. Public Law 2005, chapter 667 extends the life of the advisory committee to December 15, 2006, expands its membership and authorizes additional meetings and a final report to the Legislature. The bill also authorizes the advisory committee to carry forward any remaining funds in order to support its continued work.

Public Law 2005, chapter 667 was enacted as an emergency measure effective May 30, 2006.

LD 2028

An Act To Establish a Computer Crimes Unit within the Maine State Police Crime Laboratory

**PUBLIC 676
EMERGENCY**

Sponsor(s)

Committee Report
OTP-AM

Amendments Adopted
S-519
S-674 ROTUNDO

LD 2028 was proposed by the Joint Standing Committee on Criminal Justice and Public Safety. The bill proposed to repeal the Maine Computer Crimes Task Force and create a new Computer Crimes Unit to be housed within the Maine State Police Crime Laboratory, which is part of the State Police Program. The bill proposed that the Computer Crimes Unit will consist of 6 full-time positions, 4 of which already exist and 2 that are new. The bill also proposed that the Computer Crimes Unit will continue the work of the Maine Computer Crimes Task Force by working collaboratively with the Department of the Attorney General and local law enforcement agencies for the purposes of investigation and assisting all law enforcement agencies in crimes involving computers.

Committee Amendment “A” (S-519) proposed to incorporate a fiscal note.

Senate Amendment “A” (S-674) proposed to replace the bill and to require that 3/14 of the surcharge collected and deposited in the Government Operations Surcharge Fund be paid to the Maine Criminal Justice Academy and 1/14 of the surcharge collected and deposited in the Government Operations Surcharge Fund be paid to the State Police to supplement current funds for computer crimes investigations. The amendment proposed to repeal the statute that established the Maine Computer Crimes Task Force and appropriate funds for the creation of a new computer crimes unit to be housed within the Maine State Police Crime Laboratory, which is part of the State Police program. The computer crimes unit will consist of 6 full-time positions, 4 of which already exist and 2 that are new. The computer crimes unit will continue the work of the Maine Computer Crimes Task Force by working collaboratively with the Department of the Attorney General and local law enforcement agencies for the purposes of investigation and assisting all law enforcement agencies in crimes involving computers.

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Enacted law summary

Public Law 2005, chapter 676 requires that 3/14 of the surcharge collected and deposited in the Government Operations Surcharge Fund be paid to the Maine Criminal Justice Academy and 1/14 of the surcharge collected and deposited in the Government Operations Surcharge Fund be paid to the State Police to supplement current funds for computer crimes investigations. Public Law 2005, chapter 676 repeals the statute that established the Maine Computer Crimes Task Force and appropriates funds for the creation of a new computer crimes unit to be housed within the Maine State Police Crime Laboratory, which is part of the State Police program. The computer crimes unit will consist of 6 full-time positions, 4 of which already exist and 2 that are new. The computer crimes unit will continue the work of the Maine Computer Crimes Task Force by working collaboratively with the Department of the Attorney General and local law enforcement agencies for the purposes of investigation and assisting all law enforcement agencies in crimes involving computers.

Public Law 2005, chapter 676 was enacted as an emergency measure effective June 1, 2006.

LD 2031

**An Act To Authorize Certain County Jail Employees To Perform
Certain Ministerial and Notary Functions for Inmates**

**PUBLIC 541
EMERGENCY**

Sponsor(s)

Committee Report
OTP-AM

Amendments Adopted
H-863

LD 2031 was an emergency bill introduced by the Criminal Law Advisory Commission. The bill proposed to authorize a county jail employee to perform, without fee, the ministerial functions associated with releasing a county jail prisoner on personal recognizance or an unsecured appearance bond if a court has already ordered such a release, with or without additional conditions but without the financial conditions that would create a secured bond. LD 2031 would allow this only if the sheriff had authorized the county jail employee to perform these functions.

Committee Amendment “A” (H-863) proposed to replace the bill and that, beginning April 15, 2006, county jail employees, other than corrections officers or deputy sheriffs, who have a commission as a notary public to provide notary public services may provide those services for inmates if authorized by the sheriff. Inmates frequently require access to notary public services and unless county jail employees are allowed to perform them, there is no practical way for inmates to obtain such access. On February 28, 1989, “judicial officer or notary public” was substituted for “magistrate” in this provision, apparently in the mistaken belief that a notary public performed judicial functions. However, as of 1988 this was no longer true, and a notary public was restricted to performing only ministerial functions. Therefore, there is no legal impediment to or conflict of interest for a jail employee to also act a notary public for inmates.

This amendment also proposed to add an emergency preamble and a retroactivity clause. Due to ignorance of the law on the part of inmates and employees alike, since 1989 numerous county jail inmates have requested and been afforded notary public services from county jail employees including notarizing documents like affidavits, wills, living wills, and powers of attorney and performing marriage ceremonies. Making this change retroactive would validate the authority to act as a notary a jail employee who provided notary services for an inmate at any time since 1989.

Enacted law summary

Joint Standing Committee on Criminal Justice and Public Safety

Beginning April 15, 2006, Public Law 2005, chapter 541 authorizes county jail employees, except corrections officers or deputy sheriffs, who have a commission as a notary public to provide notary public services for inmates if the employees are authorized to do so by the sheriff. Inmates frequently require access to notary public services and unless county jail employees are allowed to perform them, there is no practical way for inmates to obtain such access. On February 28, 1989, “judicial officer or notary public” was substituted for “magistrate” in the statute, apparently in the mistaken belief that a notary public performed judicial functions. However, as of 1988 this was no longer true, and a notary public was restricted to performing only ministerial functions. Therefore, there is no legal impediment to or conflict of interest for a jail employee to also act a notary public for inmates.

Public Law 2005, chapter 541 is retroactive, thereby validating the authority to act as a notary to a jail employee who provided notary services for an inmate at any time since 1989. Due to ignorance of the law on the part of inmates and employees alike, since 1989, numerous county jail inmates have requested and been afforded notary public services from county jail employees, including notarizing documents like affidavits, wills, living wills, and powers of attorney and performing marriage ceremonies.

Public Law 2005, chapter 541 was enacted as an emergency measure effective April 5, 2006.

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LD 2044

**An Act To Enhance the Protection of Maine Families from
Terrorism and Natural Disasters**

**PUBLIC 634
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-1066 DUPLESSIE S-575 S-651 STRIMLING

LD 2044 was recommended by the Task Force to Study Maine's Homeland Security Needs. This bill proposed to do the following:

1. Place matters pertaining to the Maine Emergency Management Agency (MEMA) and its director under the jurisdiction of the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and assign that committee the responsibility of reviewing that agency under the provisions of the State Government Evaluation Act. The bill proposed to create the Homeland Security Advisory Council to advise the Governor on the coordination of homeland security activities of state agencies and the most effective use of grant funds and to make the Director of MEMA chair of the council;
2. Direct the Statewide Radio Network Board, which consists of the Chief Information Officer and agencies using the statewide radio and network system, to develop protocols and procedures for frequency coordination throughout the State during emergencies and to obtain memoranda of understanding from certain stakeholders. The bill proposed to require the Statewide Radio Network Board to report to the Task Force to Study Maine's Homeland Security Needs on its progress by September 18, 2006. It proposed to clarify that the Chief Information Officer and other agencies using the statewide radio and network system may operate as a board to establish standards for statewide radio and network system operations;
3. Authorize the Governor to bring the balance of the Disaster Relief Fund up to \$3,000,000. It proposed to require that any interest that accrues in the fund in excess of \$3,000,000 be transferred by the State Controller to the Maine Budget Stabilization Fund. The bill also proposed to provide that the Disaster Relief Fund may be used for the purpose of matching federal funds in the event of a federally declared disaster and that the Director of MEMA report annually to the Governor and the Legislature on the fund's balance and expenditures beginning January 15, 2007;
4. Require the Director of the Maine Center for Disease Control and Prevention within the Department of Health and Human Services to coordinate with the Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency on the planning and expenditure of federal funds received by the center for homeland security or bioterrorism prevention. The bill also proposed to require the advisor of the Homeland Security Advisory Council to report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the use of those funds;
5. Require that the Director of MEMA be qualified by education, training or experience in the emergency management profession, appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and confirmation by the Legislature. It also proposed to provide that the director shall represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the State. It proposed to require the director to conduct periodic assessments of the use of state radio frequencies in

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emergencies and directs the director to develop and produce emergency preparedness public service announcements to be broadcast regularly on local broadcasting networks;

6. Require the Director of MEMA to survey Maine communities to gather information on the types of emergency notification systems that are in place throughout the State, evacuation plans for nursing homes currently adopted throughout the State and shelter capabilities throughout the State, with a focus on determining how shelters are designed to accommodate populations with special needs, particularly persons with disabilities;
7. Direct the Director of the MEMA to coordinate with the Commissioner of Education to perform an assessment of the number of Maine public schools that have adopted an all-hazards approach to emergency preparedness and requires the director and the commissioner to coordinate their efforts for community outreach for all-hazards emergency planning. The bill proposed to require the director to report by September 18, 2006 to the Task Force to Study Maine's Homeland Security Needs with its findings and recommendations. This bill also proposed to require that all new schools be designed to include backup energy generators or be wired for portable energy generators, thus enabling their use as public shelters;
8. Require the Commissioner of Education to determine methods for incorporating emergency plans within the elementary and secondary public school curriculum. It proposed to require the commissioner to report by January 15, 2007 with findings and proposed recommended changes to the curriculum to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters;
9. Direct the Maine Center for Disease Control and Prevention, in conjunction with the Maine Hospital Association, to update its survey of emergency health system capacity in the State and to report to the Task Force to Study Maine's Homeland Security Needs on the results of this study and recommendations to address surge capacity by September 18, 2006; and
10. Require the Director of the Maine Center for Disease Control and Prevention to work with stakeholders to ensure that the regional resource centers are provided sufficient funding, and require the director to study the qualifications of local health officers and develop recommendations for enhancing their role in emergency preparedness plans. It proposed to require the director to report to the Task Force to Study Maine's Homeland Security Needs on the results of this study and proposed recommendations by September 18, 2006 and to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over criminal justice matters by January 15, 2007.

Committee Amendment “A” (S-575) proposed to do the following:

1. Direct the Commissioner of Administrative and Financial Services to recommend that, effective July 1, 2007, 45% of the rental income collected by the Department of Administrative and Financial Services, Bureau of General Services, up to \$3,000,000, be transferred to the Department of Defense, Veterans and Emergency Management, Disaster Assistance Relief, Other Special Revenue Funds account for disaster assistance. The fund must be the first resource used when an emergency is proclaimed under the Maine Revised Statutes, Title 37-B, section 742 or 744;
2. Direct the Department of Education to amend its written application for funding for school construction projects to include the question: “Do you plan to use your school as a public community shelter?” The amendment also proposed to specify that in the case of a school construction project in which the school is

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expected to be used as a community shelter, the State Board of Education may approve only those projects designed to accommodate backup energy generators;

3. Modify the required qualifications of the Director of MEMA within the Department of Defense, Veterans and Emergency Management to require education, training or experience in managing emergencies or in the emergency management profession. The amendment proposed to specify that the Director of MEMA acts subject to the direction and control of the Commissioner of Defense, Veterans and Emergency Management. The amendment proposed to repeal an archaic reference in the duties of the Director of MEMA that specifies that the director may not require any political subdivision to participate in any program of nuclear civil protection planning. Finally, in the duties of the Director of MEMA, the amendment proposed to clarify that the director shall develop and conduct an annual program of comprehensive public education, using all appropriate means of communication to educate and inform members of the public and public officials about emergency preparedness, response, recovery and mitigation. The amendment proposed that the program must incorporate the use of appropriate accessible formats to educate and inform individuals with disabilities, individuals who are elderly and non-English-speaking residents of Maine;
4. Expand the directive to the Director of MEMA to evaluate emergency notification systems and evacuation plans and shelters to include evaluation of plans for other long-term care facilities besides nursing homes, including home-based and community-based programs, and evacuation plans for individuals living independently in communities who due to age or disability require assistance to evacuate;
5. Strike language requiring the Director of MEMA and the Commissioner of Education to develop and incorporate emergency plans into the public school curriculum, as the law authorizes this planning, and it is currently taking place;
6. Specify that the parties to be involved in updating information on Maine's emergency health system capacity include the Director of the Center for Disease Control and Prevention within the Department of Health and Human Services, in conjunction with health system stakeholders. The amendment also proposed to specify that the Director of the Center for Disease Control and Prevention, in coordination with the Director of MEMA and the Director of Maine Emergency Medical Services within the Department of Public Safety in consultation with health system stakeholders, including the Maine Primary Care Association, the Maine Hospital Association and other interested parties, shall develop recommendations to address Maine's acute medical and public health surge capacity;
7. Direct the Director of the Maine Center for Disease Control and Prevention to work with health care and emergency management stakeholders to distribute grant funds provided by the United States Department of Health and Human Services, Health Resources and Services Administration to ensure that the regional resource centers are provided with sufficient funding resources to improve health system preparedness, within the limits of the federal funds, in accordance with the documented local needs of the federally specified funding beneficiaries: emergency medical services, poison control centers, health clinics and hospitals in each region. The amendment proposed that the Maine Center for Disease Control and Prevention shall report to the task Force to Study Maine's Homeland Security Needs on the results of the federal Health Resources and Services Administration grant and contract with the regional resource centers and other health system providers and on proposed recommendations and to report the same information to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. The amendment further proposed that the Maine Center for Disease Control and Prevention shall also report annually, beginning January 15, 2007, to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having

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jurisdiction over criminal justice and public safety matters on the progress of the grantees on meeting the stated contractual deliverables;

8. Repeal the application section regarding school construction projects;
9. Add several new sections to the bill, including directing the Director of the MEMA to consult with the Public Utilities Commission to determine the feasibility of adding a disability indicator to the current E-9-1-1 system in Maine to allow individuals with disabilities and special health needs to choose to provide a 2-digit code identifying special assistance needs in an emergency; directing the Maine Center for Disease Control and Prevention to submit a report to the Task Force to Study Maine's Homeland Security Needs by September 18, 2006 detailing the number of health care workers, by profession, registered in the federal Emergency System for Advance Registration of Voluntary Health Professionals; and authorizing 2 additional meetings of the Task Force to Study Maine's Homeland Security Needs;
10. Strike language that gives the Joint Standing Committee on Criminal Justice and Public Safety jurisdiction over matters pertaining to MEMA, as oversight of the agency can be inferred from the committee's review of the agency under the State Government Evaluation Act process and by confirmation of its director; and
11. Add an appropriations and allocations section.

House Amendment “D” to Committee Amendment “A” (H-1066) proposed to strike a section from Committee Amendment “A” that altered a transfer of funding and instead proposed to increase the funding for the Task Force to Study Maine's Homeland Security Needs in order to increase the number of authorized public hearings in fiscal year 2006-07 from one to 2.

Senate Amendment “B” to Committee Amendment “A” (S-651) proposed to incorporate the changes made in House Amendment “C” to Committee Amendment “A” and to limit the Governor to transferring 10% of the balance of rental income from facilities in Limestone in the case of an emergency to provide funds for disaster relief.

House Amendment “A” to Committee Amendment “A” (H-985), which was not adopted, proposed to strike the language that modifies the required qualifications of the Director of MEMA within the Department of Defense, Veterans and Emergency Management to require education, training or experience in managing emergencies or in the emergency management profession. The amendment also proposed to strike the language that requires that the Director of MEMA be appointed by the Governor, serve at the pleasure of the Governor, be responsible for notifying the Governor and Commissioner of Defense, Veterans and Emergency Management of all emergencies and represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the State.

House Amendment “B” to Committee Amendment “A” (H-999), which was not adopted, proposed to strike the language that requires that the Director of MEMA be appointed by the Governor, serve at the pleasure of the Governor, be responsible for notifying the Governor and Commissioner of Defense, Veterans and Emergency Management of all emergencies and represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the State.

House Amendment “C” to Committee Amendment “A” (H-1035), which was not adopted, proposed to give the Governor authority to take money from rental income of facilities in Limestone in the case of an emergency pursuant to the Maine Revised Statutes, Title 37-B, section 742 or 744 if money is needed for disaster relief.

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This amendment also proposed to reduce the amount of rental income that the Department of Administrative and Financial Services, Bureau of General Services must transfer to the Department of Defense, Veterans and Emergency Management, Disaster Assistance Relief, Other Special Revenue Funds account for disaster assistance from 45% to 22.5%.

The amendment also proposed to require that the Director of the Maine Emergency Management Agency be appointed by the Governor upon recommendation by the Commissioner of Defense, Veterans and Emergency Management, subject to confirmation of the joint standing committee of the Legislature having jurisdiction over the Department of Public Safety and the Legislature.

Finally, this amendment proposed to provide that, beginning July 1, 2007, a portion of the rental income from Maine Military Authority facilities in Limestone must be used for the repair and maintenance of National Guard armories in the State.

Senate Amendment “A” to Committee Amendment “A” (S-625), which was not adopted, proposed to strike a section from Committee Amendment “A” that altered a transfer of funding and instead increases the funding for the Task Force to Study Maine's Homeland Security Needs in order to increase the number of authorized public hearings in fiscal year 2006-07 from one to 2.

Enacted law summary

Public Law 2005, chapter 634 enacts a number of the interim recommendations of the Task Force to Study Maine's Homeland Security Needs, as amended by the Joint Standing Committee on Criminal Justice and Public Safety and the Legislature. Public Law 2005, chapter 634 does the following.

1. It assigns to the committee of the Legislature having jurisdiction over criminal justice and public safety matters the responsibility of reviewing the Maine Emergency Management Agency (MEMA) under the provisions of the State Government Evaluation Act.
2. It directs the Statewide Radio Network Board, which consists of the Chief Information Officer and agencies using the statewide radio and network system, to develop protocols and procedures for frequency coordination throughout the State during emergencies and to obtain memoranda of understanding from certain stakeholders. The Statewide Radio Network Board shall report to the Task Force to Study Maine's Homeland Security Needs on its progress by September 18, 2006. It also clarifies that the Chief Information Officer and other agencies using the statewide radio and network system may operate as a board to establish standards for statewide radio and network system operations.
3. Beginning July 1, 2007, it specifies, in regard to the rental income from the rental of facilities at Limestone, that, notwithstanding any other law, the Department of Administrative and Financial Services, Bureau of General Services must transfer 22.5% of the income to the Department of Defense, Veterans and Emergency Management, Disaster Assistance Relief, Other Special Revenue Funds account for disaster assistance. The total amount that may be transferred is capped at \$3,000,000. In addition, notwithstanding any other law and except when the Governor in the case of a declared emergency needs money for disaster relief, the Governor may transfer no more than 10% of the balance of rental income from facilities in Limestone. It also specifies that beginning July 1, 2007, part of the rental income collected be transferred to the Department of Defense, Veterans and Emergency Management for maintenance and repair of National Guard armories in the State.

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4. It creates the Homeland Security Advisory Council to advise the Governor on the coordination of homeland security activities of state agencies and the most effective use of grant funds and makes the Director of MEMA chair of the council.
5. It directs the Department of Education to amend its written application for funding for school construction projects to include the question: “Do you plan to use your school as a public community shelter?” It also requires that in the case of a school construction project in which the school is expected to be used as a community shelter, the State Board of Education may approve only those projects designed to accommodate backup energy generators.
6. It requires the Director of the Maine Center for Disease Control and Prevention within the Department of Health and Human Services to coordinate with the Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency on the planning and expenditure of federal funds received by the center for homeland security or bioterrorism prevention. It also requires the advisor of the Homeland Security Advisory Council to report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the use of those funds.
7. It requires that the Director of the Maine Emergency Management Agency be qualified by education, training or experience in managing emergencies and be appointed by the Governor upon recommendation by the Commissioner of Defense, Veterans and Emergency Management, subject to confirmation of the joint standing committee of the Legislature having jurisdiction over the Department of Public Safety and the Legislature. It also provides that the director shall represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the State. It requires the director to develop and conduct an annual program of comprehensive public education, using all appropriate means of communication to educate and inform members of the public and public officials about emergency preparedness, response, recovery and mitigation. The program must incorporate the use of appropriate accessible formats to educate and inform individuals with disabilities, individuals who are elderly and non-English-speaking residents of Maine.
8. It requires the Director of MEMA to survey Maine communities to gather information on the types of emergency notification systems that are in place throughout the State, evacuation plans for nursing homes and other long-term care facilities, including home-based and community-based programs, and evacuation plans for individuals living independently in communities who due to age or disability require assistance to evacuate.
9. It directs the Director of the MEMA to coordinate with the Commissioner of Education to perform an assessment of the number of Maine public schools that have adopted an all-hazards approach to emergency preparedness and requires the director and the commissioner to coordinate their efforts for community outreach for all-hazards emergency planning.
10. It directs the Director of the Center for Disease Control and Prevention within the Department of Health and Human Services, in conjunction with health system stakeholders, to update its survey of emergency health system capacity in the State. It also specifies that the Director of the Center for Disease Control and Prevention, in coordination with the Director of MEMA and the Director of Maine Emergency Medical Services within the Department of Public Safety in consultation with health system stakeholders, including the Maine Primary Care Association, the Maine Hospital Association and other interested parties, shall develop recommendations to address Maine's acute medical and public health surge capacity.

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- 11. It directs the Director of the Center for Disease Control and Prevention, in conjunction with stakeholders and other interested parties, to study the qualifications and duties of local health officers in Maine and develop recommendations for enhancing the role of local health officers in emergency preparedness plans.
- 12. It directs the Director of the Maine Center for Disease Control and Prevention to work with health care and emergency management stakeholders to distribute grant funds provided by the United States Department of Health and Human Services, Health Resources and Services Administration to ensure that the regional resource centers are provided with sufficient funding resources to improve health system preparedness, within the limits of the federal funds, in accordance with the documented local needs of the federally specified funding beneficiaries: emergency medical services, poison control centers, health clinics and hospitals in each region. The Maine Center for Disease Control and Prevention shall report to the task Force to Study Maine's Homeland Security Needs on the results of the federal Health Resources and Services Administration grant and contract with the regional resource centers and other health system providers and on proposed recommendations. The Maine Center for Disease Control and Prevention shall report the same to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. The Maine Center for Disease Control and Prevention shall also report annually, beginning January 15, 2007, to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the progress of the grantees on meeting the stated contractual deliverables.
- 13. It directs the Director of the MEMA to consult with the Public Utilities Commission to determine the feasibility of adding a disability indicator to the current E-9-1-1 system in Maine to allow individuals with disabilities and special health needs to choose to provide a 2-digit code identifying special assistance needs in an emergency.
- 14. It directs the Maine Center for Disease Control and Prevention to submit a report to the Task Force to Study Maine's Homeland Security Needs by September 18, 2006 detailing the number of health care workers, by profession, registered in the federal Emergency System for Advance Registration of Voluntary Health Professionals.

Public Law 2005, chapter 634 was enacted as an emergency measure effective May 9, 2006.

LD 2046

An Act To Implement the Recommendations of the Attorney General's Working Group Regarding Sentencing Factors for Crimes against Persons Who Are Homeless

PUBLIC 551

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP MAJ	
	ONTP MIN	

LD 2046 proposed to implement the recommendations of the Attorney General's working group regarding the advisability of implementing aggravating sentencing factors for crimes against persons who are homeless, which was established pursuant to Public Law 2005, chapter 393. The bill proposed to amend the purpose section of the general sentencing provisions of the Maine Criminal Code by adding homelessness to the list of factors, such as the age, religion and sexual orientation of a victim, that a court considers in determining the gravity of an offense in sentencing.

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Enacted law summary

Public Law 2005, chapter 551 implements the recommendations of the Attorney General's working group regarding the advisability of implementing aggravating sentencing factors for crimes against persons who are homeless, which was established pursuant to Public Law 2005, chapter 393. Public Law 2005, chapter 551 amends the purpose section of the general sentencing provisions of the Maine Criminal Code by adding homelessness to the list of factors, such as the age, religion and sexual orientation of a victim, that a court considers in determining the gravity of an offense in sentencing.

LD 2108 **An Act Regarding the Sentencing of Persons Convicted of Gross Sexual Assault against Victims under 12 Years of Age** **INDEF PP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
GERZOFSKY BRENNAN		

LD 2108 proposed to require a court, in a case involving gross sexual assault against a victim who has not yet attained 12 years of age, to specify a term of imprisonment for any term of years, including a term that exceeds 30 years, which is the maximum allowed for a Class A crime. The bill proposed that, in making its determination, the court is required to start with a basic period of imprisonment of 20 years; using that term as a starting point, the court may then increase or decrease the term of imprisonment based upon all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case. These sentencing factors include, but are not limited to, the character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest. LD 2108 also proposed to impose probation for life for persons convicted of gross sexual assault against persons who have not attained 12 years of age and to require that these persons, when released from prison, be subject to supervision by the Department of Corrections that includes electronic monitoring for the duration of the probation.

LD 2108 was not referred to committee. Please see LD 1717.

LD 2116 **An Act To Provide Protection for Victims of Domestic Violence** **PUBLIC 671**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
STRIMLING SIMPSON		

LD 2116 proposed to specify that, upon receiving information from a federal agency that through a criminal background check an individual subject to a protection from abuse order has illegally attempted to purchase a firearm, the Department of Public Safety shall share that information with the individual who is intended to be protected by the order and with another law enforcement agency with jurisdiction in the municipality in which that individual resides as quickly as practicable.

The bill also proposed to specify that the Department of Public Safety may accomplish the notification process by notifying another law enforcement agency within the county in which the individual intended to be protected by

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the protection from abuse order resides. The bill proposed that when the department makes notification through such a law enforcement agency, that agency then must make reasonable effort to notify as quickly as practicable the individual intended to be protected by the protection from abuse order. The bill further proposed that if, when notifying another law enforcement agency, the department is informed by that agency that it cannot notify the individual intended to be protected by the protection from abuse order, the department must continue to make its own reasonable effort to notify that individual as quickly as practicable, and this may be accomplished through a different law enforcement agency within the county in which the individual resides.

The bill also proposed to clarify that the immunity provision does not prohibit the State or a political subdivision of the State from pursuing legally authorized disciplinary action.

This bill was introduced to replace LD 1938, as amended by Committee Amendment "A," which died between the bodies.

Enacted law summary

Public Law 2005, chapter 671 specifies that, upon receiving information from a federal agency that through a criminal background check an individual subject to a protection from abuse order has illegally attempted to purchase a firearm, the Department of Public Safety shall share that information with the individual who is intended to be protected by the order and with another law enforcement agency with jurisdiction in the municipality in which that individual resides as quickly as practicable.

Public Law 2005, chapter 671 further specifies that the Department of Public Safety may accomplish the notification process by notifying another law enforcement agency within the county in which the individual intended to be protected by the protection from abuse order resides. When the department makes notification through such a law enforcement agency, that agency then must make reasonable effort to notify as quickly as practicable the individual intended to be protected by the protection from abuse order. If, when notifying another law enforcement agency, the department is informed by that agency that it cannot notify the individual intended to be protected by the protection from abuse order, the department must continue to make its own reasonable effort to notify that individual as quickly as practicable, and this may be accomplished through a different law enforcement agency within the county in which the individual resides.

LD 2118

An Act Relating to the Handling of Firearms Confiscated by Law Enforcement Officers Pursuant to a Court Order

PUBLIC 684

Sponsor(s)
MILLS J

Committee Report

Amendments Adopted
S-695 DIAMOND

LD 2118 proposed to direct the Maine Criminal Justice Academy to provide training for municipal, county and state law enforcement officers regarding the proper handling, storage, safekeeping and return of firearms and firearm accessories received pursuant to a protection from abuse order.

The bill proposed to provide that in developing materials for training in domestic violence issues, the Maine Criminal Justice Academy may consult with a statewide organization involved in advocacy for victims of domestic violence and with an organization having statewide membership representing the interests of firearms owners.

Joint Standing Committee on Criminal Justice and Public Safety

The bill also proposed to provide that a law enforcement officer who receives custody of a firearm pursuant to a protection from abuse order shall exercise reasonable care to avoid loss, damage or reduction in value of such firearm and may not permanently mark the firearm or fire the firearm unless there is reasonable suspicion that the firearm has been used in the commission of a crime. Any liability for damage or reduction in value to such a firearm is governed by the Maine Tort Claims Act.

Senate Amendment “A” (S-695) proposed to provide that the requirements of the bill begin January 1, 2008.

Enacted law summary

Public Law 2005, chapter 684 directs the Maine Criminal Justice Academy to provide training for municipal, county and state law enforcement officers regarding the proper handling, storage, safekeeping and return of firearms and firearm accessories received pursuant to a protection from abuse order.

Public Law 2005, chapter 684 provides that in developing materials for training in domestic violence issues, the Maine Criminal Justice Academy may consult with a statewide organization involved in advocacy for victims of domestic violence and with an organization having statewide membership representing the interests of firearms owners.

Public Law 2005, chapter 684 also provides that a law enforcement officer who receives custody of a firearm pursuant to a protection from abuse order shall exercise reasonable care to avoid loss, damage or reduction in value of such firearm and may not permanently mark the firearm or fire the firearm unless there is reasonable suspicion that the firearm has been used in the commission of a crime. Any liability for damage or reduction in value to such a firearm is governed by the Maine Tort Claims Act.

Public Law 2005, chapter 684 is effective January 1, 2008.