

Joint Standing Committee on Criminal Justice

LD 9 **An Act to Amend the Criminal Code Concerning the Crime of Assault on an Officer** **PUBLIC 67**

<u>Sponsor(s)</u>		<u>Committee Report</u> OTP		<u>Amendments Adopted</u>
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LD 9 proposed to eliminate the requirement that a criminal complaint for the crime of assault on a law enforcement officer be initiated by the chief administrative officer of the law enforcement agency or facility in which the officer against whom the assault was allegedly committed is a member or is assigned. This bill was proposed by the Criminal Law Advisory Commission.

Enacted law summary

Public Law 1997, chapter 67 eliminates the requirement that a criminal complaint for the crime of assault on a law enforcement officer be initiated by the chief administrative officer of the law enforcement agency or facility in which the officer against whom the assault was allegedly committed is a member or is assigned.

LD 36 **An Act to Criminalize Certain Photographing of Children** **OTP-ND-NT**

<u>Sponsor(s)</u> SMALL PEAVEY		<u>Committee Report</u> OTP-ND-NT		<u>Amendments Adopted</u>
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LD 36 proposed to establish the Class D crime of visual exploitation of a child. A person would have been guilty of visual exploitation of a child if that person photographed or video recorded a minor for the purpose of arousing or gratifying that person's sexual desire.

See LD 1892, An Act to Criminalize Certain Photographing of Children Under the Clothing of a Person in a Public Place by Mechanical or Electronic Equipment, which is LD 36 passed in a new draft.

LD 47 **An Act Concerning the Responsibility of Prisoners for Family Support** **PUBLIC 41**

<u>Sponsor(s)</u> WHEELER E FERGUSON		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-18
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LD 47 proposed to require an offender incarcerated in a state correctional facility to pay up to 25% of the money in the offender's account with the facility, or that could be in the account by virtue of the offender's working, in order to provide any court-ordered support or alimony, including that of a spouse or former spouse, regardless of whether that spouse had custody of any of the person's children. The bill proposed to require the offender to maintain at least 25% of the offender's income in the offender's account in order to meet the support obligations. Shifting money out of the offender's account in order to escape these provisions would have constituted the Class D crime of fraudulent conveyance.

Committee Amendment "A" (H-18) proposed several changes to the bill, including eliminating the following:

1. The Class D crime of defrauding a creditor;
2. The requirement that a court order for support exist;
3. The requirement that the Commissioner of Corrections keep the courts informed as to a prisoner's work history and performance; and
4. The requirement that spousal support be paid.

The amendment also proposed to require a prisoner to consent to pay at least 25% of the prisoner's earnings toward child support before the prisoner could participate in a program through which the prisoner would be able to generate money. The amendment proposed to permit a parent, legal guardian or legal custodian of the child to request payments from the facility housing the prisoner.

The amendment proposed to apply these provisions to both state and county facilities and to exclude prisoners already making child support payments pursuant to an order issued by a court or by the Department of Human Services.

Enacted law summary

Public Law 1997, chapter 41 requires a prisoner in a state or county facility to consent to pay at least 25% of the prisoner's earnings toward child support before that prisoner may participate in a program in which the prisoner can earn money. A parent or guardian of a child may request to receive child support payments directly from the prisoner's facility. The law does not apply to prisoners who make child support payments pursuant to a Department of Human Services order.

LD 56

An Act to Increase the Fee That May Be Assessed against a Prisoner to Help Defray the Costs of Incarceration

PUBLIC 88

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MCALEVEY FERGUSON	OTP-AM	H-102

LD 56 proposed to increase from \$20 to \$60 per day the fee that could be assessed against a prisoner in a county jail to help defray the costs of incarceration.

Committee Amendment "A" (H-102) proposed to increase the maximum assessment for the cost of incarceration of a prisoner in a county jail to \$80 per day to help defray the costs of incarceration. The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 88 helps defray the costs of incarceration by increasing from \$20 to \$80 the maximum daily assessment for the cost of incarceration of a prisoner in a county jail.

LD 64 An Act to Provide Reimbursement to Counties for Persons Jailed on Probation Revocations PUBLIC 533

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
WHEELER E FERGUSON	OTP-AM	H-380 S-395 MICHAUD

LD 64 proposed to require the Department of Corrections to reimburse counties for persons sentenced to county jails for probation revocations.

Committee Amendment "A" (H-380) proposed to remove the emergency preamble and the emergency clause from the bill. The amendment also proposed to remove section 1 of the bill, which would have been necessary only if the bill were enacted as an emergency.

Senate Amendment "A" (S-395) to Committee Amendment "A" proposed to clarify that the Department of Corrections' reimbursement obligation to counties for persons sentenced to county jail pursuant to a probation revocation proceeding was limited to persons originally sentenced for Class A, B or C crimes.

Enacted law summary

Public Law 1997, chapter 533 requires the Department of Corrections to reimburse counties for persons sentenced to county jails for probation revocations if the persons were originally sentenced for Class A, B or C crimes.

LD 65 An Act to Amend the Laws Regarding Reimbursement to the Counties for Community Corrections CARRIED OVER

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MCALEVEY LAFOUNTAIN		

LD 65 prohibits the Department of Corrections from subtracting jail revenues raised by a county from a jail's expenditures. Currently, pursuant to the Department of Corrections Uniform Accounting Report Forms, jail revenues are subtracted from the jail's total expenditures for the purpose of reducing the Department of Corrections reimbursement rate to the county for housing state prisoners.

LD 65 was carried over to the Second Regular Session of the 118th Legislature.

LD 69 **An Act to Prohibit a Juvenile from Pleading to a Reduced Juvenile Crime** **ONTP**

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

LD 69 proposed to prevent a prosecuting attorney from charging a juvenile with a reduced crime. The bill would have prohibited plea bargains and required that juveniles be charged with the crime actually committed.

LD 74 **An Act to Increase the Period of Probation for Sex Offenders** **INDEF PP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
THOMPSON PARADIS	OTP-AM	H-517

LD 74 proposed to double the otherwise allowable period of probation for a person convicted of an offense under the Maine Revised Statutes, Title 17-A, chapter 11.

Committee Amendment "A" (H-517) replaced the bill and proposed to allow a court to impose a period of probation of up to 10 years for a Class A crime, up to 6 years for a Class B or Class C crime and up to 2 years for a Class D or Class E crime if the person were convicted of a sexual assault or of indecent conduct, excluding a conviction for engaging in a sexual act in a public place, and the court found that additional probationary time was needed to either provide sex offender treatment to the offender or to protect the public from an offender determined to be high-risk.

See **Committee Amendment "A" (H-750)** to LD 1138, An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1997, June 30, 1998 and June 30, 1999, Part M, enacted as Public Law 1997, chapter 395, which incorporated Criminal Justice Committee Amendment "A" (H-517) minus the fiscal note.

LD 95 **An Act Concerning Prisoner Participation in Public Works Projects** **PUBLIC 54**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MAYO SMALL	OTP-AM	H-47

LD 95 proposed to allow a person committed to a county jail for nonpayment of a fine to participate in a public works project or improvement of property owned by a charitable organization with the permission of the court and the sheriff of the county jail at the time of sentencing. Persons participating in such projects would have had their sentences reduced at the rate of one day for every hour of participation in the project.

Committee Amendment "A" (H-47) proposed that prisoners participating in public works projects for nonpayment of fines could reduce a fine by \$5 for every hour worked. The amendment also proposed that a sentence imposed for nonpayment of fines would run consecutively with any other sentence.

Enacted law summary

Public Law 1997, chapter 54 allows a person committed to a county jail for nonpayment of a fine to participate in a public works project or improvement of property owned by a charitable organization with the permission of the court and the sheriff of the county jail at the time of sentencing. Persons participating in such projects for nonpayment of fines may reduce the fine by \$5 for every hour worked. Public Law 1997, chapter 54 also specifies that a sentence imposed for nonpayment of fines runs consecutively with any other sentence.

LD 104 An Act Concerning Threatening the Use of Deadly Force Against a Law Enforcement Officer Engaged in Carrying out Public Duty PUBLIC 289

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CLUKEY	OTP-AM MAJ ONTP MIN	H-407

LD 104 proposed to bar a private citizen, who otherwise would have the legal right to do so, from threatening the use of deadly force against a person the private citizen knew or should have known was a law enforcement officer, unless the private citizen knew that that law enforcement officer was not at that time engaged in the performance of official duties or unless the private citizen was justified in actually using deadly force against that officer.

Committee Amendment "A" (H-407) was the majority report of the Joint Standing Committee on Criminal Justice and proposed that a person otherwise justified in threatening to use deadly force against a law enforcement officer would not be justified in doing so with a firearm or other dangerous weapon. The amendment also proposed to preclude a law enforcement officer from making a nonconsensual warrantless entry into a dwelling place solely in response to a threat not justified by the Maine Revised Statutes, Title 17-A, section 110.

Enacted law summary

Public Law 1997, chapter 289 specifies that a person, otherwise justified in threatening to use deadly force against another person, is not justified in doing so with a firearm or other dangerous weapon if that person knows or should know that the other person is a law enforcement officer, unless the person knows that the law enforcement officer is not at that time engaged in the performance of official duties or unless the private citizen is justified under the Maine Revised Statutes, Title 17-A, chapter 5 in actually using deadly force against that officer. Public Law 1997, chapter 289 also precludes a law enforcement officer from making a nonconsensual warrantless entry into a dwelling place solely in response to a threat not justified by the Maine Revised Statutes, Title 17-A, section 110.

Although broader in scope, Public Law 1997, chapter 289 intends to overrule the result in *State v. Clisham*, 614 A.2d 1297 (Me. 1992) that allows a private citizen to threaten a law enforcement officer, acting under color of authority, with death or serious bodily injury under circumstances in which the private citizen is legally justified in using only nondeadly force. In *State v. Clisham* the Law Court equated threatening deadly force with the actual use of nondeadly force. *Id.* at 1298. See also *State v. Lord*, 617 A.2d 536 (Me. 1992). This legal parallel drawn by the

Law Court when a law enforcement officer is involved is rejected because of the substantial and unwarranted risk of death or serious bodily injury posed to the private citizen and to the law enforcement officer.

LD 145 **An Act to Allow Independent Investigation of a Complaint against a Law Enforcement or Corrections Officer upon Request** **PUBLIC 42**

<u>Sponsor(s)</u> BUNKER		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-20
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LD 145 proposed to authorize a law enforcement or corrections officer or the chief administrative officer of the agency employing the officer to petition the complaint review board of the Board of Trustees of the Maine Criminal Justice Academy for an independent investigation of alleged conduct of an officer in cases in which the investigation ordinarily would have been performed by the chief administrative officer.

Committee Amendment "A" (H-20) proposed to mandate that an agency conducting an independent investigation of a complaint against a law enforcement officer be approved by the Board of Trustees of the Maine Criminal Justice Academy. The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 42 authorizes a law enforcement or corrections officer or the chief administrative officer of the agency employing the officer to petition the complaint review board of the Board of Trustees of the Maine Criminal Justice Academy for an independent investigation of alleged conduct of an officer. Public Law 1997, chapter 42 requires that an agency conducting an independent investigation of a complaint against a law enforcement or corrections officer be approved by the Board of Trustees of the Maine Criminal Justice Academy.

LD 148 **An Act to Appropriate Funds for the Staffing and Operation of the Northern Maine Regional Juvenile Detention Facility** **ONTP**

<u>Sponsor(s)</u> BUNKER		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 148 proposed to provide funding to the Department of Corrections to open the Northern Maine Regional Juvenile Detention Facility during fiscal year 1997-98.

See Committee Amendment "A" (H-15) to LD 1137, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1998 and June 30, 1999, Part JJ, enacted as Public Law 1997, chapter 24, which incorporated LD 148.

LD 162

An Act to Allow Retired Law Enforcement Officials to Obtain a Lifetime Concealed Weapons Permit

ONTP

Sponsor(s)
LIBBY

Committee Report
ONTP

Amendments Adopted

LD 162 proposed to allow a retired law enforcement officer to obtain a permit to carry a concealed firearm for life.

LD 169

An Act Concerning Theft of Rental Property

PUBLIC 319

Sponsor(s)
BUTLAND

Committee Report
OTP-AM

Amendments Adopted
S-228

LD 169 proposed that theft of rental property occurs when a person knowingly provides false identification or information to the owner of the property at the time of the rental and that theft of rental property could be presumed when the person fails to return the property within 10 days of receiving a written demand, mailed after the expiration of the rental period. This bill also would have provided an affirmative defense to theft of rental property for persons who gave accurate information at the time of the rental, failed to receive the owner's written demand and returned the property to the owner within 48 hours of the commencement of prosecution.

Committee Amendment “A” (S-228) proposed that theft of rental property could be presumed when a person fails to return the property within 5 days of receiving a written demand mailed after the expiration of the rental period. The amendment would have removed language regarding theft of rental property that specified that a person knowingly provided false identification or information to the owner at the time of the rental. The amendment further proposed to remove the affirmative defense to theft of rental property and to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 319 specifies that theft of rental property may be presumed when a person fails to return the property within 5 days of receiving the owner's written demand, mailed by certified or registered mail after the expiration of the rental period.

LD 231

An Act to Classify Vehicular Homicide as a Class A Crime

PUBLIC 34

Sponsor(s)
POVICH

Committee Report
OTP

Amendments Adopted

LD 231 proposed to repeal the defense to prosecution of a manslaughter based upon the reckless or criminally negligent operation of a motor vehicle.

Enacted law summary

Public Law 1997, chapter 34 repeals Maine Revised Statutes, Title 17-A, section 203, subsection 3, paragraph A, which provides a defense to a prosecution of a manslaughter based upon the reckless or criminally negligent operation of a motor vehicle. This provision reduces manslaughter based upon the criminally negligent operation of a motor vehicle to a Class B crime. The defense is available under current law when the death of the victim resulted from conduct that would otherwise be defined only as a civil violation or civil infraction.

Because of the existence of Title 17-A, section 203, subsection 3, paragraph A, the court in *State v. Berube*, 669 A.2d 170 (Me. 1995) vacated a Class A manslaughter conviction and the 12-year sentence that had been imposed. Public Law 1997, chapter 34 overrules *State v. Berube* to the extent that it makes all vehicular homicides a Class A crime.

LD 232 **An Act to Create the Class A Crime of Theft** **ONTP**

<u>Sponsor(s)</u> POVICH		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 232 proposed to create the Class A crime of theft of property or services valued in excess of \$50,000.

LD 245 **An Act to Provide a Time Limit Extension for Basic Corrections Training** **PUBLIC 14**

<u>Sponsor(s)</u> WHEELER E		<u>Committee Report</u> OTP		<u>Amendments Adopted</u>
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LD 245 proposed to allow the Board of Trustees of the Maine Criminal Justice Academy to extend by 90 days the period in which a full-time corrections officer must receive basic training.

Enacted law summary

Public Law 1997, chapter 14 allows the Board of Trustees of the Maine Criminal Justice Academy to extend by 90 days the period in which a full-time corrections officer must receive basic training. Currently, a full-time corrections officer must complete training within the first 12 months of employment.

LD 261 **An Act to Establish the Crime of Elevated Aggravated Assault** **PUBLIC 461**

<u>Sponsor(s)</u>		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-101
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LD 261 proposed to establish the Class A crime of elevated aggravated assault. The bill was proposed by the Criminal Law Advisory Commission.

Committee Amendment "A" (H-101) proposed to strike redundant language, correct the corresponding verb change and add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 461 establishes the Class A crime of elevated aggravated assault. A person is guilty of elevated aggravated assault if that person uses a dangerous weapon to cause serious bodily injury to another either intentionally or knowingly or with depraved indifference to the value of human life.

LD 286 An Act to Meet Federal Requirements Regarding Collection of Bias PUBLIC 47
Motivation Data through Uniform Crime Reporting

<u>Sponsor(s)</u> LINDAHL		<u>Committee Report</u> OTP		<u>Amendments Adopted</u>
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LD 286 proposed to bring provisions that govern uniform crime reporting data collection by the State Police into compliance with federal law.

Enacted law summary

Public Law 1997, chapter 47 was enacted in response to the federal Violent Crime and Law Enforcement Act of 1994, which amended the Hate Crimes Statistics Act to include the collection of data using the Uniform Crime Reporting System about crimes that manifest evidence of prejudice based on disability. Public Law 1997, chapter 47 brings the Maine Revised Statutes, Title 25, section 1544, which governs uniform crime reporting data collection by the State Police, into compliance with the federal requirement.

LD 291 An Act Concerning Defendants' Ability to Attack Orders of PUBLIC 30
Restitution

<u>Sponsor(s)</u>		<u>Committee Report</u> OTP		<u>Amendments Adopted</u>
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LD 291 proposed to build upon current case law that allows a court to satisfy itself as to a defendant's ability to pay a specific amount of restitution by relying upon the defendant's consent to pay that amount. The bill was proposed by the Criminal Law Advisory Commission.

Enacted law summary

Public Law 1997, chapter 30 builds upon current case law that allows a court to satisfy itself as to a defendant's ability to pay a specific amount of restitution by relying upon the defendant's consent to pay that amount. See generally, *State v. Dragon*, 521 A.2d 704 (Me. 1987); *State v. LaCase*, 512 A.2d 315-316 (Me. 1986). Public Law 1997, chapter 30 precludes a defendant under these circumstances from seeking thereafter to have that restitution order vacated as excessive.

LD 293

An Act to Create a Repeat Offender Provision Addressing Crimes of Violence against Persons

PUBLIC 460

Sponsor(s)

Committee Report
OTP-AM

Amendments Adopted
H-554

LD 293 proposed to enhance the sentencing class for a Class B, Class C, Class D or Class E crime in the Maine Revised Statutes, Title 17-A, chapters 9, 11, 13 or 27 if the offender within the prior 10 years had 2 or more convictions for violations of these same chapters or essentially similar crimes in other jurisdictions. This bill was proposed by the Criminal Law Advisory Commission.

Committee Amendment “A” (H-554) proposed that murder not be included among those crimes for which a sentencing class could be increased. The amendment also proposed to centralize the repeat offender provision for crimes under the Maine Revised Statutes, Title 17-A, chapters 9, 11, 13 and 27 and add a fiscal note.

Enacted law summary

Public Law 1997, chapter 460 enhances the sentencing class for Class B, Class C, Class D or Class E crimes in the Maine Revised Statutes, Title 17-A, chapters 9, 11, 13 or 27 if the offender within the prior 10 years has 2 or more convictions for violations of these same chapters or essentially similar crimes in other jurisdictions. For a Class A crime in Title 17-A, chapter 9, 11, 13 or 27, Public Law 1997, chapter 460 requires that the same prior convictions be given serious consideration by a court in exercising its sentencing discretion. Finally, Public Law 1997, chapter 460 clarifies that in order to qualify for an enhanced sentence the prior convictions must have been entered in separate court proceedings on separate dates and the subject crimes must have occurred on separate dates.

LD 294

An Act to Increase the Authorized Period of Probation for a Class D Crime

ONTP

Sponsor(s)

Committee Report
ONTP

Amendments Adopted

LD 294 proposed to increase the authorized period of probation for a Class D crime from one year to 2 years. This bill was proposed by the Criminal Law Advisory Commission.

LD 295

An Act to Facilitate Payment of Restitution for Thefts by Extending the Period of Probation

ONTP

Sponsor(s)

Committee Report
ONTP

Amendments Adopted

LD 295 proposed to address an issue raised in the Law Court opinion of State v. Fournier, 617 A.2d 998 (Me. 1982) regarding payment of restitution while on probation. LD 295 proposed to allow the court to sentence a person convicted of Class B theft to a period of probation longer than the authorized maximum of 4 years when the value of the property or services stolen is large. The bill proposed to permit the court to extend probation by one

additional year for every \$5,000 above the initial \$10,000 in value of the property or services stolen. This bill was proposed by the Criminal Law Advisory Commission.

LD 297 **An Act to Make Unlawful Possession of Firearms for Nonviolent Juvenile Offenses Either a Crime or a Juvenile Offense Depending upon the Age of the Violator** **PUBLIC 462**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-22

LD 297 proposed to make unlawful possession of firearms for nonviolent juvenile offenses either a crime or a juvenile offense depending on the age of the offender. This bill was proposed by the Criminal Law Advisory Commission.

Committee Amendment "A" (H-22) proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 462 corrects a deficiency in current law. The Maine Revised Statutes, Title 15, section 393, subsection 1-A prohibits certain juveniles or certain persons who have reached the age of 18 years from owning, possessing or controlling a firearm for a specified period. Currently, a violation of the conduct prohibited by subsection 1-A is not a crime if committed by an adult nor a juvenile offense if committed by a juvenile. Public Law 1997, chapter 462 makes such unlawful possession a crime or a juvenile offense.

LD 305 **An Act to Prohibit the Inhaling of Toxic Vapors for Effect** **PUBLIC 325**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MARVIN MITCHELL B	OTP-AM	H-382 H-546 POVICH

LD 305 proposed to prohibit inhaling toxic vapors for effect. This form of inhalant abuse is also called "huffing" and can cause "sudden sniffing death" at any time.

Committee Amendment "A" (H-382) replaced the bill and proposed to do the following:

1. Make the inhalation of toxic vapors a civil violation, rather than a Class E crime. The mandatory forfeitures for the violation would have been \$100 to \$300 for the first offense, \$200 to \$500 for the 2nd offense and \$500 for the 3rd and each subsequent offense;
2. Create the presumption that a person violated the section if there were proof that the person intentionally or knowingly inhaled, ingested, applied or used a substance in a manner contrary to the directions for use, cautions or warnings on the label of the substance container;

3. Create the presumption that the ingredients in a container are those listed on a label on the container or those listed for that substance in databases maintained or relied upon by poison control centers certified by a national association of poison control centers;
4. Permit the judge to require an offender to perform public service or to undergo evaluation, education or treatment with a licensed social worker or a licensed substance abuse counselor; and
5. Add a fiscal note to the bill.

House Amendment “A” (H-546) to Committee Amendment "A" (H-382) proposed to allow the court to suspend the forfeiture imposed for unlawfully using or possessing inhalants if the court ordered the person to perform public service work or undergo evaluation, education or treatment.

House Amendment “B” (H-571) to Committee Amendment "A" (H-382) proposed to restrict the unlawful use or possession of inhalants to juveniles.

Enacted law summary

Public Law 1997, chapter 325 does the following:

1. Makes the prohibition against toxic vapor inhalation a civil violation and sets mandatory forfeitures of \$100 to \$300 for a first offense, \$200 to \$500 for a 2nd offense and \$500 for a 3rd and each subsequent offense;
2. Specifies that a person may not intentionally or knowingly inhale, ingest, apply or smell a toxic substance for the purpose of causing intoxication, euphoria, inebriation, excitement, stupefaction or the dulling of the brain or nervous system and that a person may not intentionally or knowingly possess a toxic substance with the intent to inhale, ingest, apply or smell;
3. Creates the presumption that a person violated the section if there were proof that the person intentionally or knowingly inhaled, ingested, applied or used a substance in a manner contrary to the directions for use, cautions or warnings on the label of the substance container;
4. Creates the presumption that the ingredients in a container are those listed on a label on the container or those listed for that substance in databases maintained or relied upon by poison control centers certified by a national association of poison control centers; and
5. Permits the court to suspend a forfeiture and require an offender to perform public service or to undergo evaluation, education or treatment with a licensed social worker or a licensed substance abuse counselor.

LD 310

An Act to Permit Investigative Officers within the Employ of the Department of Corrections to Exercise the Powers of Law Enforcement Officers

PUBLIC 102

<u>Sponsor(s)</u> MCALEVEY	<u>Committee Report</u> OTP-AM MAJ ONTP MIN	<u>Amendments Adopted</u> H-103
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LD 310 proposed to allow employees of the Department of Corrections who are certified as law enforcement officers to exercise the powers of law enforcement officers as part of their employment duties, if authorized to do so by the Commissioner of Corrections.

Committee Amendment "A" (H-103) was the majority report of the Joint Standing Committee on Criminal Justice and proposed to limit the authority of investigative officers by stating that they could not exercise law enforcement powers against other employees of the department. The amendment also proposed that internal investigations of department employees would be conducted according to any applicable collective bargaining agreement. The amendment also would have added a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 102 allows Department of Corrections' employees who are certified as law enforcement officers to exercise the powers of law enforcement officers as part of their employment duties. This authority must first be authorized by the Commissioner of Corrections and may not be used against other employees of the department. Public Law 1997, chapter 102 specifies that internal investigations of department employees be conducted according to any applicable collective bargaining agreement.

LD 328 An Act to Increase the Penalty for Burglary When the Actor has PUBLIC 477
Prior Convictions for Certain Enumerated Crimes

<u>Sponsor(s)</u> POVICH		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-384
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LD 328 proposed to enhance the sentencing classification for a burglary from a Class C crime to a Class B crime if the defendant had at least 2 prior convictions for any combination of theft, aggravated forgery, forgery, negotiating a worthless instrument, burglary, robbery or any attempts to commit those crimes. This bill also proposed to provide that a prior conviction for burglary could be considered regardless of what crime the offender intended to commit at the time of the burglary.

Committee Amendment "A" (H-384) proposed to limit the types of prior convictions that make burglary a Class B crime. The amendment proposed to specify the technical aspects of defining prior convictions and to add a fiscal note.

Enacted law summary

Public Law 1997, chapter 328 enhances the sentencing classification for a burglary from a Class C crime to a Class B crime if the defendant intentionally or recklessly inflicted or attempted to inflict bodily injury on anyone during the commission of the burglary, the defendant was armed with a dangerous weapon other than a firearm, the violation occurred in a dwelling place or at the time of the burglary the defendant had 2 or more prior Class A, B or C convictions for any combination of burglary, robbery, theft, aggravated forgery, forgery, negotiating a worthless instrument or any attempts to commit those crimes.

LD 356

An Act to Require Fire and Rescue Departments to Reimburse Costs of Training

ONTP

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

LD 356 proposed to provide for the reimbursement of certain firefighting or rescue training costs for persons who were hired by more than one governmental entity.

LD 359

Resolve, to Establish a Study Group to Assess the Needs of the Office of the State Fire Marshal and Ensure Prompt, Effective Response to the Public's Fire Safety Needs

RESOLVE 10

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MCALEVEY AMERO	OTP-AM	H-21

LD 359 proposed to establish a study group to review and consider improvements to the role of the Office of the State Fire Marshal.

Committee Amendment "A" (H-21) proposed to change the membership of the study group in 2 ways.

1. It proposed that one member be a certified firefighter, rather than a representative of a professional firefighters' union.
2. It proposed that the representative from the fire insurance industry be appointed by the Governor, rather than by the President of the Senate and the Speaker of the House.

This amendment also proposed to change the date that the study group would have to submit its report to the Joint Standing Committee on Criminal Justice from January 1, 1998 to March 1, 1998.

Finally, this amendment proposed to delete the provision authorizing the study group to seek, accept and expend private or public funds, and it proposed to add a fiscal note to the bill.

Enacted law summary

Resolves 1997, chapter 10 establishes a study group to review and consider improvements to the role of the Office of the State Fire Marshal. The study group will look at how that office can become more responsive to and provide better service for the public. The study group shall report its findings to the Joint Standing Committee on Criminal Justice by March 1, 1998.

LD 384

An Act to Amend the Operating Under the Influence Laws to Discern whether an Offender Was Served Alcohol at a Licensed Establishment

ONTP

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

LD 384 proposed to authorize police officers to ask a person arrested for driving under the influence of intoxicants, and the courts to ask persons convicted of driving under the influence of intoxicants, if the person had been served alcohol at a licensed establishment and, if so, the name and location of the establishment. The bill proposed to require officers to include any information that they obtained in their accident reports and to require the courts to forward all information to the Bureau of Liquor Enforcement, the Office of the Attorney General, the district attorney for the district in which the establishment was located and the establishment itself.

LD 427

An Act to Prohibit the Selling of Children

ONTP

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

LD 427 proposed to expand the definition of endangering the welfare of a child to include selling or attempting to sell a child. This bill also proposed to expand the grounds for termination of parental rights to include selling or attempting to sell a child.

Committee Amendment “A” (S-250) was the minority report of the Joint Standing Committee on Criminal Justice. The amendment proposed that a person had to have parental rights and duties with respect to a child in order to be guilty of selling that child. The amendment also proposed that to be guilty of selling a child a person would have to sell the child for the purpose of receiving money or anything else of value. Legally authorized adoptions would have been exempt.

LD 467

An Act to Allow Individuals to Participate in Training at the Criminal Justice Academy

ONTP

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

LD 467 proposed to eliminate the cost to municipal and county law enforcement agencies of sending new officers to the Maine Criminal Justice Academy. The bill would have precluded those agencies from hiring, after January 1, 1998, anyone who had not already attended the academy. The bill also proposed to require persons attending the academy while not on the payroll of a law enforcement agency to pay all costs associated with attending.

LD 470

An Act to Increase Security at the Maine State Prison

**P & S 1
EMERGENCY**

Sponsor(s)
MURRAY
POVICH

Committee Report

Amendments Adopted
S-9 MURRAY

LD 470 proposed to make supplemental appropriations from the General Fund to increase security by establishing 9 new guard positions at the Maine State Prison. The bill was not referred to the Joint Standing Committee on Criminal Justice.

Senate Amendment "A" (S-9) proposed to clarify that the funds be appropriated from the General Fund.

Enacted law summary

Private and Special Law 1997, chapter 1 makes supplemental appropriations from the General Fund to increase security by establishing 9 new guard positions at the Maine State Prison. Private and Special Law 1997, chapter 1 was enacted as an emergency measure effective on February 10, 1997.

LD 504

**An Act to Amend Certain Provisions Dealing with Juvenile
Summonses**

PUBLIC 350

Sponsor(s)
BENOIT
BUNKER

Committee Report
OTP-AM

Amendments Adopted
S-249

LD 504 proposed to amend the Maine Juvenile Code in the following manner:

1. Lower the age below which a person is considered a juvenile from 18 to 17 years of age;
2. Amend the bind-over process to allow a juvenile to be bound over to the Superior Court at the request of a prosecutor. The juvenile could request a hearing on that request of the prosecutor;
3. Remove from the definition of "juvenile crime" those offenses involving marijuana and intoxicating liquor;
4. Repeal the prohibition on the questioning of juveniles by law enforcement officers without the presence, consent or notification of a legal custodian;
5. Amend the procedure for service of summons; and
6. Permit hearings and records involving a juvenile who was at least 16 years of age at the time of the crime to be open to the public.

Committee Amendment "A" (S-249) replaced the bill. The amendment proposed to require a juvenile caseworker to issue and would allow that caseworker to serve a juvenile summons, if the caseworker decided to request that the prosecuting attorney file a petition against a juvenile. The amendment also proposed to add a fiscal note.

Enacted law summary

Public Law 1997, chapter 350 requires a juvenile caseworker to issue and would allow that caseworker to serve a juvenile summons, if the caseworker decided to request that the prosecuting attorney file a petition against a juvenile. If the caseworker does not serve the summons, the caseworker must request a law enforcement officer to make service. The summons must include information required in a summons for an adult crime under Title 17-A, section 15-A. Service must be made as required by Rule 4(c)(4) of the Maine Rules of Criminal Procedure.

LD 515 An Act to Set a Fixed Rate for Housing of State Prisoners CARRIED OVER

<u>Sponsor(s)</u> BUNKER		<u>Committee Report</u>		<u>Amendments Adopted</u>
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LD 515 fixes the rate of reimbursement to counties for prisoners at \$83.75 per prisoner per day. The bill specifies that a county must petition the Legislature for any desired change in that rate.

The bill was carried over to the Second Regular Session of the 118th Legislature.

LD 521 An Act to Encourage Collaboration and Cooperation among Agencies in the Interests of Juveniles within the Juvenile Court System PUBLIC 278

<u>Sponsor(s)</u> O'BRIEN		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-379
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LD 521 proposed to permit distribution of confidential information regarding juvenile offenders by and to juvenile courts, law enforcement agencies, schools and health and welfare agencies to create an individualized plan for a juvenile's rehabilitation.

Committee Amendment "A" (H-379) replaced the bill. The amendment proposed that confidential information regarding a juvenile be distributed only if the juvenile is adjudicated of a juvenile crime. The amendment also proposed that for educational agencies, only the superintendent of the juvenile's school and the superintendent's designees could receive the confidential information.

Enacted law summary

Public Law 1997, chapter 278 permits distribution of confidential information regarding juvenile offenders by and to juvenile courts, law enforcement agencies, the superintendent of the juvenile's school and health and welfare agencies to create an individualized plan for a juvenile's rehabilitation. Public Law 1997, chapter 278 also limits the sharing of confidential information regarding juveniles to those cases in which the juvenile has been adjudicated of a juvenile crime.

LD 522 **An Act to Clarify the Need and Time Frame for Presentence Investigations** **ONTP**

<u>Sponsor(s)</u> BUNKER	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 522 proposed that presentence investigations could be ordered in the court's discretion. The bill also proposed that presentence investigations be completed within 30 days, unless the Division of Probation and Parole demonstrated that more time was needed.

LD 523 **An Act to Require Law Enforcement Officers to Furnish an Affidavit of Probable Cause to Holding Facilities** **ONTP**

<u>Sponsor(s)</u> BUNKER	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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The Maine Rules of Criminal Procedure require a District Court judge or a justice of the peace to determine, within 48 hours of an arrest, whether there is probable cause to hold the person who has been arrested. LD 523 proposed to require the arresting officer to give the holding facility a written promise that the officer would furnish the facility with a copy of the document endorsed by the District Court judge or justice of the peace with the determination. The bill would have permitted the holding facility to release the person arrested if the officer failed to provide a copy of the document within 24 hours of the determination.

LD 538 **An Act to Increase the County Share and Change the Name of the Government Operations Surcharge Fund** **ONTP**

<u>Sponsor(s)</u> ROWE BENNETT	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 538 proposed to change the name of the Government Operations Surcharge Fund to the Jail Operations Surcharge Fund, as it was named before 1991.

Currently, 2% of the total funds collected through fines and the surcharge are paid out of the fund to the counties each month. This bill proposed to increase the percentage of total collections that was returned to the counties by 1% each year, beginning July 1, 1998, until all the money collected through the surcharge was returned to the counties.

LD 538 proposed to change the method of determining the counties' shares of the fund. Currently, 1991 is used as the base year and each county receives the same percentage of the fund as it received in 1991. This bill would have based the distribution of current funds on the percentage of court collections received by each county in the previous year.

An Act to Make Appeals to the Law Court From Revocation of Probation Proceedings Conditional and to Clarify the Matter of Bail Pending Final Disposition of a Motion for Revocation of Probation

<u>Sponsor(s)</u>	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-377
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LD 542 proposed to amend current law to provide guidance to the court in exercising its discretion to set bail or revoke bail in the context of a probation revocation proceeding.

The bill also proposed to amend current law to allow the Supreme Judicial Court by rule to condition an appeal to the Law Court upon the granting of a certificate of probable cause when the appeal is either by a person whose probation was revoked in the Superior Court or by a person whose probation was revoked in the District Court and who was unsuccessful before the Superior Court sitting as an intermediate appellate court. This bill was proposed by the Criminal Law Advisory Committee.

Committee Amendment "A" (H-377) proposed to specify that, when making decisions about bail in probation revocation proceedings, the court would have to be guided by the Maine Bail Code standards in the Maine Revised Statutes, Title 15, section 1051, subsections 2 and 3. The amendment also proposed to apply certain other provisions of the Maine Bail Code to probation revocation proceedings.

Enacted law summary

Public Law 1997, chapter 273 specifies that when making decisions about bail in probation revocation proceedings, the court must be guided by the Maine Bail Code standards in the Maine Revised Statutes, Title 15, section 1051, subsections 2 and 3. Public Law 1997, chapter 273 also amends current law to allow the Supreme Judicial Court by rule to condition an appeal to the Law Court upon the granting of a certificate of probable cause when the appeal is either by a person whose probation is revoked in the Superior Court or by a person whose probation is revoked in the District Court and who has been unsuccessful before the Superior Court sitting as an intermediate appellate court.

Public Law 1997, chapter 273 also applies the following provisions of the Maine Bail Code to probation revocation proceedings:

1. Title 15, chapter 105-A, subchapter IV regarding sureties and other forms of bail;
2. Title 15, chapter 105-A, subchapter V, articles 1 and 3 regarding enforcement; and
3. Title 15, section 1051, subsections 5 and 6 and section 1099-A, subsection 2 regarding appeals.

An Act to Increase the Authorized Period of Probation

<u>Sponsor(s)</u> POVICH	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 543 proposed to increase the authorized periods of probation for Class A, B, C, D and E crimes as follows: For a Class A crime from 6 to 10 years, for a Class B or C crime from 4 to 6 years and for a Class D or E crime from one to 2 years.

LD 545 **An Act to Enhance the Penalty for Operating a Motor Vehicle after Habitual Offender Revocation When the Actor Has Had a Prior Conviction for Operating after Revocation or Operating under the Influence within the Previous 10 Years** **PUBLIC 476**

<u>Sponsor(s)</u> POVICH		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-199
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LD 545 proposed to change the sentencing classification from a Class D to a Class C crime for operating a motor vehicle after habitual offender revocation if the offender were convicted of one or more habitual offender offenses or operating-under-the-influence or OUI offenses within the previous 10 years instead of the current 5-year time frame.

Committee Amendment "A" (H-199) proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 476 changes the sentencing classification from a Class D crime to a Class C crime for operating a motor vehicle after habitual offender revocation if the offender were convicted of one or more habitual offender offenses or operating-under-the-influence or OUI offenses within the previous 10 years instead of the current 5-year time frame. This change makes the habitual offender law consistent with the criminal OUI law that extended the time period for previous OUI offenses from 6 years to 10 years.

LD 590 **An Act to Require Consecutive Sentences to Be Imposed on Habitual Offenders** **ONTP**

<u>Sponsor(s)</u> BOUFFARD CLEVELAND		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 590 proposed to provide that a person who drives after that person's license has been revoked as an habitual offender and who also committed other motor vehicle violations while driving after revocation would have to be given consecutive sentences. This bill also proposed to allow the court to impose the appropriate sentence for both the operating after revocation and the other offenses, but required the driver to serve the operating after revocation sentence separately.

Sponsor(s)
KONTOS

Committee Report
OTP-AM

Amendments Adopted
H-553

LD 593 proposed to establish the crime of resisting arrest. The bill would have made it a Class C crime if the arresting party were injured during the arrest or attempted arrest and a Class E crime if the arresting party were not injured. The bill proposed to establish a minimum fine of \$500 and a minimum term of 2 days imprisonment for both classifications of the crime. The bill also proposed to require the guilty party to pay the medical bills and lost wages suffered by the arresting party.

Committee Amendment "A" (H-553) replaced the bill. The amendment proposed to do the following:

1. Specify that a person would be guilty of the Class D crime of resisting an arrest or detention if that person intended to hinder, delay or prevent the arrest and either used physical force against the officer or created a substantial risk of bodily injury to the officer;
2. Clarify that a person would not be justified in using physical force to resist an arrest or detention, regardless of whether the arrest or detention was legal, as long as the law enforcement officer used reasonable nondeadly force to effect the arrest or detention;
3. Specify that a person would be justified in using reasonable nondeadly force against an officer who unlawfully used nondeadly force;
4. Provide a defense for a person who reasonably believed that the person making the arrest was not an officer or who was aware that the officer knew the arrest was illegal; and
5. Add a fiscal note.

Enacted law summary

Public Law 1997, chapter 351 codifies the holding in *State v. Austin*, 381 A.2d 652 (Me. 1978), by stating that a person is not justified in using physical force to resist an arrest or detention, regardless of whether the arrest or detention is legal, as long as the law enforcement officer uses reasonable nondeadly force to effect the arrest or detention. A person is justified in using reasonable nondeadly force against an officer who unlawfully uses nondeadly force.

Public Law 1997, chapter 351 states that a person is guilty of the Class D crime of resisting an arrest or detention if the person intends to hinder, delay or prevent the arrest and either uses physical force against the officer or creates a substantial risk of bodily injury to the officer. Public Law 1997, chapter 351 does not address the situation in which a person at least recklessly causes an offensive physical contact or bodily injury to an officer, because that is adequately addressed in the Maine Revised Statutes, Title 17-A, sections 207, 208 and 752-A. Similarly, it does not address the situation in which a person threatens to use physical force against an officer, because that is addressed in Title 17-A, sections 209 and 210.

Public Law 1997, chapter 351 also provides a defense for a person who reasonably believed that the person making the arrest was not an officer or who was aware that the officer knew the arrest was illegal.

LD 598

An Act to Create the Crime of Sexual Misconduct with a Child under 14 Years of Age

PUBLIC 143

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-156

LD 598 proposed to criminalize the use of any sexually explicit materials to encourage a child under 14 years of age to participate in or submit to a sexual act or sexual contact. This bill was proposed by the Criminal Law Advisory Commission.

Committee Amendment "A" (H-156) proposed to specify that a person could only be guilty of sexual misconduct with a child under 14 years of age if that person were at least 18 years of age. The amendment also proposed to correct a reference and add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 143 establishes the Class D crime of sexual misconduct with a child under 14 years of age. A person is guilty of sexual misconduct with a child under 14 years of age if that person is at least 18 years of age and knowingly displays sexually explicit materials to the child in order to encourage the child to participate in or submit to a sexual act or sexual contact.

LD 608

An Act to Remove the State Prisoner Population Limit for Knox County

PUBLIC 28

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PINGREE SKOGLUND	OTP	

LD 608 proposed to remove the population cap of 800 prisoners for state correctional facilities in Knox County.

Enacted law summary

Public Law 1997, chapter 28 removes the population cap of 800 prisoners for state correctional facilities in Knox County.

LD 616

An Act to Provide Protection from Assault for Emergency Medical Care Providers

PUBLIC 470

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BULL O'GARA	OTP-AM	H-376

LD 616 proposed to provide protection from assault for persons who provide emergency medical care.

Committee Amendment "A" (H-376) proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 470 establishes the Class C crime of assault on an emergency medical care provider. A person is guilty of assault on an emergency medical care provider if that person intentionally, knowingly or recklessly causes bodily injury to an emergency medical care provider while that provider is providing emergency medical care.

LD 635

An Act to Amend the Sexual Abuse of Minors Laws

ONTP

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

Under current law, a person is guilty of sexual abuse of a minor if, having attained the age of 19, the person engages in a sexual act with another person who is between the ages of 14 and 16, as long as the actor is at least 5 years older than the other person. LD 635 proposed to reduce the age difference between the 2 people from 5 to 4 years.

LD 647

An Act to Create an Elder Abuse and Fraud Unit in the Department of the Attorney General

**DIED ON
ADJOURNMENT**

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

This bill proposed to establish the Elder Abuse and Fraud Division within the Department of the Attorney General. It would have provided funding for one Assistant Attorney General position and one Special Investigator position to investigate and prosecute elder abuse and fraud.

The bill was referred to the Joint Standing Committee on Appropriations and Financial Affairs, but it is related to LD 1714, An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes Against the Elderly.

Committee Amendment "A" (H-248) was the minority report of the Joint Standing Committee on Appropriations and Financial Affairs. The amendment would have funded 2 new positions for an Elder Abuse and Fraud Unit in the Department of the Attorney General by eliminating 2 new assistant district attorney positions established in Public Law 1997, chapter 24, Part Y, section 1.

The amendment also proposed to add a fiscal note to the bill.

Conference Committee Amendment "A" (H-662) was the unanimous report of the committee of conference. It proposed to amend the bill by establishing the Elder Abuse and Fraud Unit within the Department of the Attorney General with one Special Investigator position.

LD 651 **An Act to Expand the Definition of "Aggravated Criminal Mischief" to Make It a Class C Crime to Damage Property by Fire** **PUBLIC 482**

<u>Sponsor(s)</u> POVICH		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-383
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LD 651 proposed to expand the definition of the crime of aggravated criminal mischief to make it a Class C crime to intentionally, knowingly or recklessly damage or destroy the property of another by fire or explosion, regardless of the value of the property damaged or destroyed.

Committee Amendment "A" (H-383) proposed to change the title and to specify that, in the expanded definition of aggravated criminal mischief, property damaged or destroyed would not include a dwelling or structure. The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 482 expands the definition of the crime of aggravated criminal mischief to make it a Class C crime to intentionally, knowingly or recklessly damage or destroy the property of another by fire, if the property damaged or destroyed is neither a dwelling place nor a structure. This expanded definition may be used to prosecute offenders for conduct that is more serious than that warranting prosecution for the Class D crime of criminal mischief, but not serious enough to warrant prosecution for the Class A crime of arson. Public Law 1997, chapter 482 may also be used to prosecute offenders who set fires to wild land in the sparsely populated sections of the State.

LD 652 **An Act to Create a Repeat Offender Provision Addressing Crimes of Violence against People** **ONTP**

<u>Sponsor(s)</u> POVICH		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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Current law raises the classification of a Class D crime to a Class C crime if that crime is committed against a member of the actor's family and the actor has 2 or more prior convictions of an offense against a person within the previous 5 years. LD 652 proposed to repeal that provision. LD 652 proposed to enhance the sentencing class for all Class B, C, D and E crimes in chapters 9, 11, 13 and 27 of the Maine Criminal Code, regardless of who the victim was, if the offender, within the prior 10 years, had 2 or more convictions for violation of those same chapters or for essentially similar crimes in other jurisdictions. For a Class A crime in those chapters, this bill would have required that the same prior convictions be given serious consideration by a court in exercising its sentencing discretion. The prior convictions could have occurred on the same date in the same court. The date of the commission of the offense would have been presumed to be the date alleged in the charging instrument.

LD 725

**An Act Requiring State Reimbursement for Certain Services
Provided by Counties**

ONTP

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

LD 725 proposed to require the Department of Corrections to reimburse counties for certain transportation costs. The bill also proposed to require the Department of Corrections to provide full reimbursement under the Community Corrections Act for fiscal years 1993-94, 1994-95, 1995-96 and 1996-97.

Committee Amendment "A" (H-556) was the minority report of the Joint Standing Committee on Criminal Justice. The amendment proposed to delete language that would have required counties to use in a specified manner funds received as reimbursement for housing state prisoners. That language was enacted to respond to a one-time distribution of money and was meant to be only temporary.

LD 753

An Act to Allow Police to Take Intoxicated Persons into Custody **CARRIED OVER**

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

LD 753 permits law enforcement officers to take intoxicated persons into protective custody by placing them in a municipal or county jail or lock-up. The bill specifies that protective custody is not an arrest, that the person may not be charged with a crime and that the custody may not extend beyond 12 hours. The bill also exempts law enforcement officers from criminal and civil liability for imposing protective custody, unless the officer acts willfully and maliciously.

LD 753 was carried over to the Second Regular Session of the 118th Legislature.

LD 760

**An Act to Increase Penalties for Subsequent Violations of the Laws
Prohibiting Indecent Conduct** **PUBLIC 256**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
WHEELER E	OTP-AM	H-341

LD 760 proposed to create 3 different classes for the offense of indecent conduct. If a person had 2 or more prior indecent conduct convictions, it would have been a Class C crime. If a person had been previously convicted of violating this section or section Title 17-A, section 256, it would have been a Class D crime. Any other charge of indecent conduct would have remained a Class E crime.

Committee Amendment "A" (H-341) proposed to increase the sentencing class for indecent conduct from Class E to Class D if the defendant had 2 or more prior convictions for indecent conduct or visual sexual aggression against

a child. The amendment also proposed that the probationary period for a defendant with 2 or more prior convictions could be doubled.

This amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 256 increases the sentencing class for indecent conduct from Class E to Class D if the defendant has 2 or more prior convictions for indecent conduct or visual sexual aggression against a child. Public Law 1997, chapter 256 also allows the court to increase from one year to 2 years the probationary period for a defendant with 2 or more prior convictions for violation of Title 17-A, sections 256 or 854.

**LD 803 An Act to Protect the Rights of Children Who Have Been Victims of PUBLIC 548
Sexual Abuse by a Juvenile**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
AMERO MUSE	OTP-AM	S-207 S-382 MICHAUD

LD 803 proposed to require the Department of Corrections to notify day-care facility operators and other local authorities or entities involved in the care of children when a juvenile adjudicated of having committed gross sexual assault resides, works or attends school in the area of the facility involving the care of children.

The bill also proposed to direct the Department of Human Services and the Department of the Attorney General to convene a work group to examine the legal rights of children who are alleged victims of sexual abuse and to review current investigative and courtroom procedures for child sexual abuse cases.

Committee Amendment "A" (S-207) proposed that notice of a judgment against a juvenile sex offender would have to be given to licensed and registered day-care facility operators and, upon request, to entities that provide care to children and are located in the municipality in which the juvenile lives, works or attends school.

The amendment would have clarified who would be participating in the work group studying the rights of children who are the alleged victims of sexual abuse and would have changed the work group's reporting date from January 15, 1999 to November 15, 1998. The amendment also proposed to add a fiscal note to the bill.

House Amendment "A" to Committee Amendment "A" (H-537) proposed to provide for staffing the work group and to clarify the provision of per diem for legislative members. The amendment also would have added an appropriation section to the bill.

Senate Amendment "A" to Committee Amendment "A" (S-382) would have changed the work group's reporting date to on or before January 1, 1998 and removed the appropriation in fiscal year 1998-99.

Enacted law summary

Public Law 1997, chapter 548 requires the Department of Corrections to give notice of a judgment against a juvenile sex offender to licensed and registered day-care facility operators and, upon request, to entities that provide care to children and are located in the municipality in which the juvenile lives, works or attends school.

LD 874

An Act to Clarify the Public Safety Laws Concerning Visual Smoke Detectors

PUBLIC 95

Sponsor(s)
TREAT
KERR

Committee Report
OTP-AM

Amendments Adopted
S-72

LD 874 proposed to amend the law governing the installation of smoke detectors in dwelling units to ensure that the smoke detectors relied upon by occupants are appropriate to warn the occupants.

If the owner failed to provide a smoke detector that was suitable to warn the occupant of a dwelling unit, the occupant could have obtained one and could have deducted the reasonable costs of doing so from the rent.

Committee Amendment "A" (S-72) proposed that a visual smoke detector would have to be approved by the State Fire Marshal. The amendment also specified that, if a landlord did not provide a suitable smoke alarm for a deaf or hard-of-hearing tenant, the tenant could obtain, install and maintain a suitable smoke detector and deduct the actual costs of doing so from the rent. This amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 95 amends the law governing the installation of smoke detectors in dwelling units to ensure that the smoke detector relied upon by the occupant is appropriate to warn the occupant.

If the owner does not provide a smoke detector that is suitable to warn the occupant of the dwelling unit, the occupant may do so and deduct the actual costs from the rent. The occupant may not be subjected to any repercussions for not paying that portion of the rent.

LD 882

An Act to Require Defendants to Pay Restitution, Monetarily or Through Work Restitution

PUBLIC 413

Sponsor(s)
BENOIT
WATERHOUSE

Committee Report
OTP-AM

Amendments Adopted
S-305

LD 882 proposed to provide the court with a wider definition of the ability to pay restitution. This bill would have authorized a court to order offenders to work in the public interest to repay their victims. The bill also would have postponed appellate review of restitution orders until offenders were found to have inexcusably violated probation or court payment schedules. LD 882 would have required all offenders to pay restitution either by monetary compensation or through work.

Committee Amendment "A" (S-305) replaced the bill. The amendment proposed to require the court to consider an offender's present and future ability to pay when imposing restitution and to specify that the burden lies on the offender to prove an incapacity to pay restitution.

The amendment would have placed an affirmative duty on the offender to seek from the court a modification of the time or method of payment or service before a default occurred. It proposed to allow a court to modify its prior

order by reducing the amount of each installment or by allowing more time for the convicted person to make payments or perform services.

The amendment also proposed to establish an enforcement mechanism by requiring a person who defaulted on payment of restitution to return to court.

The amendment would have allowed that execution be levied and other measures authorized for the collection of unpaid civil judgments be taken to collect defaulted restitution. The amendment proposed that persons authorized to disburse an organization's assets could be personally liable for failing to pay the organization's restitution.

The amendment also proposed to add a fiscal note.

Enacted law summary

Public Law 1997, chapter 413 requires the court to consider an offender's present and future ability to pay when imposing restitution and specifies that the burden lies on the offender to prove an incapacity to pay restitution.

Public Law 1997, chapter 413 places an affirmative duty on the offender to seek from the court a modification of the time or method of payment or service before a default occurs. It allows a court to modify its prior order by reducing the amount of each installment or by allowing more time for the convicted person to make payments or perform services. The option of allowing the court to revoke the unpaid portion of the restitution in whole or in part has been removed as an apparent unconstitutional intrusion into the Governor's exclusive postconviction pardon power. See *State v. Hunter*, 447 A.2d 797 (Me. 1982).

Public Law 1997, chapter 413 also establishes an enforcement mechanism by requiring a person who defaults on payment of restitution to return to court. The attorney for the State or the court may initiate a motion to enforce payment of restitution. The court must find an offender's default unexcused, unless the offender shows by a preponderance of the evidence that the offender did not intentionally or knowingly refuse to obey the court order or fail to make a good-faith effort to obtain the funds required to make payment. An offender whose default is unexcused may be incarcerated for 6 months or for one day for every \$5 of unpaid restitution, whichever is shorter.

Execution may be levied and other measures authorized for the collection of unpaid civil judgments may be taken to collect defaulted restitution. Finally, persons authorized to disburse an organization's assets may be personally liable for failing to pay the organization's restitution.

LD 910

An Act to Authorize Court-ordered Supervision of Juveniles

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SAXL J DAGGETT	ONTP	

LD 910 proposed to amend the Maine Revised Statutes, Title 15, chapter 505, relating to the detention of juveniles, to provide that in situations when the juvenile was involved in criminal activity, the court could order supplemental supervision. Juveniles found to be in violation of the court order could be taken into custody pending a court hearing and further disposition. Parents who did not comply could be fined up to \$100 per each day of noncompliance.

Sponsor(s)
BUNKER

Committee Report

Amendments Adopted

LD 915 makes the following changes to the laws governing criminal procedure as it relates to juveniles.

1. It establishes, as a purpose of the Maine Juvenile Code, the provision of consequences, including those of a punitive nature, for repeated criminal behavior.
2. Current law defines a juvenile as one who has not yet attained 18 years of age. This bill changes the definition of juvenile to one who has not yet attained 17 years of age.
3. It eliminates the need for a bind-over hearing unless the defendant requests one.
4. It amends the definition of "juvenile crime."
5. It requires immediate notification of the juvenile caseworker if the law enforcement officer believes immediate secure detention is required.
6. Current law limits the questioning of an arrested juvenile by a law enforcement officer. This bill removes those limitations.
7. It requires a juvenile caseworker to issue a summons to the juvenile to appear in court at the time the caseworker requests that a petition be filed.
8. It authorizes the prosecuting attorney to file a petition at any time more than 30 days after the juvenile caseworker has been given notice.
9. It amends the provisions governing issuance, contents and service of summonses.
10. It provides that the general public may not be excluded from any proceeding regarding a juvenile who at the time of the commission of the juvenile crime was 16 years of age or older.
11. It allows distribution of information contained in juvenile records by one criminal justice agency to another if the person concerned is least 16 years of age at the time the crime is committed.
12. It increases from 30 to 90 days the length of time the court may commit a juvenile to the Maine Youth Center.

LD 915 was carried over to the Second Regular Session of the 118th Legislature.

LD 918

**An Act to Increase the Penalties for Criminal OUI for Persons
Previously Convicted of Vehicular Manslaughter**

ONTP

Sponsor(s)
COWGER
KILKELLY

Committee Report
ONTP

Amendments Adopted

LD 918 proposed to increase the range of sentences a judge could give for criminal OUI when sentencing a person who was previously convicted of manslaughter involving the operation of a motor vehicle. A person who committed the offense of criminal OUI after a prior manslaughter conviction involving the use of a motor vehicle would have been subject to the same range of penalties as persons with 3 or more prior OUI offenses in a 10-year period.

LD 920

**An Act Criminalizing the Failure of One Parent to Report a Sexual
Assault or Exploitation of a Child by Another Parent**

ONTP

Sponsor(s)
KERR
MACKINNON

Committee Report
ONTP

Amendments Adopted

LD 920 proposed to make it a Class D crime for a parent or surrogate parent to fail to report or cause a report to be made to the Department of Human Services if that parent knew of, or had reasonable cause to suspect, sexual assault or exploitation of a child by another parent or surrogate parent.

LD 996

An Act to Amend the Definition of a Juvenile

ONTP

Sponsor(s)
BRAGDON
MITCHELL B

Committee Report
ONTP

Amendments Adopted

LD 996 proposed to amend the Juvenile Code and the Maine Criminal Code by reducing to 17 years of age from 18 years of age the age at which a person is considered a juvenile.

LD 1026

**An Act to Reduce the Presumptive Amount for Trafficking in
Marijuana from 2 Pounds to One Pound**

PUBLIC 481

Sponsor(s)
WHEELER E
HALL

Committee Report
OTP-AM

Amendments Adopted
H-422

LD 1026 proposed to reduce the amount of marijuana required to constitute the Class C crime of unlawful trafficking from 2 pounds to 453 grams and to reduce the presumptive amount of marijuana for unlawful trafficking from 2 pounds to 453 grams.

Committee Amendment "A" (H-422) proposed to correct the Maine Revised Statutes, section 1101, subsection 17, paragraph D by making it clear when a person is guilty of trafficking in marijuana.

The amendment proposed to round off the amount of marijuana required to constitute the Class C crime of trafficking from 453 grams to one pound and to round off the presumptive amount of marijuana to constitute unlawful trafficking from 453 grams to one pound. The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 481 reduces the amount of marijuana required to constitute the Class C crime of trafficking to one pound and reduces the presumptive amount of marijuana to constitute unlawful trafficking to one pound.

LD 1033 **An Act to Provide Conflict Resolution Education for Juvenile Offenders** **ONTP**

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

LD 1033 proposed to require the Department of Education to provide academic and social programs to juvenile offenders to give them the opportunity to discuss methods of crime prevention and conflict resolution with community members and school personnel.

LD 1065 **An Act to Require Law Enforcement Officers to Inform a Person Who Fails to Submit to a Test about the Informed Consent Law** **PUBLIC 357**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
POVICH	OTP	H-600 POVICH S-232 MILLS

LD 1065 proposed to clarify that law enforcement officers are not required to advise drivers who submit to chemical testing of what might have happened if the driver had refused to submit to testing.

Senate Amendment "A" (S-232) proposed to prohibit the use of a refusal or failure to submit to a test as evidence against that person or to be considered an aggravating factor in sentencing unless the person had been told of the specific consequences of that refusal or failure.

House Amendment "A" to Senate Amendment "A" (H-527) proposed to clarify that the refusal to submit applied to tests other than just a blood test.

House Amendment "B" to Senate Amendment "A" (H-600) proposed to change the title of the bill and to provide that a refusal to submit to any test could not be used against a person, unless the person had first been told that the refusal or failure would result in certain consequences.

Enacted law summary

Public Law 1997, chapter 357 was enacted in response to State v. Harold Stade (Law Docket No. PIS 95-564) in which the law court held that a police officer's imprecise recitation of the consequences of refusal required exclusion of chemical test results at the OUI trial even though the driver had not refused.

Public Law 1997, chapter 357 clarifies that law enforcement officers are not required to advise drivers who do submit to chemical testing of what might have happened if the driver refused to submit to testing. Public Law 1997, chapter 357 also prohibits the use of a refusal or failure to submit to a test as evidence against that person or as an aggravating factor in sentencing unless the person has been told of the specific consequences of that refusal or failure.

Public Law 1997, chapter 357 also specifies that a refusal to submit to any test may not be used against a person, unless that person has first been told that the refusal or failure will result in certain consequences.

LD 1069

An Act to Require Prisoners to Pay Court Fines and Family Support

**PUBLIC 358
EMERGENCY**

Sponsor(s)
MAILHOT

Committee Report
OTP-AM

Amendments Adopted
H-378
H-476 POVICH

LD 1069 proposed to require a prisoner in a work program to pay 25% of that prisoner's gross weekly wages to pay court ordered fines. The chief administrative officer of the correctional facility would have had to collect court ordered fines after the prisoner had paid in full any victim restitution.

Committee Amendment "A" (H-378) proposed to do the following:

1. Add an emergency preamble and a mandate preamble to the bill and change the title;
2. Eliminate references to a prisoner's "income" and reinstate the original language, which refers to a prisoner's "money;"
3. Prohibit a prisoner from participating in a work program unless the prisoner agreed to pay at least 25% of that prisoner's money for the support of any dependent children;
4. Repeal Public Law 1997, chapter 41 and reenact Maine Revised Statutes, Title 30-A, section 1607 and Title 34-A, section 3039-A, so that a mandate preamble and emergency preamble could be added to them; and
5. Add a fiscal note.

House Amendment "A" to Committee Amendment "A" (H-476) proposed to make technical changes to clarify that family support paid by a prisoner under these sections was to be used for all of the prisoner's dependent children.

Enacted law summary

Public Law 1997, chapter 358 prohibits a prisoner from participating in a work program unless the prisoner agrees to pay 25% of that prisoner's money for court ordered fines and restitution and at least 25% of that prisoner's money for the support of any dependent children. The chief administrative officer of the correctional facility where the prisoner is incarcerated must collect the prisoner's money for fines, restitution and child support and disburse the money to the court, victims and the parent of the dependent child, respectively.

Public Law 1997, chapter 358 was enacted as an emergency measure effective on May 31, 1997.

LD 1071 An Act to Ensure That Crime Victims Are Informed of Their Rights PUBLIC 286

<u>Sponsor(s)</u> PEAVEY	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-381
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LD 1071 proposed to require district attorneys and other attorneys representing the State in criminal proceedings to provide victims of crime with informational pamphlets in every day language outlining the laws on victims' rights, the Victims' Compensation Fund, negotiated pleas and victim involvement in criminal proceedings.

Committee Amendment "A" (H-381) proposed to allow district attorneys and other attorneys representing the State to satisfy the notice requirements to victims by providing victims with pamphlets produced either by the attorney's office or by the Department of Corrections. The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 286 requires district attorneys and other attorneys representing the State in criminal proceedings to provide victims of crime with informational pamphlets, produced either by the attorney's office or by the Department of Corrections, outlining the laws on victims' rights, the Victims' Compensation Fund, negotiated pleas and victim involvement in criminal proceedings.

LD 1096 An Act to Make It a Crime to Solicit a Child by Means of Computer to Commit an Unlawful Sex Act ONTP

<u>Sponsor(s)</u> MCALEVEY SMALL	<u>Committee Report</u> ONTP MAJ OTP-AM MIN	<u>Amendments Adopted</u>
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LD 1096 proposed to establish the crime of solicitation of a child by a computer. A person would have been guilty of this crime if that person were 16 years of age or older and knowingly, with the intent to commit an unlawful sex act, enticed, advised, coerced, ordered or commanded, by means of a computer, a child who was less than 16 years

of age and at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Solicitation of a child by a computer would have been the same class of crime as the crime solicited.

Committee Amendment "A" (H-620) was the minority report of the Joint Standing Committee on Criminal Justice and would have replaced the bill. The amendment proposed to make it a crime for a person who was at least 18 years of age to knowingly entice, advise, coerce, order or command a child under 14 years of age to allow the person to engage in conduct with the child that would be a sexual offense. The class of the crime would have been one class less than the class for the conduct that would constitute the sexual offense. The amendment also would have added a fiscal note to the bill.

LD 1179 An Act to Require the State to Take Responsibility for Detention of ONTP
Certain Juveniles by September 1, 1997

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

LD 1179 proposed to require the State to assume responsibility for detained and committed juveniles by September 1, 1997, regardless of whether the Northern Maine Regional Juvenile Detention Facility were operational.

LD 1184 An Act Regarding Firearms Proficiency Testing for Private PUBLIC 360
Investigators

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PEAVEY	OTP-AM MAJ ONTP MIN	H-511

LD 1184 proposed that a private investigator's certificate of firearms proficiency would be valid for at least 2 years and that a private investigator could not be required to undergo more than one proficiency examination during a 2-year period.

Committee Amendment "A" (H-511) replaced the bill. The amendment proposed to require a private investigator to pass a written examination prescribed by the Commissioner of Public Safety and be issued a concealed weapons permit by the Chief of the State Police in order to carry a firearm while performing the duties of a private investigator. The amendment also proposed to add a fiscal note.

Enacted law summary

Public Law 1997, chapter 360 requires a private investigator to pass a written examination prescribed by the Commissioner of Public Safety and be issued a concealed weapons permit by the Chief of the State Police in order to carry a firearm while performing the duties of a private investigator.

LD 1194

An Act Concerning Consecutive Sentencing

ONTP

Sponsor(s)
OTT

Committee Report
ONTP

Amendments Adopted

LD 1194 proposed to amend the Maine Criminal Code so that multiple sentences for murder and Class A, B and C crimes would be imposed consecutively absent a reason stated on the record. The bill also would have required the sentencing court to state its reasons on the record for imposing a concurrent sentence.

LD 1196

An Act to Amend the Victims' Rights Laws

INDEF PP

Sponsor(s)
MCALEVEY

Committee Report
OTP-AM

Amendments Adopted
H-691

LD 1196 proposed to amend the victims' rights laws to provide additional rights to the victim of a crime. It would have provided the victim the opportunity to participate at a hearing on a motion to revoke the defendant's probation and upon request at the sentencing hearing when the defendant had been convicted of a subsequent offense.

The bill would have required the attorney for the State to provide the victim with a pamphlet developed by the Office of the Attorney General explaining a victim's rights. The bill also would have required law enforcement officers to inform the victim of these rights.

The bill further proposed to require a judicial officer who set bail or released a defendant to notify the victim of a Class A, B, C or D crime involving a sexual act or contact, stalking or domestic violence unless the victim had requested not to be notified.

Committee Amendment "A" (H-691) proposed to eliminate from the bill the requirements that a law enforcement officer inform a victim of the victim's rights and that the prosecuting attorney distribute a pamphlet to the victim. The amendment also would have deleted the provision that authorized a victim to participate in sentencing proceedings when the same defendant was convicted of a subsequent offense.

The amendment proposed that, if a victim requested notification, a county jail would have to notify the victim when the defendant was released on preconviction or postconviction bail or any other pretrial release. The amendment also would have required that by January 1, 1998, all summonses include language informing the victim, if any, of the victim's right under the Maine Revised Statutes, section 1175 to receive notification of the defendant's release. The law enforcement agency issuing the summons would have had to provide the victim with a copy of the summons when it was practicable to do so. Finally, the amendment would have added a mandate preamble, an appropriation and a fiscal note to the bill.

LD 1205

An Act to Amend Certain Provisions Regarding the Presumption of Negotiating a Worthless Instrument

PUBLIC 253

Sponsor(s)
JONES SL

Committee Report
OTP-AM

Amendments Adopted
H-342

LD 1205 proposed to change the law regarding negotiating a worthless instrument by creating the presumption that if an account were closed, the drawer intended to negotiate the worthless instrument. The bill also would have simplified the procedure by which the drawee could certify lack of funds or account of an instrument by signing a statement.

Committee Amendment "A" (H-342) proposed to change the law regarding the crime of negotiating a worthless instrument by creating a presumption that the content of the stamp or writing of the drawee on or accompanying a negotiable instrument is accurate. The amendment also would have made the stamp or writing of the drawee evidence admissible in any court in the State, unless the defendant requested at least 10 days before trial that the prosecution provide a qualified witness to testify as to why the instrument was not honored.

Enacted law summary

Public Law 1997, chapter 253 amends the law regarding negotiating a worthless instrument by creating a presumption that the content of the stamp or writing of the drawee on or accompanying a negotiable instrument is accurate. In other words, if the stamp states that the instrument was not honored because there were insufficient funds, then it is presumed that there were insufficient funds. Public Law 1997, chapter 253 is modeled after language in the civil evidentiary provisions regarding negotiable instruments in the Maine Revised Statutes, Title 11, section 3-1505.

Public Law 1997, chapter 253 also states that the stamp or writing of the drawee is evidence admissible in any court in the State, unless the defendant requests at least 10 days before trial that the prosecution provide a qualified witness to testify as to why the instrument was not honored.

LD 1218

An Act to Expand the Harassment Laws

PUBLIC 267

Sponsor(s)
KILKELLY
PEAVEY

Committee Report
OTP-AM

Amendments Adopted
S-185

LD 1218 proposed to prohibit an adult person in the custody or under the supervision of the Department of Corrections from harassing another person after having been forbidden to do so by the Commissioner of Corrections or the chief administrative officer of the facility housing the adult person or a sheriff, deputy sheriff, constable, police officer, justice of the peace or a court.

Committee Amendment "A" (S-185) proposed to eliminate the need for 2 new subsections and simply added to the list of persons in the Maine Revised Statutes, Title 17-A, section 506-A, subsection 1 who could forbid a person to engage in harassment. The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 267 prohibits an adult person in the custody or under the supervision of the Department of Corrections from harassing another person after having been forbidden to do so by the Commissioner of Corrections, the chief administrative officer of the facility or the regional correctional administrator.

LD 1223 An Act to Expand the Monitoring of the Conversations of Prisoners PUBLIC 361

<u>Sponsor(s)</u> MURRAY POVICH		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> S-277
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LD 1223 proposed to allow the Department of Corrections to monitor the conversations of prisoners without requiring the department to have probable cause to believe that a party to a specific conversation was involved in a criminal offense.

Committee Amendment "A" (S-277) proposed to allow the counties, as well as the State, authority to monitor inmate conversations. The amendment proposed to require 3 types of notification to be used to inform inmates and recipients of telephone calls from inmates that their conversations are subject to monitoring.

Enacted law summary

Public Law 1997, chapter 361 allows counties and the State to monitor inmate conversations. County jails and state prisons must provide inmates with a written notification statement, a posted written notification next to every telephone and a recorded warning before every call that informs inmates and recipients of telephone calls from inmates that their conversations are subject to monitoring. Monitoring of all conversations of prisoners, except those involving attorney-client privilege, is permitted as in other jurisdictions in the United States.

LD 1250 An Act to Protect Private Communication ONTP

<u>Sponsor(s)</u> VEDRAL		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1250 proposed to expand the privacy laws by specifying that a person is guilty of violation of privacy if that person intentionally and without the consent of the person entitled to privacy in the communications listens to or records communications taking place over an electronic link. A violation of privacy would not occur if the person conducting the surveillance were doing so in the execution of a public duty in accordance with law.

LD 1256

An Act to Permit Disclosure of the Identity of Certain Juvenile Offenders

ONTP

Sponsor(s)
BROOKS
PARADIS

Committee Report
ONTP

Amendments Adopted

LD 1256 proposed that a juvenile must be tried as an adult if the juvenile previously had been adjudicated twice as having committed any juvenile crime as defined by the Maine Revised Statutes, Title 15, section 3103. If a juvenile previously had been adjudicated twice as having committed a juvenile crime, the bill would have allowed law enforcement officers, officers of the court and juvenile caseworkers to release the juvenile's identity before a petition was filed charging the juvenile with a juvenile crime. The bill also proposed to give the judge discretion to disclose a juvenile's identity regardless of whether the juvenile previously had been adjudicated.

LD 1285

An Act to Define the Permissible Duties of Part-time and Full-time Law Enforcement Officers

INDEF PP

Sponsor(s)
BUNKER

Committee Report
OTP-AM

Amendments Adopted
H-623

LD 1285 proposed to require the Board of Trustees of the Maine Criminal Justice Academy to design and implement by rule an intermediate law enforcement officer training course and recertification program.

The bill proposed to require the board to define the permissible duties of the 3 levels of law enforcement officers governed by Title 25, sections 2804-B, 2804-C and 2804-H and to submit these definitions to the Joint Standing Committee on Criminal Justice, along with the necessary implementing legislation. LD 1285 also proposed to require the board to review the certification of all law enforcement and corrections officers and to suspend the right to enforce the criminal laws of the State or to act as a corrections officer of any person found in violation of the training and recertification requirements found in Title 25, section 2804-B, 2804-C, 2804-D, 2804-E or 2804-H.

LD 1285 would have amended the Government Operations Surcharge Fund provisions by adding 2% to the 10% surcharge scheduled to go into effect January 1, 2001, with that 2% to be paid to the Maine Criminal Justice Academy to fund training and recertification programs.

Committee Amendment "A" (H-623) would have required the Board of Trustees of the Maine Criminal Justice Academy to define the term "part-time law enforcement officer" and adopt rules identifying the permissible duties of those officers no later than March 1, 1998. The rules would have had to be implemented no later than December 31, 1998.

This amendment further proposed to amend the Maine Revised Statutes, Title 25, section 2804-B to require a person covered by that section to complete specified recertification training annually. An officer who had completed the basic course described in Title 25, section 2804-C would have had to complete board-specified recertification training each year.

This amendment also proposed to require the board to review the certification of all law enforcement and corrections officers on March 1st of every year, beginning in 1999. The board would have had to decertify those individuals who, upon review, did not meet certification or recertification requirements.

The amendment would have specified that the provision regarding the additional percentage of the Government Operations Surcharge Fund to be paid to the Maine Criminal Justice Academy would take effect January 1, 2001, or when the funding for the operation of the Judicial Department's computer system lapsed, whichever occurred first.

The amendment also proposed to add an appropriation section and a fiscal note to the bill.

See Committee Amendment "A" (H-750) to LD 1138, "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1997, June 30, 1998 and June 30, 1999," Part O, enacted as Public Law 1997, chapter 395, which adopted an amended version of the Criminal Justice Committee Amendment "A"(H-623). The changes that were incorporated into Committee Amendment "A" (H-750) to LD 1138 delay the duties of the board to coincide with the receipt of anticipated funds from the additional 2% surcharge on fines, forfeitures and penalties.

LD 1312 An Act to Strengthen Parental Responsibility for Juveniles ONTP

<u>Sponsor(s)</u> LINDAHL	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 1312 proposed to amend the Juvenile Code to allow a juvenile court to order a parent to pay support for a juvenile residing in the Maine Youth Center or a county jail. The bill further proposed to allow the court to order a juvenile found to have committed criminal mischief to write a formal apology to the victim, to write a report concerning the public property damage and to contribute in a variety of ways to the restoration of the property damaged or to restitution to the victim.

LD 1312 further proposed to allow the court to order a parent of a juvenile found to have committed criminal mischief to submit restitution up to \$10,000 to the victim if the juvenile were in the custody of and residing with the parent and if the court found that the criminal mischief were a direct result of the parent's failure to reasonably supervise and control the juvenile's conduct.

The bill proposed that a parent or person who knowingly contributes to the commission of a juvenile crime is guilty of a Class E crime.

LD 1324 Resolve, to Establish a Commission to Review Sentencing Guidelines ONTP

<u>Sponsor(s)</u> KONTOS	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 1324 was a concept draft pursuant to Joint Rule 208. The resolve proposed to establish a commission to evaluate and review sentencing guidelines to ensure that they are fair and reasonable.

LD 1354 **An Act to Transfer the Responsibility for the Certification of Battersers' Intervention Programs to the Department of Corrections** **PUBLIC 292**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PEAVEY KILKELLY	OTP-AM	H-406

LD 1354 proposed to transfer the responsibility for the certification of batterers' intervention programs from the Department of Public Safety to the Department of Corrections.

Committee Amendment "A" (H-406) proposed that rules adopted by the Department of Corrections pursuant to the batterers' intervention programs would be major substantive rules and proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 292 transfers the responsibility for the certification of batterers' intervention programs from the Department of Public Safety to the Department of Corrections.

LD 1396 **An Act to Provide for Shock Incarceration of Juveniles** **ONTP**

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

LD 1396 proposed to establish the Shock Incarceration Program as a new sentencing alternative for juveniles who are 17 years of age. A person sentenced to the program would have had to complete the incarceration portion of the sentence in a facility providing intensive regimentation and discipline patterned after military basic training.

LD 1402 **An Act to Establish the Civil Violation of Creating a Police Standoff** **PUBLIC 426**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
LEMKE	OTP-AM	H-470 H-676 POVICH

LD 1402 proposed to establish the civil offense of creating a police standoff. The bill would have required that restitution be made in an amount equal to the greater of \$500 or the direct costs incurred by the law enforcement agency or agencies that responded to the standoff.

LD 1438 proposed to add the penalties of vehicle impoundment and forfeiture to a person who had 2 previous OUI offenses within a 10-year period and the penalty of vehicle forfeiture to a person who had a prior conviction of operating a motor vehicle while that person's license was suspended if that person were convicted again.

LD 1467 **An Act to Amend the Law to Be Consistent with the Organizational Structure of the Department of Corrections and for Other Purposes** **PUBLIC 464**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
POVICH MURRAY	OTP-AM	H-513

LD 1467 proposed to do the following:

1. Eliminate remaining references to the director and division of Probation and Parole, pursuant to PL 1995, chapter 502;
2. Eliminate references to the Bureau of Juvenile Corrections, which was reorganized and is headed by the Associate Commissioner of Juvenile Services;
3. Delete all references to "entrustment" of juveniles and uses "aftercare" instead to refer to all services a juvenile receives after leaving the Maine Youth Center;
4. Provide that any challenge to the commissioner's decision to return a juvenile to the Maine Youth Center from aftercare status or an adult to a correctional facility from supervised community confinement is not a proper subject for post conviction review, and instead must go through an 80-C action (M.R. Civ. Pro. 80-C, "Review of Final Agency Action");
5. Make court review of out-of-home placement determination take place every 12 months pursuant to federal law;
6. Amend the Department of Corrections' confidentiality provision to facilitate receipt of federal funds;
7. Add the term "deduction" to prisoner disciplinary statute pursuant to changes in good time; and
8. Clarify that persons transferred to the Department of Corrections from a county jail are transferred to the department and not to a specific facility.

Committee Amendment "A" (H-513) proposed to clarify that a juvenile who, prior to sentencing, was detained in any state facility is entitled to receive a day-for-day reduction from the juvenile's total required term of imprisonment. The amendment also proposed to make technical changes and add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 464 does the following:

1. Eliminates all remaining references to the director and division of Probation and Parole;
2. Eliminates references to the Bureau of Juvenile Corrections, which was reorganized and is headed by the Associate Commissioner of Juvenile Services;
3. Deletes all references to "entrustment" of juveniles and uses "aftercare" instead to refer to all services a juvenile receives after leaving the Maine Youth Center;
4. Provides that any challenge to the commissioner's decision to return a juvenile to the Maine Youth Center from aftercare status or an adult to a correctional facility from supervised community confinement is not a proper subject for post conviction review, and instead must go through an 80-C action (M.R. Civ. Pro. 80-C, "Review of Final Agency Action");

5. Makes court review of out-of-home placement determination take place every 12 months pursuant to federal law;
6. Amends the Department of Corrections' confidentiality provision to facilitate receipt of federal funds;
7. Adds the term "deduction" to prisoner disciplinary statute pursuant to changes in good time;
8. Clarifies that persons transferred to the Department of Corrections from a county jail are transferred to the department, instead of to a specific facility; and
9. Clarifies that a juvenile who, prior to sentencing, is detained in any state facility is entitled to receive a day-for-day reduction from the juvenile's total required term of imprisonment. Currently, the law gives such credit to a juvenile who has spent time in a "correctional facility," which includes the Maine Youth Center but does not include the Northern Maine Regional Juvenile Detention Facility.

LD 1522

An Act to Strengthen Juvenile Laws

ONTP

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

LD 1522 proposed to make it possible to charge a juvenile with any adult crime. It would have made the following elements mandatory in every disposition: complete restitution for economic and physical loss, for which the juvenile's parents or legal custodians were jointly and severally liable; community service, overseen by local authorities; placement at the Maine Youth Center; and a letter of public apology. The bill proposed to require the courts to increase a penalty if, at the time of the offense, the juvenile were truant or had been previously adjudicated or convicted of harassment.

LD 1524

An Act to Reinstate the Death Penalty

DIED BETWEEN BODIES

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

LD 1524 proposed to reinstate the death penalty. A sentence of death could have been imposed if the murder caused the death of two or more people or if the victim were less than 14 years of age and had also been sexually assaulted.

Committee Amendment "A" (S-252) was the minority report of the Joint Standing Committee on Criminal Justice. The amendment proposed to add an appropriation section and a fiscal note to the bill.

LD 1527

An Act to Authorize a Police Officer to Impound the Motor Vehicle of a Person Arrested for Operating Under the Influence or Driving with a Suspended or Revoked License

PUBLIC 417

Sponsor(s)
BUTLAND

Committee Report
OTP-AM

Amendments Adopted
S-304

LD 1527 proposed to allow a law enforcement officer to impound a vehicle operated by a person arrested for driving with a suspended or revoked license. The bill also would have allowed for the sale of an impounded vehicle if the person arrested were an owner of the vehicle, the vehicle was declared a nuisance, the person arrested was convicted of the underlying violation and the person had at least one prior conviction for operating under the influence or driving with a suspended or revoked license.

Committee Amendment "A" (S-304) replaced the bill. The amendment proposed to allow a law enforcement officer to impound a vehicle if the vehicle were used by a person arrested for driving with a suspended or revoked license when the suspension or revocation was for OUI or an OUI offense.

Enacted law summary

Public Law 1997, chapter 417 allows a law enforcement officer to impound a vehicle if the vehicle was used by a person arrested for driving with a suspended or revoked license when the suspension or revocation was for OUI or an OUI offense. Currently, a vehicle may be impounded if the vehicle was used by a person arrested for OUI.

LD 1533

An Act to Make Certain Changes to Post-conviction Review

PUBLIC 399

Sponsor(s)
POVICH

Committee Report
OTP-AM

Amendments Adopted
H-621

LD 1533 proposed to modify statutory post-conviction review in 2 ways. First, the bill would have eliminated the current availability of post-conviction review relative to a present restraint or impediment resulting indirectly from a challenged criminal judgment of the State. Second, this bill would have adopted a filing deadline for initiating a petition seeking relief from a criminal judgment coming within the Maine Revised Statutes, Title 15, section 2124, subsection 1 or 1-A.

Committee Amendment "A" (H-621) proposed to adopt a flat one-year filing deadline for initiating a petition seeking relief from a criminal judgment coming within the Maine Revised Statutes, Title 15, section 2124, subsection 3. The limitation period would start to run from the date the sentence was imposed for the new crime.

The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 399 modifies statutory post-conviction review by eliminating the current availability of post-conviction review relative to a present restraint or impediment resulting indirectly from a challenged criminal judgment of the State. Availability of relief is not required by the Constitution of Maine, Article 1, Section 10 as in *YDE v. State*, 376 A.2d 465 (Me. 1977). Public Law 1997, chapter 399 also adopts a filing deadline for initiating

a petition seeking relief from a criminal judgment coming within the Maine Revised Statutes, Title 15, section 2124, subsection 1 or 1-A. That filing deadline is modeled after the federal habeas corpus statute, 28 United States Code, Section 2254. In order to ensure fairness, a grace period of the same length as the new limitation period is provided.

Public Law 1997, chapter 399 also adopts a flat one-year filing deadline for initiating a petition seeking relief from a criminal judgment coming within the Maine Revised Statutes, Title 15, section 2124, subsection 3. The limitation period starts to run from the date the sentence is imposed for the new crime.

LD 1548

An Act to Outlaw the Sale of Code Grabbers in the State

PUBLIC 372

<u>Sponsor(s)</u> PLOWMAN	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-552
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LD 1548 proposed to make the sale or possession of code grabbers in the State unlawful. The sale or possession of code grabbers would have been a Class D crime.

Committee Amendment "A" (H-552) replaced the bill and proposed to do the following:

1. Prohibit the transfer of burglar's tools, in addition to possession of them;
2. List electronic devices used as code grabbers among the examples of burglar's tools;
3. Specify that possession of burglar's tools is a Class E crime and transfer of burglar's tools is a Class D crime; and
4. Prohibit the possession or transfer of theft devices, in general, rather than simply theft of services devices.

Enacted law summary

Public Law 1997, chapter 372 does the following:

1. Makes transferring or possessing with the intent to transfer burglar's tools that the person knows are designed for or are useful for the commission of a crime a Class D crime;
2. Makes possession with the intent to use a burglar's tools to commit a crime a Class E crime;
3. Lists electronic devices used as code grabbers among the examples of burglar's tools; and
4. Prohibits the possession or transfer of theft devices.

LD 1571

An Act to Amend the Maine Bail Code

PUBLIC 543

<u>Sponsor(s)</u> BENOIT WATERHOUSE	<u>Committee Report</u> OTP-AM MAJ OTP-AM MIN	<u>Amendments Adopted</u> S-423
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LD 1571 proposed to do the following:

1. Amend the definitions of the terms "bail" and "ensure the integrity of the judicial process;"

2. Change the standards for release of a defendant in custody for a crime bailable as of right preconviction;
3. Prohibit a judicial officer from ordering the pretrial release of a defendant on personal recognizance or upon execution of an unsecured appearance bond on new criminal conduct if the defendant has pending criminal charges;
4. List criteria for a judicial officer to consider in determining whether the pretrial release of a defendant on personal recognizance or an unsecured appearance bond is appropriate;
5. Prohibit a judicial officer from ordering the defendant released on personal recognizance or unsecured appearance bond if the defendant's crime is serious or the judicial officer finds the defendant's criminal record inappropriate for granting the defendant release on personal recognizance or unsecured appearance bond;
6. Repeal the provision that permits the Superior Court to make a de novo determination of the refusal of a judge of the District Court or a bail commissioner acting under the Maine Revised Statutes, Title 15, section 1026 to authorize the defendant's release on personal recognizance or on the execution of an unsecured appearance bond and replace it with a provision that permits a defendant to appeal to the Superior Court to review whether the District Court or bail commissioner abused the court's or commissioner's discretion in setting the bail. It provides that for a defendant in custody, an appeal hearing would have to be scheduled within 96 hours of the filing of the appeal;
7. Change the standards admitting a defendant to post-conviction bail;
8. Provide that a surety for a defendant admitted to bail is responsible for the appearance of the defendant at all times, the defendant's compliance with the conditions of release and ensuring that the defendant refrains from engaging in new criminal conduct; and
9. Change the standards for determining whether to release a person on bail in connection with probation revocation proceedings and provides that bail is not available to any person pending the appeal of a revocation of probation pursuant to Title 17-A, section 1207.

Committee Amendment "A" (S-314) replaced the bill and was the majority report of the Joint Standing Committee on Criminal Justice. The amendment proposed to do the following:

1. Amend the code's statement of purpose to include the fact that, while on bail, a defendant is expected to refrain from engaging in new criminal conduct;
2. Amend the bail definition both in the preconviction and post-conviction context to expressly include refraining from any new criminal conduct and obeying each condition of release imposed by the judicial officer;
3. Define new criminal conduct;
4. Clarify that a judicial officer is authorized to issue a preconviction order releasing a defendant on personal recognizance or execution of an unsecured bond and imposes additional release conditions;
5. Require that every preconviction and post-conviction order of release contain, in addition to a waiver of extradition by the defendant, a condition that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders;

6. Clarify that a judicial officer is authorized to require a defendant preconviction to execute an agreement to forfeit designated property or execute a bail bond with sureties to ensure the integrity of the judicial process as well as the defendant's appearance;
7. Recognize additional sources of information from which the judicial officer may gather reliable information needed to make the release decision;
8. Add the factor of whether the defendant has previously violated conditions of release, probation or other court orders, including protection from abuse orders to the list of factors to be considered in the preconviction and post-conviction release decision;
9. Clarify that the judicial officer must advise the defendant of the potential penalties as well as the consequences of violating a condition of release;
10. Require, both in the post-conviction context and when the conditional right to have preconviction bail set has been extinguished at a Harnish bail proceeding, that bail be denied in the event a substantial risk exists that the defendant will commit new criminal conduct;
11. Increase from 24 to 48 hours the time within which a confined defendant must be transported to a different county if no Justice of the Superior Court is locally available to make a de novo determination of preconviction bail. It additionally requires the clerk to provide notice to the attorney for the State of the upcoming hearing and to schedule that hearing for a time not less than 24 hours but not more than 48 hours after the attorney for the State has been notified;
12. Make both preconviction and post-conviction sureties responsible for ensuring a defendant's compliance with each condition of release imposed by the judicial officer, including that the defendant refrain from new criminal conduct, in addition to being responsible for ensuring the appearance of the defendant at all times;
13. Prior to undertaking the responsibility of surety for a defendant, a surety must be provided a copy of the defendant's written release order and a written statement containing an explanation of both the general responsibilities of a surety and the potential consequences to a surety if a defendant violates a condition of release and must be verbally advised of each condition in the defendant's written release order as well as the potential consequences to the surety if the defendant fails to abide by each condition of release. It further requires the Supreme Judicial Court to specify by rule who will be responsible for advising the surety and providing to the surety a copy of the written order and the written explanation;
14. Address the consequences to a defendant who fails to refrain from new criminal conduct. If a judge or justice finds probable cause exists to believe that the defendant has committed a new crime following the setting of preconviction bail, the judge or justice must issue an order denying bail unless the court finds that there are conditions of release that will reasonably ensure that the defendant will not continue to commit new crimes while out on bail in which case, the court must issue an order under the Maine Revised Statutes, Title 15, section 1026; and
15. Add a fiscal note.

Committee Amendment "B" (S-315) replaced the bill and was the minority report of the Joint Standing Committee on Criminal Justice. The amendment proposed to do the same as Committee Amendment "A" (S-314),

except that it would not have made changes to the surety provisions as described in paragraphs 12 and 13 of Committee Amendment "A."

Committee of Conference Amendment "A" (S-423) proposed to do the same as Committee Amendment "A" (S-314), except that it would have amended the surety provisions differently by replacing Committee Amendment "A's" paragraph 12 with the following:

12. Make both preconviction and post-conviction sureties responsible for ensuring a defendant's compliance with each condition of release imposed by the judicial officer, including that the defendant refrain from new criminal conduct, in addition to being responsible for ensuring the appearance of the defendant at all times. Notwithstanding this new responsibility of sureties, the amendment also establishes a precondition to forfeiture of cash or other property of a surety if the defendant violates a condition of release. The precondition requires the court to absolve a surety of the responsibility to pay bond and to return deposited cash bail to the surety, unless the surety had on a prior occasion, acted as a surety or deposited cash bail for the defendant's compliance with each condition of release and on that occasion the defendant failed to comply with each condition. This precondition does not apply to a defendant's failure to appear. The attorney for the State shall make a good faith effort to notify the surety of a bail revocation hearing and, if the surety appears at the hearing, the court must explain the consequences of the precondition to the surety. If bail is reset and the surety elects to continue to act as surety, that person will receive notice of surety responsibilities pursuant to the Maine Revised Statutes, Title 15, section 1072-A.

Enacted law summary

Public Law 1997, chapter 543 does the following:

1. Amends the code's statement of purpose to include the fact that, while on bail, a defendant is expected to refrain from engaging in new criminal conduct;
2. Amends the bail definition both in the preconviction and post-conviction context to expressly include refraining from any new criminal conduct and obeying each condition of release imposed by the judicial officer;
3. Defines new criminal conduct;
4. Clarifies that a judicial officer is authorized to issue a preconviction order releasing a defendant on personal recognizance or execution of an unsecured bond and imposes additional release conditions;
5. Requires that every preconviction and post-conviction order of release contain, in addition to a waiver of extradition by the defendant, a condition that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders;
6. Clarifies that a judicial officer is authorized to require a defendant preconviction to execute an agreement to forfeit designated property or execute a bail bond with sureties to ensure the integrity of the judicial process as well as the defendant's appearance;
7. Recognizes additional sources of information from which the judicial officer may gather reliable information needed to make the release decision;

8. Adds the factor of whether the defendant has previously violated conditions of release, probation or other court orders, including protection from abuse orders to the list of factors to be considered in the preconviction and post-conviction release decision;
9. Clarifies that the judicial officer must advise the defendant of the potential penalties as well as the consequences of violating a condition of release;
10. Requires, both in the post-conviction context and when the conditional right to have preconviction bail set has been extinguished at a Harnish bail proceeding, that bail be denied in the event a substantial risk exists that the defendant will commit new criminal conduct;
11. Increases from 24 to 48 hours the time within which a confined defendant must be transported to a different county if no Justice of the Superior Court is locally available to make a de novo determination of preconviction bail. It additionally requires the clerk to provide notice to the attorney for the State of the upcoming hearing and to schedule that hearing for a time not less than 24 hours but not more than 48 hours after the attorney for the State has been notified;
12. Makes both preconviction and post-conviction sureties responsible for ensuring a defendant's compliance with each condition of release imposed by the judicial officer, including that the defendant refrain from new criminal conduct, in addition to being responsible for ensuring the appearance of the defendant at all times. Notwithstanding this new responsibility of sureties, chapter 543 also establishes a precondition to forfeiture of cash or other property of a surety if the defendant violates a condition of release. The precondition requires the court to absolve a surety of the responsibility to pay bond and to return deposited cash bail to the surety, unless the surety had on a prior occasion, acted as a surety or deposited cash bail for the defendant's compliance with each condition of release and on that occasion the defendant failed to comply with each condition. This precondition does not apply to a defendant's failure to appear. The attorney for the State shall make a good faith effort to notify the surety of a bail revocation hearing and, if the surety appears at the hearing, the court must explain the consequences of the precondition to the surety. If bail is reset and the surety elects to continue to act as surety, that person will receive notice of surety responsibilities pursuant to the Maine Revised Statutes, Title 15, section 1072-A.
13. Prior to a person's undertaking the responsibility of surety for a defendant, a surety must be provided a copy of the defendant's written release order and a written statement containing an explanation of both the general responsibilities of a surety and the potential consequences to a surety if a defendant violates a condition of release and must be verbally advised of each condition in the defendant's written release order as well as the potential consequences to the surety if the defendant fails to abide by each condition of release. It further requires the Supreme Judicial Court to specify by rule who will be responsible for advising the surety and providing to the surety a copy of the written order and the written explanation; and
14. Addresses the consequences to a defendant who fails to refrain from new criminal conduct. If a judge or justice finds probable cause exists to believe that the defendant has committed a new crime following the setting of preconviction bail, the judge or justice must issue an order denying bail unless the court finds that there are conditions of release that will reasonably ensure that the defendant will not continue to commit new crimes while out on bail in which case, the court must issue an order under the Maine Revised Statutes, Title 15, section 1026.

LD 1573 **An Act to Establish Penalty for Violation of Compulsory School Attendance** **ONTP**

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

LD 1573 proposed to amend the truancy laws. The bill would have repealed the civil enforcement sections and would have specified that an adult commits a Class E crime if the adult had control of and was primarily responsible for a person who is habitually truant.

LD 1592 **An Act to Require Post-release Supervision of Prisoners Who Are Identified as High-risk Offenders** **CARRIED OVER**

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

LD 1592 allows the courts to sentence to a period of post-release supervision a person who commits a violent or sexual offense for which the person is sentenced to an unsuspended term of imprisonment of at least one year if the court determines that the person is at high risk of being a repeat offender. The bill also sets out the parameters of the post-release supervision and its termination.

The bill was carried over to the Second Regular Session of the 118th Legislature.

LD 1618 **An Act to Require That Handguns Sold in the State Be Equipped with Child-proof Trigger Locks** **ONTP**

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

LD 1618 proposed to prohibit firearm dealers from selling handguns unless the guns were equipped with trigger locks.

LD 1629 **An Act to Include Possession of a Dangerous Weapon as Grounds for Expulsion of a Student** **PUBLIC 298**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
GOLDTHWAIT	OTP-AM	S-251

LD 1629 proposed to make the manufacture, sale, purchase or possession of throwing stars a Class D crime.

Committee Amendment "A" (S-251) replaced the bill. The amendment proposed to allow a school to expel a student who possesses on school property, without the permission of a school official, a dangerous weapon, as defined in the Maine Revised Statutes, Title 17-A, section 2, subsection 9.

Enacted law summary

Public Law 1997, chapter 298 allows a school to expel a student who possesses on school property, without permission of a school official, a dangerous weapon, as defined in the Maine Revised Statutes, Title 17-A, section 2, subsection 9. Current law requires expulsion for possession, without the permission of a school official, of a firearm on school property.

LD 1647 **An Act to Allow the Attorney for the State, with the Consent of the Probation Officer, to File a Motion for Revocation of Probation** **ONTP**

<u>Sponsor(s)</u> JONES SL		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1647 proposed to provide that the attorney for the State, with the consent of the probation officer, may file a motion for revocation of probation with the court.

LD 1656 **An Act to Suspend Certain Licenses of Teenagers Convicted of a Juvenile Crime** **ONTP**

<u>Sponsor(s)</u> MILLS		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1656 proposed to allow the court to suspend, until 17 years of age or for one year, whichever is later, a person's privilege to operate a motor vehicle and the privilege to hunt or fish if that person were convicted of a juvenile crime.

LD 1667 **An Act to Permit Involuntary Medication of Mentally Ill Persons Residing in Department of Corrections Facilities** **CARRIED OVER**

<u>Sponsor(s)</u> MITCHELL B JONES SL		<u>Committee Report</u>		<u>Amendments Adopted</u>
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LD 1667 sets out the criteria and procedures for involuntary medication of mentally ill persons residing in Department of Corrections facilities. The bill conforms with the requirements set out by the United States Supreme Court in *Washington v. Harper*, 494 U.S. 210 (1990).

The bill was carried over to the Second Regular Session of the 118th Legislature.

LD 1674

An Act Related to Bind-over of Older Juveniles Who Commit Certain Offenses

ONTP

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

LD 1674 proposed to require that, at the request of the prosecuting attorney, a juvenile be bound over for trial as an adult if the juvenile had committed what would be murder, Class A or B manslaughter, aggravated assault, or Class A or B gross sexual assault and was at least 16 years of age at the time, unless the juvenile requested a bind-over hearing. The bill would have placed on the juvenile the burden of showing the inappropriateness of bind-over.

LD 1679

An Act to Assist the Law Enforcement Community in Locating Missing Children

PUBLIC 468

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SMALL PEAVEY	OTP-AM	H-707 POVICH S-276

LD 1679 proposed to require a law enforcement agency that received a report of a missing child who was a student at a school in this State to inform an administrator of that school of the missing child report. An administrator of that school would have to identify the file or any other records of the missing child in the custody of the school as pertaining to the missing child. If a request for this file or these records were made, an administrator of that school would have to notify a law enforcement agency of this request immediately. This bill also proposed to require the law enforcement agency to inform the municipal clerk of the municipality in which the child's birth records are kept of the missing child report. The municipal clerk would have to identify the birth records of the missing child. If a request for these records were made, the municipal clerk would have to notify a law enforcement agency of this request immediately.

Committee Amendment "A" (S-276) replaced the bill. The amendment proposed that a law enforcement agency must immediately notify a child's school, the municipality in which the child's birth records are kept and the Department of Human Services if a child were considered a victim or possible victim of kidnapping or criminal restraint. The amendment would require the notified agencies to identify the records in their custody that pertain to the child and immediately notify the law enforcement agency if a request for those records were made.

The amendment also proposed to add a fiscal note and a mandate preamble to the bill.

House Amendment "A" to Committee Amendment "A" (H-707) proposed to make technical changes to ensure grammatical consistency in the language used in the committee amendment.

Enacted law summary

Public Law 1997, chapter 468 requires a law enforcement agency to immediately notify a child's school, the municipality in which the child's birth records are kept and the Department of Human Services when a child is considered a victim or possible victim of kidnapping or criminal restraint. Notified agencies must identify the records in their custody that pertain to the child and immediately notify the law enforcement agency if a request for those records is made.

LD 1707 **An Act to Repeal the Requirement of Concealed Weapon Permits** **ONTP**

<u>Sponsor(s)</u> MACK FERGUSON		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1707 proposed to repeal the provisions requiring concealed weapon permits and to make changes to other laws consistent with the repeal.

LD 1711 **An Act Addressing Sexual Exploitation of an Abuse Victim by a Law Enforcement Officer** **PUBLIC 402**

<u>Sponsor(s)</u> O'BRIEN		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-624
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LD 1711 proposed to create a new Class C form of gross sexual assault and a new Class D form of unlawful sexual contact when the actor is a law enforcement officer engaged in an investigation or purported investigation involving an allegation of abuse and the other person, not the actor's spouse, was the alleged victim of that abuse and the actor engaged in a sexual act with the other person or the actor intentionally subjected the other person to any sexual contact, respectively.

The bill also proposed to create a defense to both crimes if either a preexisting and ongoing sexual relationship existed between the actor and the other person that included the same kind of sexual conduct or if more than 6 months had elapsed since the actor first became involved in the underlying investigation or purported investigation involving the allegation of abuse.

Committee Amendment "A" (H-624) replaced the bill. The amendment proposed that the Board of Trustees of the Maine Criminal Justice Academy could suspend or revoke the certification of a law enforcement officer who engaged in a sexual act or sexual contact with an alleged victim of abuse if the law enforcement officer is involved in the investigation or purported investigation of that alleged abuse and the alleged victim was not the law enforcement officer's spouse.

The amendment also proposed to make a technical correction and add a fiscal note.

Enacted law summary

Public Law 1997, chapter 402 allows the Board of Trustees of the Maine Criminal Justice Academy to suspend or revoke the certification of a law enforcement officer who engaged in a sexual act or sexual contact with an alleged victim of abuse when the law enforcement officer is involved in the investigation or purported investigation of that alleged abuse and the alleged victim is not the law enforcement officer's spouse. Certification may not be suspended or revoked if the law enforcement officer and the alleged victim had a preexisting sexual relationship or if the sexual act or sexual contact occurred at least 60 days after the law enforcement officer first became involved in the investigation.

LD 1714

An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes against the Elderly

PUBLIC 453

Sponsor(s)
MCALEVEY

Committee Report
OTP-AM

Amendments Adopted
H-622

LD 1714 proposed to implement the recommendations of the Study Group on Prosecution of Crimes Against the Elderly. The bill proposed to do the following:

1. Require people who work in the financial services field and unlicensed assistive personnel to report suspected abuse pursuant to the Adult Protective Services Act;
2. Require all court-appointed conservators of estates in excess of \$10,000 to provide a bond to protect against fund mismanagement; and
3. Require durable financial powers of attorney to be notarized and include notice of agent's duties and responsibilities and liability for neglect or violation of duties.

Committee Amendment "A" (H-622) proposed to require that court-appointed conservators of estates in excess of \$25,000 provide a bond to protect the estate against the possibility of loss and mismanagement. The amendment would establish standards for Probate Courts to consider when determining whether a bond should be furnished. The amendment also would exempt from bonding requirements spouses, financial institutions and those persons who are already bonded in the course of their business.

The amendment proposed to remove language directing a person acting under a durable financial power of attorney to act with the utmost faith and loyalty. The amendment proposed to remove from the mandatory reporting law under the Maine Revised Statutes, Title 22, section 3477 Christian Science practitioners, employees and representatives of financial institutions, financial planners and stockbrokers and credit union employees.

The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

During the last legislative session, the Legislature directed the Department of Human Services to convene a "Study Group on Prosecution of Crimes Against the Elderly," for the purpose of reviewing case histories on crimes against the elderly, identifying barriers to successful investigation and prosecution of such crimes and reviewing the criminal code.

Public Law 1997, chapter 453 implements the study group's recommendations and does the following:

1. Requires unlicensed assistive personnel to report suspected abuse pursuant to the Adult Protective Services Act;
2. Requires all court-appointed conservators of estates in excess of \$25,000 to provide a bond to protect against fund mismanagement;
3. Requires durable financial powers of attorney be notarized and include notice of agent's duties and responsibilities and liability for neglect or violation of duties;
4. Establishes the following standards for Probate Courts to consider when determining whether a bond should be furnished: creditworthiness, financial solvency or past financial management;
5. Exempts from bonding requirements spouses, financial institutions and those persons who are already bonded in the course of their business if the bond is sufficient to cover the duties of conservator; and
6. Removes from the mandatory reporting law under the Maine Revised Statutes, Title 22, section 3477 Christian Science practitioners, employees and representatives of financial institutions, financial planners and stockbrokers and credit union employees.

LD 1719 An Act Concerning Firearm Purchase Background Checks CARRIED OVER

<u>Sponsor(s)</u> HALL		<u>Committee Report</u>		<u>Amendments Adopted</u>
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LD 1719 makes it mandatory that a background check, pursuant to the federal Brady Handgun Violence Prevention Act, be done before a permit to carry a concealed weapon may be issued. The bill also exempts a person from the "Brady" law if that person had a concealed weapon permit issued within the past 5 years and at that time submitted to a background check.

LD 1719 was carried over to the Second Regular Session of the 118th Legislature.

LD 1727 An Act to Establish and Implement a Pilot Program for Restorative Justice PUBLIC 421

<u>Sponsor(s)</u> MURRAY POVICH		<u>Committee Report</u> OTP-AM MAJ ONTP MIN		<u>Amendments Adopted</u> S-303
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Part A of LD 1727 proposed to permit a juvenile caseworker, after completing a preliminary investigation of a juvenile accused of having committed a juvenile crime, to initiate a family group conference in order to bring about an agreement for an informal adjustment or to receive a recommendation as to whether the juvenile caseworker should decide that no further action is required regarding the juvenile, that an informal adjustment should be

arranged or that a petition should be filed. The bill also proposed to allow for confidentiality in relation to the family group conferences and would have clarified several other juvenile confidentiality provisions.

Part B of this bill proposed that on recommendation of the Department of Corrections, a probationer would have to appear before and abide by the requirements of a community reparations board. Appearance would not be required if the court found it inappropriate or if the person were given a term of unsuspended imprisonment in a department facility. The bill also would have provided for the establishment of community reparations boards.

Committee Amendment "A" (S-303) was the majority report of the committee. It proposed to do the following:

1. Limit restorative justice to a pilot program that does not extend past May 1, 1999;
2. Change the name of the restorative justice boards for juveniles from "family group conferences" to "community resolution teams;"
3. Allow community reparations boards to be established only when federal funding or other special revenue is secured;
4. Exclude persons who have been convicted of a sexual assault or of a crime of domestic violence from participating in community reparations boards;
5. Require the Commissioner of Corrections to confer with local officials when appointing members of community reparations boards;
6. Require the Department of Corrections to report on the progress of both the community resolution teams and the community reparations boards to the joint standing committee having jurisdiction over criminal justice matters by January 1st of every year;
7. Require the Department of Corrections to make a final report on the effectiveness of both community resolution teams and community reparations boards to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by March 1, 1999. Victims, the law enforcement community, attorneys and other parties who have been involved in the programs could also address the committee at that time; and
8. Add an allocation and a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 421 does the following:

1. Limits restorative justice to a pilot program that does not extend past May 1, 1999;
2. Changes the name of the restorative justice boards for juveniles from "family group conferences" to "community resolution teams;"
3. Allows community reparations boards to be established only when federal funding or other special revenue is secured;
4. Excludes persons who have been convicted of a sexual assault or of a crime of domestic violence from participating in community reparations boards;

5. Requires the Commissioner of Corrections to confer with local officials when appointing members of community reparations boards;
6. Requires the Department of Corrections to report on the progress of both the community resolution teams and the community reparations boards to the joint standing committee having jurisdiction over criminal justice matters by January 1st of every year; and
7. Requires the Department of Corrections to make a final report on the effectiveness of both community resolution teams and community reparations boards to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by March 1, 1999. Victims, the law enforcement community, attorneys and other parties who have been involved in the programs may also address the committee at that time.

LD 1789

An Act Regarding Illegal Transportation of Drugs by a Minor

PUBLIC 382

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BODWELL HARRIMAN	OTP-AM	H-514

LD 1789 proposed to provide for a minor who transports drugs or marijuana similar penalties to those applicable to a minor who transports alcohol. These penalties would have included a fine and a mandatory operator's license suspension.

Committee Amendment "A" (H-514) replaced the bill. The amendment proposed to create the civil violation of transporting scheduled drugs, including marijuana, by a person who is under 21 years of age. A person who violated this section would have to be adjudged a forfeiture of no more than \$500 and no less than \$200 for a 2nd offense and no less than \$400 for a 3rd or subsequent offense. The court also would have to suspend the operator's license of a person who violated this section. The amendment also would add a fiscal note.

Enacted law summary

Public Law 1997, chapter 382 creates the civil violation of transporting scheduled drugs, including marijuana, by a person who is under 21 years of age. A person who violates this section must be adjudged a forfeiture of no more than \$500 and no less than \$200 for a 2nd offense and no less than \$400 for a 3rd or subsequent offense. The court also must suspend the operator's license of a person who violates this section.

A person charged with this civil violation may not also be charged with trafficking, furnishing or possession of scheduled drugs pursuant to the Maine Revised Statutes, Title 17-A, chapter 45 or Title 22, section 2383.

LD 1800

An Act to Include Flunitrazepam in the List of Schedule W Drugs

PUBLIC 487

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CATHCART	OTP-AM	S-217

LD 1800 proposed to name Flunitrazepam as a schedule W, because of its ability to incapacitate its consumer and its illegal street use on unsuspecting and nonconsenting sexual assault victims.

Committee Amendment "A" (S-217) proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 1997, chapter 487 names Flunitrazepam as a schedule W drug, which allows the introduction of a laboratory analysis certificate into evidence under the Maine Revised Statutes, Title 17-A, section 1112. Flunitrazepam is scheduled as a schedule W drug rather than another schedule because of its ability to incapacitate its consumer and its illegal street use on unsuspecting and nonconsenting sexual assault victims. Public Law 1997, chapter 487 is not intended to affect in any way the current or future, scheduling, licensure or otherwise legitimate use of Flunitrazepam under federal or state law.

LD 1870

An Act to Amend Criminal OUI Penalties Concerning Suspension of CARRIED OVER a Motor Vehicle Driver's License

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
COWGER KILKELLY		

Effective June 29, 1995, the Legislature changed from 6 to 10 years the time period for which prior convictions of OUI offenses would be used to increase penalties. LD 1870 provides that a person who has a conviction prior to the effective date of that change is subject to the 6-year rather than the 10-year provision.

LD 1870 was carried over to the Second Regular Session of the 118th Legislature.

LD 1892

An Act to Criminalize Certain Photographing of Children under the Clothing of a Person in a Public Place by Mechanical or Electronic Equipment

PUBLIC 467

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SMALL PEAVEY		

This bill is a new draft of LD 36. The title of the bill was misprinted and should have read: An Act to Criminalize Unpermitted Visual Surveillance by Mechanical or Electronic Equipment under the Clothing of Another Person in a Public Place. The bill proposed to establish that a person is guilty of a violation of privacy if that person engaged in visual surveillance in a public place by means of mechanical or electronic equipment with the intent to observe or

photograph, record, amplify or broadcast an image of any portion of the body of another person present in that place when that portion of the body was concealed from the public view under clothing and a reasonable person would expect it to be safe from surveillance.

The bill also proposed to provide a defense to prosecution if the person subject to surveillance had in fact attained 14 years of age and had consented to the surveillance.

Enacted law summary

Public Law 1997, chapter 467 establishes that a person is guilty of a violation of privacy if that person engages in visual surveillance in a public place by means of mechanical or electronic equipment with the intent to observe or photograph, record, amplify or broadcast an image of any portion of the body of another person present in that place when that portion of the body is concealed from public view under clothing and a reasonable person would expect it to be safe from surveillance. It forbids, for example, a person in a public place like a store from placing a video camera below the hemline of another person's skirt, aimed so as to record what it observes within the zone of privacy created by that skirt.

Public Law 1997, chapter 467 also provides a defense to prosecution if the person subject to surveillance has in fact attained 14 years of age and has consented to the surveillance. In order to protect young children, consent is not a defense when the other person is under 14 years of age.

Joint Standing Committee on Criminal Justice

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Not Enacted

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