



128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1795

H.P. 1239

House of Representatives, January 22, 2018

**An Act To Amend the Maine Criminal Code and Related Statutes as
Recommended by the Criminal Law Advisory Commission**

(EMERGENCY)

Reported by Representative WARREN of Hallowell for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2. Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

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

3 **Whereas,** laws were enacted by the 128th Legislature that inadvertently omitted a
4 cross-reference to the Maine Rules of Evidence in the law on service of process on
5 foreign entities that are providers of electronic communication service and providers of
6 remote computing service; repealed the option of prosecuting possession of up to 2 1/2
7 ounces of marijuana by persons under 18 years of age as a civil violation; and neglected
8 to amend the Sex Offender Registration and Notification Act of 2013 to include a
9 registration obligation for the new crime of gross sexual assault based on lack of
10 acquiescence; and

11 **Whereas,** timely correction of these errors and omissions is necessary to the proper
12 administration of the criminal laws; and

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

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

18 **Sec. 1. 15 MRSA §56, sub-§2, ¶C,** as enacted by PL 2017, c. 144, §3, is
19 amended to read:

20 C. A foreign entity provider shall verify the authenticity of records that it produces
21 by providing an affidavit that complies with the requirements set forth in the Maine
22 Rules of Evidence, Rule 902(11) if the foreign entity that is the provider of services is
23 governed by the laws of another state and that complies with the requirements set
24 forth in the Maine Rules of Evidence, Rule 902(12) if the foreign entity that is the
25 provider of services is governed by the laws of a foreign country. Admissibility of
26 these records in a court in this State is governed by the Maine Rules of Evidence,
27 Rule 803(6).

28 **Sec. 2. 22 MRSA §2383, sub-§1-A,** as enacted by PL 2017, c. 1, §20, is amended
29 to read:

30 **1-A. Marijuana possession by a person under 21 years of age.** Except for
31 possession of marijuana for medical use pursuant to chapter 558-C, a person who is under
32 21 years of age may not possess marijuana. A person who is ~~18, 19 or 20~~ under 21 years
33 of age who possesses a usable amount of marijuana commits a civil violation for which a
34 fine of not less than \$350 and not more than \$600 must be adjudged for possession of up
35 to 1 1/4 ounces of marijuana and a fine of not less than \$700 and not more than \$1,000
36 must be adjudged for possession of over 1 1/4 ounces to 2 1/2 ounces of marijuana, none
37 of which may be suspended. For the purposes of this section, marijuana has the same
38 meaning as in Title 17-A, section 1101, subsection 1.

39 **Sec. 3. 34-A MRSA §11273, sub-§15, ¶A,** as amended by PL 2017, c. 65, §2, is
40 further amended to read:

- 1 A. Title 17-A, chapter 11 including the following:
- 2 (1) Title 17-A, section 253, subsection 2, paragraph J, regardless of the age of
3 the victim;
- 4 (1-A) Title 17-A, section 253, subsection 2, paragraph F, regardless of the age of
5 the victim if the crime is committed on or after October 1, 2017;
- 6 (2) Title 17-A, section 253, subsection 2, paragraph K, regardless of the age of
7 the victim;
- 8 (3) Title 17-A, section 253, subsection 2, paragraph L, regardless of the age of
9 the victim;
- 10 (3-A) Title 17-A, section 253, subsection 2, paragraph M, regardless of the age
11 of the victim, if the crime is committed on or after the effective date of this
12 subparagraph;
- 13 (4) Title 17-A, section 255-A, subsection 1, paragraph J, regardless of the age of
14 the victim;
- 15 (4-A) Title 17-A, section 255-A, subsection 1, paragraph L, regardless of the age
16 of the victim if the crime is committed on or after October 1, 2017;
- 17 (5) Title 17-A, section 255-A, subsection 1, paragraph R-1, regardless of the age
18 of the victim;
- 19 (6) Title 17-A, section 255-A, subsection 1, paragraph R-2, regardless of the age
20 of the victim; and
- 21 (7) Title 17-A, section 258, subsection 1-A, if the victim had not attained 12
22 years of age;

23 **Emergency clause.** In view of the emergency cited in the preamble, this
24 legislation takes effect when approved.

25 **SUMMARY**

26 This bill is emergency legislation. The bill makes the following corrections to the
27 criminal and related laws and to the law on possession of more than 2 1/2 ounces of
28 marijuana.

29 1. Public Law 2017, chapter 144, section 3 failed to distinguish, in the laws on
30 service of process on providers of electronic communication service and providers of
31 remote computing service, between foreign entities that are governed by laws of states
32 other than Maine and those that are governed by laws of foreign countries. The bill
33 distinguishes these 2 types of foreign entities and provides a cross-reference to the Maine
34 Rules of Evidence for each type of foreign entity.

35 2. Public Law 2017, chapter 1, section 20 designated possession of up to 2 1/2
36 ounces of marijuana by a person under 18 years of age a violation of the Maine Juvenile
37 Code, which was one of 2 options for prosecution under prior law. Chapter 1 repealed
38 the option of prosecution of possession as a civil violation. The bill retains the

1 designation of possession as a juvenile crime and restores the designation of possession
2 as a civil violation. Neither the juvenile crime nor the civil violation applies to
3 possession of up to 2 1/2 ounces by a person under 21 years of age who is a qualified
4 patient for the purposes of the Medical Use of Marijuana Act.

5 3. Public Law 2017, chapter 300 created a new version of the crime of gross sexual
6 assault, specifically, engaging in a sexual act with another person when that other person
7 has not expressly or impliedly acquiesced to the sexual act. The law neglected to create a
8 corresponding registration provision for the newly defined variant of gross sexual assault.
9 The bill designates gross sexual assault based on lack of acquiescence to the sexual act as
10 a Tier II offense under the Sex Offender Registration and Notification Act of 2013. The
11 registration obligation will apply to conduct committed on or after the effective date of
12 this Act.