

**Maine Revised Statutes**  
**Title 14: COURT PROCEDURE -- CIVIL**  
**Chapter 739: WASTE AND TRESPASS TO REAL ESTATE**

**§7552. INJURY TO LAND, FOREST PRODUCTS OR AGRICULTURAL PRODUCTS**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agricultural product" means crops produced and livestock raised as a result of cultivating the soil and harvesting. Agricultural products include, but are not limited to, vegetables, fruit, forages, grain, nuts, berries, flowers, ornamental plants, nursery crops, milk, dairy products, eggs, domestic livestock and other products in varying degrees of preparation. Agricultural products also include the soil amendments and by-products that are used in cultivation. [1995, c. 450, §2 (NEW) .]

B. "Christmas tree" and "evergreen boughs" have the same meanings as provided in Title 12, section 8841. [1995, c. 450, §2 (NEW) .]

C. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, evergreen boughs or cones or other seed products. [1995, c. 450, §2 (NEW) .]

D. When there is damage to public property, the term "owner" may include a suitable official authorized to act on behalf of the public entity.

For damage to a monument or mark under subsection 2, paragraph C, "owner" may include the entity for whose benefit the monument or mark is maintained. [1995, c. 450, §2 (NEW) .]

E. "Professional services" may include:

- (1) The damage estimate of a licensed professional forester;
- (2) A boundary survey;
- (3) A title opinion; and
- (4) Attorney's fees for preparing the claim and bringing a court action. [1995, c. 450, §2 (NEW) .]

[ 1995, c. 450, §2 (NEW) .]

**2. Prohibitions.** Without permission of the owner a person may not:

A. Cut down, destroy, damage or carry away any forest product, ornamental or fruit tree, agricultural product, stones, gravel, ore, goods or property of any kind from land not that person's own; or [1995, c. 585, §3 (AMD) .]

B. [1995, c. 585, §3 (RP) .]

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub, guardstake, bench mark, pipe, iron, concrete post, stone post or other monument of any railroad, highway, public utility or other engineering location or survey or any such monument marking the bounds of public or private property. [1995, c. 450, §2 (NEW) .]

[ 1995, c. 585, §3 (AMD) .]

**3. Measure of damages.** This subsection governs the measurement of damages resulting from a violation of subsection 2.

A. When agricultural or forest products have been destroyed or carried away, the owner may recover as damages either the value of the lost products themselves or the diminution in value of the real estate as a whole resulting from the violation, whichever is greater. [1997, c. 214, §1 (AMD) .]

B. Except within areas that have been zoned for residential use, for lost trees the owner may choose to claim:

- (1) The market value of the lost trees;
- (2) The diminution in value of the real estate as a whole resulting from the violation;
- (3) The forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3; or
- (4) If the lost trees are ornamental or fruit trees, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting.

In addition, the owner's damages for lost trees that are not ornamental or fruit trees may include the costs for regeneration of the stand in accordance with Title 12, section 8869.

The court may reduce the damages awarded for good cause shown when the cutting of trees was done negligently or without fault.

Public utilities, as defined in Title 35-A, section 102, and contractors performing work for public utilities are not liable for damages under this paragraph for lost trees the trimming or removal of which is necessary to provide safe and reliable service to the customers of the public utilities. [2015, c. 241, §1 (RPR) .]

B-1. Within areas that have been zoned for residential use, for lost trees the owner may choose to claim:

- (1) The costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting;
- (2) The market value of the lost trees;
- (3) The diminution in value of the real estate as a whole resulting from the violation; or
- (4) The forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3.

Public utilities, as defined in Title 35-A, section 102, and contractors performing work for public utilities are not liable for damages under this paragraph for lost trees the trimming or removal of which is necessary to provide safe and reliable service to the customers of the public utilities. [2015, c. 241, §2 (NEW) .]

C. When a monument or marker has been disturbed, removed or destroyed as prohibited in subsection 2, paragraph C, the owner's damages may include the cost of engineering and surveyor services necessary to reestablish a monument or marker and its proper location. [1997, c. 214, §1 (AMD) .]

[ 2015, c. 241, §§1, 2 (AMD) .]

**4. Damages recoverable.** Damages are recoverable as follows.

A. A person who negligently or without fault violates subsection 2 is liable to the owner for 2 times the owner's damages as measured under subsection 3 or \$250, whichever is greater. [1995, c. 585, §3 (AMD) .]

B. A person who intentionally or knowingly violates subsection 2 is liable to the owner for 3 times the owner's damages as measured under subsection 3 or \$500, whichever is greater. [1995, c. 585, §3 (AMD) .]

C. In addition to the damages recoverable under paragraphs A and B, a person who violates subsection 2 is also liable to the owner for the costs the owner may incur if the violation results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding. [1995, c. 585, §3 (NEW) .]

D. A person who with malice violates subsection 2 is subject to punitive damages in addition to the damages under paragraphs A, B and C. [2015, c. 241, §3 (NEW) .]

[ 2015, c. 241, §3 (AMD) .]

**5. Costs and fees.** In addition to damages, interest and costs, the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim as long as the person first has written notice or actual knowledge that a claim is being asserted.

[ 2015, c. 241, §4 (AMD) .]

**6. Offer of settlement.** At any time after the violation but more than 10 days before trial begins, the person who violated subsection 2 may make a written offer to settle the owner's claim.

A. For such an offer to be valid, it must by its terms remain open for at least 10 days and the owner must first be provided with liability and damage information that is:

- (1) Available to the person and not reasonably available to the owner; and
- (2) Necessary or pertinent to an evaluation of the owner's claim. [1995, c. 450, §2 (NEW) .]

B. Notwithstanding the Maine Rules of Civil Procedure, Rule 68, any offer not paid within 10 days of its acceptance is void for purposes of this subsection but may be specifically enforced by the owner, if the owner so elects. [1995, c. 450, §2 (NEW) .]

C. If the owner does not accept the offer, the owner may not recover any interest, costs or professional fees incurred following the date of the offer unless the owner later proves that the value of the claim, at the time the offer was made, exceeded the amount of the offer. [1995, c. 450, §2 (NEW) .]

[ 1995, c. 450, §2 (NEW) .]

**7. Issues of fact.** The court sitting without a jury shall resolve issues of fact arising under subsections 5 and 6.

[ 1995, c. 450, §2 (NEW) .]

**8. Other actions barred.** A recovery from a defendant under this section bars an action to recover damages under section 7551-B from that defendant for the same specific damage.

[ 1995, c. 585, §4 (NEW) .]

#### SECTION HISTORY

1977, c. 313, §1 (AMD). 1983, c. 362, §2 (AMD). 1983, c. 507, §7 (AMD). 1983, c. 816, §A5 (RPR). 1989, c. 555, §13 (AMD). 1995, c. 450, §2 (RPR). 1995, c. 585, §§2-4 (AMD). 1997, c. 214, §1 (AMD). 1999, c. 339, §1 (AMD). 2015, c. 241, §§1-4 (AMD).

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**Maine Revised Statutes**  
**Title 14: COURT PROCEDURE -- CIVIL**  
**Chapter 739: WASTE AND TRESPASS TO REAL ESTATE**

**§7552-A. LAND ON WHICH 10 ACRES OR MORE OF WOOD IS TO BE CUT**

Any person who authorizes the cutting of timber or wood on the person's own property, when the cutting involves an area of 10 or more acres, shall clearly mark any property lines that are within 200 feet of the area to be cut. If any such person fails to clearly mark such property lines and if the person or persons who are authorized to cut then cut timber or wood on abutting land without the authorization of the owner of that land, the person who failed to mark the person's property lines is liable in a civil action, in double damages, to that owner of the abutting land. These damages are in addition to any damages to which the owner of the abutting land may be entitled under section 7552. [1995, c. 450, §3 (AMD) .]

**SECTION HISTORY**

1975, c. 253, (NEW) . 1977, c. 313, §2 (RPR) . 1995, c. 450, §3 (AMD) .

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**Maine Revised Statutes**  
**Title 17: CRIMES**  
**Chapter 83: MALICIOUS MISCHIEFS**

**§2510. UNLAWFUL CUTTING OF TREES**

**1. Unlawful cutting.** Any person who in fact cuts down or fells any tree without the consent of the owner of the property on which the tree stands commits a civil violation for which the forfeitures provided in this section may be adjudged. Proof of a culpable state of mind is not required. The cutting down or felling of any tree by the following are exempt from this section:

A. The Department of Transportation in the performance of activities under Title 23, section 701; [1981, c. 355, (NEW) .]

B. Public utilities in maintaining adequate facilities in emergencies in compliance with Title 35-A, section 301; and [1997, c. 152, §1 (AMD) .]

C. Municipal employees, persons contracting with a municipality or other legitimate agents of a municipality acting within the course and scope of their employment or performing volunteer work for the municipality removing street trees or blown down trees or in emergencies. [1997, c. 152, §1 (AMD) .]

D. [1997, c. 152, §1 (RP) .]

[ 1997, c. 152, §1 (AMD) .]

**2. Forfeitures.** The following forfeitures may be adjudged for each tree over 2 inches in diameter that has been cut or felled:

A. If the tree is no more than 6 inches in diameter, a forfeiture of \$25; [1981, c. 355, (NEW) .]

B. If the tree is over 6 inches and up to 10 inches in diameter, a forfeiture of \$50; [1997, c. 152, §2 (AMD) .]

C. If the tree is over 10 inches and up to 14 inches in diameter, a forfeiture of \$75; [1997, c. 152, §2 (AMD) .]

D. If the tree is over 14 inches and up to 18 inches in diameter, a forfeiture of \$100; [1997, c. 152, §2 (AMD) .]

E. If the tree is over 18 inches and up to 22 inches in diameter, a forfeiture of \$125; and [1997, c. 152, §2 (AMD) .]

F. If the tree is greater than 22 inches in diameter, a forfeiture of \$150. [1981, c. 355, (NEW) .]

[ 1997, c. 152, §2 (AMD) .]

**3. Diameter.** For the purposes of determining the forfeiture, the diameter of a tree shall be the diameter of the tree stump remaining or the diameter of the tree at 4 1/2 feet from the ground if the remaining stump is higher than that distance.

[ 1981, c. 355, (NEW) .]

**4. Restitution.** The court shall inquire of the prosecutor or the owner of the property on which the tree was cut down or felled the extent of the owner's financial loss. With the owner's consent, the court shall order restitution when appropriate on the basis of an adequate factual foundation. The order of restitution must designate the amount of restitution to be paid and the person or persons to whom the restitution must be paid.

Restitution ordered under this subsection is in addition to any forfeitures adjudged under subsection 2; except that at the request of the prosecutor, the court may suspend all or a portion of the forfeiture adjudged under subsection 2 and apply it to restitution to the property owner under this section.

Any restitution ordered and paid must be deducted from the amount of any judgment awarded in a civil action brought by the owner against the offender based on the same facts.

[ 2003, c. 540, §1 (AMD) .]

**5. Liability for conduct of another.** A person commits the civil violation in subsection 1 even if the person did not personally cut down or fell the tree if the person is legally accountable for the conduct of another person who violates subsection 1. A person is legally accountable for the conduct of another person if:

- A. The person causes another person to violate subsection 1; or [1997, c. 152, §3 (NEW) .]
- B. The person solicits another person to commit the civil violation or aids, agrees to aid or attempts to aid another person in planning or committing the civil violation. [1997, c. 152, §3 (NEW) .]

[ 1997, c. 152, §3 (NEW) .]

**SECTION HISTORY**

1981, c. 355, (NEW). 1987, c. 10, (AMD). 1987, c. 141, §B14 (AMD).  
1995, c. 450, §5 (AMD). 1997, c. 152, §§1-3 (AMD). 2003, c. 540, §1 (AMD) .

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**Maine Revised Statutes**  
**Title 17: CRIMES**  
**Chapter 83: MALICIOUS MISCHIEFS**

**§2511. HARVESTING TIMBER NEAR PROPERTY LINE**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Established property line" means a line demarcated by monuments, signs, markings, pins, reference points or other markers that denotes a change in ownership between abutting properties. These established property line markers must have been placed upon mutual agreement of the abutting landowners, based on historical physical evidence of a preexisting boundary line, or by a licensed professional surveyor pursuant to Title 32, chapter 141. [2013, c. 180, §2 (AMD); 2013, c. 180, §6 (AFF).]

B. "Harvester" means a person, firm, company, corporation or other legal entity that harvests or contracts to harvest a forest product. [2003, c. 550, §1 (NEW).]

C. "Landowner representative" means a person, firm, company, corporation or other legal entity representing the landowner in timber sales or land management. [2003, c. 550, §1 (NEW).]

D. "Line tree" means a tree whose main stem or trunk straddles an established property line and that is blazed or painted to indicate the location of the established property line. [2003, c. 550, §1 (NEW).]

E. "Timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products. [2003, c. 550, §1 (NEW).]

[ 2013, c. 180, §2 (AMD); 2013, c. 180, §6 (AFF) .]

**2. Prohibitions.** The following acts are prohibited.

A. A landowner or landowner representative who authorizes timber harvesting or a harvester who in fact harvests timber shall clearly mark with flagging or other temporary and visible means any established property lines that are within 200 feet of the area to be harvested. The marking of property lines must be completed prior to commencing timber harvesting. A person who fails to mark property lines in accordance with this paragraph commits a civil violation for which a fine of not less than \$250 nor more than \$1,000 may be adjudged. [2003, c. 550, §1 (NEW).]

B. A landowner, landowner representative or harvester who authorizes the timber harvesting or in fact harvests a line tree without first obtaining permission from the abutting landowner commits a civil violation for which a fine of not less than \$250 nor more than \$1,000 may be adjudged. [2003, c. 550, §1 (NEW).]

[ 2003, c. 550, §1 (NEW) .]

**3. Exemptions.** The following are exempt from this section:

A. The Department of Transportation in the performance of activities under Title 23, section 701; [2003, c. 550, §1 (NEW).]

B. Public utilities engaged in maintaining adequate facilities in compliance with Title 35-A, section 301; [2003, c. 550, §1 (NEW).]



C. Municipal employees, persons contracting with a municipality or other legitimate agents of a municipality acting within the course and scope of their employment or performing volunteer work for the municipality by removing trees obstructing a public way or fallen trees or in emergencies; and [2003, c. 550, §1 (NEW) .]

D. Timber harvesting performed on a parcel of land that is 5 acres or less. [2003, c. 550, §1 (NEW) .]

[ 2003, c. 550, §1 (NEW) .]

SECTION HISTORY

2003, c. 550, §1 (NEW). 2013, c. 180, §2 (AMD). 2013, c. 180, §6 (AFF).

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**Maine Revised Statutes**  
**Title 17: CRIMES**  
**Chapter 83: MALICIOUS MISCHIEFS**

**§2512. FAILURE TO PAY FOR TREES HARVESTED**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass fuel wood, fuel wood or other products commonly known as forest products, but does not include Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, bough material, cones or other seed crops. [2005, c. 546, §1 (NEW) .]

B. "Handling or processing facility" means sawmills; bolter mills; shingle mills; veneer mills; fence pole and piling making operations; pulp and paper mills; wafer board, particle board and plywood mills; whole tree chippers; commercial fuel wood processors; custom wood processing mills; and log yards established to accumulate logs awaiting shipment to these facilities. [2005, c. 546, §1 (NEW) .]

C. "Harvest operation" means the harvest of forest products on land in a single municipality or township. Land harvested need not be contiguous, and more than one harvester may work a harvest operation. [2005, c. 546, §1 (NEW) .]

[ 2005, c. 546, §1 (NEW) .]

**2. Payment required within 45 days.** Absent a written contract that indicates different payment terms between the landowner and the person conducting a harvest operation, the person conducting the harvest operation shall provide to the landowner full payment for each truckload of harvested forest products transported to a handling or processing facility within 45 days of delivery to the handling or processing facility. In accordance with Title 10, section 2364-A, subsection 2, paragraph G, the person conducting the harvest operation shall provide to the landowner a copy of the measurement tally sheet or stumpage sheet for each truckload of forest products transported to a handling or processing facility when the person conducting the harvest operation pays the landowner.

[ 2005, c. 546, §1 (NEW) .]

**3. Penalties.** The following penalties apply.

A. A person who violates subsection 2 commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [2005, c. 546, §1 (NEW) .]

B. A person who violates subsection 2 after having been adjudicated as having violated subsection 2 within the previous 5 years commits a civil violation for which a fine of not more than \$2,000 may be adjudged. [2005, c. 546, §1 (NEW) .]

C. A person who violates subsection 2 after having been adjudicated as having committed 2 or more civil violations under subsection 2 within the previous 5 years commits a Class E crime. Violation of this paragraph is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2005, c. 546, §1 (NEW) .]

D. In addition to any other penalties imposed in this subsection, the court may order a person adjudicated as having violated this section to provide upon request to any forest ranger of the Department of Agriculture, Conservation and Forestry, Bureau of Forestry copies of measurement tally sheets for

subsequent harvest operations being conducted by the violator for a period not to exceed one year.

[2005, c. 546, §1 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV).]

[2005, c. 546, §1 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

**4. Restitution.** In addition to any penalties imposed pursuant to subsection 3 and, when appropriate, in accordance with the requirements of Title 17-A, chapter 54, the court shall order restitution to the landowner on the basis of an adequate factual foundation. The amount of restitution may be determined by using the measured volume of the harvested forest products as listed on the measurement tally sheet or stumpage sheet in accordance with Title 10, section 2364-A, subsection 2 and by the terms of the sales contract according to the measurement procedures set forth in Title 10, section 2363-A that are applicable to a sale of wood.

Any restitution ordered and paid must be deducted from the amount of any restitution awarded in a civil action brought by the owner or the State against the offender based on the same facts.

[2005, c. 546, §1 (NEW) .]

**5. Exemptions.** The following are exempt from this section:

A. The Department of Transportation in the performance of activities under Title 23, section 701; [2005, c. 546, §1 (NEW) .]

B. Public utilities in maintaining adequate facilities in emergencies in compliance with Title 35-A, section 301; and [2005, c. 546, §1 (NEW) .]

C. Municipal employees, persons contracting with a municipality or other legitimate agents of a municipality acting within the course and scope of their employment or performing volunteer work for the municipality removing street trees or fallen trees or in emergencies. [2005, c. 546, §1 (NEW) .]

[2005, c. 546, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 546, §1 (NEW). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23 (REV) .

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**Maine Revised Statutes**  
**Title 17-A: MAINE CRIMINAL CODE**  
**Chapter 51: SENTENCES OF IMPRISONMENT**

**§1252. IMPRISONMENT FOR CRIMES OTHER THAN MURDER**

1. In the case of a person convicted of a crime other than murder, the court may sentence to imprisonment for a definite term as provided for in this section, unless the statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to imprisonment and required to pay the fine authorized therein. Except as provided in subsection 7, the place of imprisonment must be as follows.

A. For a Class D or Class E crime the court must specify a county jail as the place of imprisonment. [1989, c. 693, §5 (NEW) .]

B. For a Class A, Class B or Class C crime the court must:

(1) Specify a county jail as the place of imprisonment if the term of imprisonment is 9 months or less; or

(2) Commit the person to the Department of Corrections if the term of imprisonment is more than 9 months. [1989, c. 693, §5 (NEW) .]

C. [1995, c. 425, §2 (RP) .]

[ 1995, c. 425, §2 (AMD) .]

2. The court shall set the term of imprisonment as follows:

A. In the case of a Class A crime, the court shall set a definite period not to exceed 30 years; [2003, c. 657, §10 (AMD) .]

B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years; [1975, c. 499, §1 (NEW) .]

C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years; [1975, c. 499, §1 (NEW) .]

D. In the case of a Class D crime, the court shall set a definite period of less than one year; or [1975, c. 499, §1 (NEW) .]

E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months. [1975, c. 499, §1 (NEW) .]

[ 2003, c. 657, §10 (AMD) .]

2-A.

[ 1977, c. 510, §76 (RP) .]

3. The court may add to the sentence of imprisonment a restitution order as is provided for in chapter 49, section 1204, subsection 2-A, paragraph B. In such cases, it shall be the responsibility of the Department of Corrections to determine whether the order has been complied with and consideration shall be given in the department's administrative decisions concerning the imprisoned person as to whether the order has been complied with.

[ 1983, c. 816, Pt. A, §6 (AMD) .]

**3-A.** At the request of or with the consent of a convicted person, a sentence of imprisonment under this chapter in a county jail or a sentence of probation involving imprisonment in a county jail under chapter 49 may be ordered to be served intermittently.

[ 1977, c. 196, (NEW) .]

4. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use should be given serious consideration by the court in exercising its sentencing discretion. This subsection does not apply to a violation or an attempted violation of section 208, to any other offenses to which use of a dangerous weapon serves as an element or to any offense for which the sentencing class is otherwise increased because the actor or an accomplice to that actor's or accomplice's knowledge is armed with a firearm or other dangerous weapon.

[ 2005, c. 527, §17 (AMD) .]

**4-A.** If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 13 or 27; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, the defendant had 2 or more prior convictions under chapter 9, 11, 13 or 27; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C or for engaging in substantially similar conduct in another jurisdiction, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time. This subsection does not apply to section 210-A if the prior convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C or any other offense in which prior convictions have already served to enhance the sentencing class.

[ 2007, c. 476, §45 (AMD) .]

**4-B.** If the State pleads and proves that the defendant is a repeat sexual assault offender, the court, notwithstanding subsection 2, may set a definite period of imprisonment for any term of years.

A. As used in this section, "repeat sexual assault offender" means a person who commits a new gross sexual assault after having been convicted previously and sentenced for any of the following:

- (1) Gross sexual assault, formerly denominated as gross sexual misconduct;
- (2) Rape;
- (3) Attempted murder accompanied by sexual assault;
- (4) Murder accompanied by sexual assault; or
- (5) Conduct substantially similar to a crime listed in subparagraph (1), (2), (3) or (4) that is a crime under the laws of another jurisdiction.

The date of sentencing is the date of the oral pronouncement of the sentence by the trial court, even if an appeal is taken. [2007, c. 476, §46 (AMD) .]

B. "Accompanied by sexual assault" as used with respect to attempted murder, murder and crimes involving substantially similar conduct in another jurisdiction is satisfied if it was definitionally an element of the crime or was pleaded and proved beyond a reasonable doubt at trial by the State or another jurisdiction. [2007, c. 476, §46 (AMD) .]

[ 2007, c. 476, §46 (AMD) .]

**4-C.** If the State pleads and proves that a Class A crime of gross sexual assault was committed by a person who had previously been convicted and sentenced for a Class B or Class C crime of unlawful sexual contact, or an essentially similar crime in another jurisdiction, that prior conviction must be given serious consideration by the court in exercising its sentencing discretion.

[ 2003, c. 711, Pt. B, §20 (NEW) .]

**4-D.** If the State pleads and proves that a crime under section 282 was committed against a person who had not attained 12 years of age, the court, in exercising its sentencing discretion, shall give the age of the victim serious consideration.

[ 2005, c. 673, §3 (RPR) .]

**4-E.** If the State pleads and proves that a crime under section 253 was committed against a person who had not yet attained 12 years of age, the court, notwithstanding subsection 2, shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least 20 years. The court shall also impose as part of the sentence a period of supervised release to immediately follow that definite term of imprisonment as mandated by section 1231.

[ 2015, c. 358, §7 (AMD) .]

**5.** Notwithstanding any other provision of this code, except as provided in this subsection, if the State pleads and proves that a Class A, B or C crime was committed with the use of a firearm against a person, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class for the crime is Class A, the minimum term of imprisonment is 4 years; when the sentencing class for the crime is Class B, the minimum term of imprisonment is 2 years; and when the sentencing class for the crime is Class C, the minimum term of imprisonment is one year. For purposes of this subsection, the applicable sentencing class is determined in accordance with subsection 4. This subsection does not apply if the State pleads and proves criminal threatening or attempted criminal threatening, as defined in section 209, or terrorizing or attempted terrorizing, as defined in section 210, subsection 1, paragraph A.

[ 1995, c. 28, §1 (AMD) .]

**5-A.** Notwithstanding any other provision of this Code, for a person convicted of violating section 1105-A, 1105-B, 1105-C or 1105-D:

A. Except as otherwise provided in paragraphs B and C, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 4 years; when the sentencing class is Class B, the minimum term of imprisonment is 2 years; and, with the exception of a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the sentencing class is Class C, the minimum term of imprisonment is one year; [2001, c. 383, §151 (AMD); 2001, c. 383, §156 (AFF) .]

B. The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in paragraph A, if:

(1) The court finds by substantial evidence that:

(a) Imposition of a minimum unsuspended term of imprisonment under paragraph A will result in substantial injustice to the defendant. In making this determination, the court shall consider, among other considerations, whether the defendant did not know and reasonably should not have known that the victim was less than 18 years of age;

(b) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not have an adverse effect on public safety; and

(c) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not appreciably impair the effect of paragraph A in deterring others from violating section 1105-A, 1105-B, 1105-C or 1105-D; and

(2) The court finds that:

(c) The defendant's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under paragraph A would frustrate the general purposes of sentencing set forth in section 1151.

If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and [2013, c. 133, §15 (AMD) .]

C. If the court imposes a sentence under paragraph B, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 9 months; when the sentencing is Class B, the minimum term of imprisonment is 6 months; and, with the exception of trafficking or furnishing marijuana under section 1105-A or 1105-C, when the sentencing class is Class C, the minimum term of imprisonment is 3 months. [2001, c. 383, §151 (AMD); 2001, c. 383, §156 (AFF) .]

[ 2013, c. 133, §15 (AMD) .]

**5-B.** In using a sentencing alternative involving a term of imprisonment for a person convicted of the attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a child who had not in fact attained the age of 6 years at the time the crime was committed, a court shall assign special weight to this objective fact in determining the basic term of imprisonment as the first step in the sentencing process. The court shall assign special weight to any subjective victim impact in determining the maximum period of incarceration in the 2nd step in the sentencing process. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd step in the sentencing process. Nothing in this subsection may be construed to restrict a court in setting a sentence from considering the age of the victim in other circumstances when relevant.

[ 1999, c. 536, §2 (NEW) .]

**5-C.** In using a sentencing alternative involving a term of imprisonment for a person convicted of the attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a woman that the convicted person knew or had reasonable cause to believe to be in fact pregnant at the time the crime was committed, a court shall assign special weight to this objective fact in determining the basic term of imprisonment as the first step in the sentencing process. The court shall assign special weight to any subjective victim impact in determining the maximum period of incarceration in the 2nd step in the sentencing process. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd step in the sentencing process. Nothing in this subsection may be construed to restrict a court in setting a sentence from considering the fact that the victim was pregnant in other circumstances when relevant.

[ 2005, c. 88, Pt. B, §2 (NEW) .]

**5-D.** In using a sentencing alternative involving a term of imprisonment for a person convicted of a Class C or higher crime, the victim of which was at the time of the commission of the crime in fact being stalked by that person, a court shall assign special weight to this objective fact in determining the basic sentence in the first step of the sentencing process. The court shall assign special weight to any subjective victim impact caused by the stalking in determining the maximum period of incarceration in the 2nd step in the sentencing process.

[ 2007, c. 685, §2 (NEW) .]

6.

[ 1989, c. 693, §6 (RP) .]

7. If a sentence to a term of imprisonment in a county jail is consecutive to or is to be followed by a sentence to a term of imprisonment in the custody of the Department of Corrections, the court imposing either sentence may order that both be served in the custody of the Department of Corrections. If a court imposes consecutive terms of imprisonment for Class D or Class E crimes and the aggregate length of the terms imposed is one year or more, the court may order that they be served in the custody of the Department of Corrections.

[ 1989, c. 693, §7 (NEW) .]

8.

[ 1991, c. 622, Pt. N, §3 (NEW); T. 17-A, §1252, sub-§8 (RP) .]

9. Subsections in this section that make the sentencing class for a crime one class higher than it would otherwise be when pled and proved may be applied successively if the subsections to be applied successively contain different class enhancement factors.

[ 2005, c. 527, §20 (NEW) .]

## SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §§116-118, 118A (AMD). 1977, c. 176, (AMD). 1977, c. 196, (AMD). 1977, c. 217, (AMD). 1977, c. 510, §§75-78 (AMD). 1979, c. 701, §30 (AMD). 1983, c. 581, §4 (AMD). 1983, c. 673, §4 (AMD). 1983, c. 816, §A6 (AMD). 1985, c. 821, §§7-10 (AMD). 1987, c. 535, §7 (AMD). 1987, c. 808, §§1, 3 (AMD). 1989, c. 693, §§5-7 (AMD). 1989, c. 925, §11 (AMD). 1991, c. 622, §N3 (NEW). 1995, c. 28, §1 (AMD). 1995, c. 425, §2 (AMD). 1995, c. 473, §1 (AMD). 1997, c. 460, §5 (AMD). 1999, c. 374, §6 (AMD). 1999, c. 536, §2 (AMD). 1999, c. 788, §8 (AMD). 2001, c. 383, §§150, 151 (AMD). 2001, c. 383, §156 (AFF). 2001, c. 439, §0004 (AMD). 2001, c. 667, §A39 (AMD). 2001, c. 667, §A40 (AFF). 2003, c. 1, §10 (AMD). 2003, c. 143, §9 (AMD). 2003, c. 232, §1 (AMD). 2003, c. 475, §1 (AMD). 2003, c. 657, §10 (AMD). 2003, c. 688, §A14 (AMD). 2003, c. 711, §§B19,20 (AMD). 2005, c. 88, §B2 (AMD). 2005, c. 447, §1 (AMD). 2005, c. 527, §§17-20 (AMD). 2005, c. 673, §§3, 4 (AMD). 2007, c. 476, §§45, 46 (AMD). 2007, c. 685, §2 (AMD). 2013, c. 133, §15 (AMD). 2015, c. 358, §7 (AMD).

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