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**2013**

**LEGAL GUIDE TO DOOR-TO-DOOR CRIMINALS**

**Door-to-Door Sales Contracts**

**Transient Sellers**

**How Police and District Attorneys Can Protect Citizens  
From Crimes Committed by Door-to-Door Sellers**

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## INTRODUCTION

This Legal Guide describes the three Maine door-to-door **criminal** laws that currently exist to protect Maine homeowners. These three laws are:

1. **The Consumer Solicitation Sales Act** (32 M.R.S.A. §§4661-4671), which requires that a door-to-door seller of merchandise, including home repair services such as paving or installing burglar alarms, must use a specific written contract and wait three (3) days before even **beginning** the job. This is important because if you find them working within three (3) days of the solicitation then you have “caught” them in the act of violating this law. Violation is a Class E crime. If the violation is intentional, it is a Class D crime.

2. **The Transient Sales Act** (32 M.R.S.A. §§14701-14716), which requires transient sellers of merchandise, including goods or services, to be licensed by the State if they do not have a permanent place of business in Maine (which is defined as either a 12-month lease or ownership of the business building). You should ask the address of their Maine “permanent place of business.” If they do not have one, demand to see proof of their State license as a Transient Seller. Failure to be licensed can be a Class E crime. If intentional, a violation is a Class D crime. Call Licensing Division at the Maine Department of Professional and Financial Regulation (624-8603) to confirm that the seller is licensed. Or you can search Maine’s online list of licensees. Go to [www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm).

3. **The Door-to-Door Seller of Home Repair Services Act** (32 M.R.S.A. §§14501-14513). This law requires any **door-to-door seller of home repair services** to be licensed by the State and to carry a State issued license if he is soliciting in a municipality in which he does not have a permanent place of business (a 12-month lease or ownership). For example, if you find a driveway paver who is going door-to-door ask: (a) do you have a permanent place of business in this municipality; (b) if not, show me your State license. Violation is a Class E crime. If the violation is intentional, it is a Class D crime. Call Licensing Division at the Maine Department of Professional and Financial Regulation (624-8603) to confirm that the seller is registered. Or you can search Maine’s online list of licensees. Go to [www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm).

The following chapters discuss these laws in much greater detail. The typical door-to-door seller of home repair services (which includes not just driveway paving but tree-trimming, chimney repairs, etc.) could violate all three of these laws in the course of their standard business operation.

I am also attaching in an Appendix a hypothetical fact pattern and four draft District Court criminal complaints based on that fact pattern.

If you have any questions, here is a directory of the Consumer Protection Division.

Thank You.

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# DOOR-TO-DOOR SALES CONTRACTS

## The Consumer Solicitation Sales Act (Cash Sales) 32 M.R.S.A. §§4661-4671 (Criminal Violation)

### 1. INTRODUCTION: THE THREE-DAY WAITING PERIOD

The purpose of the three-day waiting period required by the Consumer Solicitation Sales Act (cash or check sales) is to provide consumers with a chance to reconsider decisions to buy certain goods or services that may have been sold “door-to-door” under high-pressure conditions. Like the Transient Sales Act (see pages 5 to 8), these laws have particular application to driveway pavers. Violations are Class E crimes, unless the State pleads and proves the violations were intentional, then they are Class D crimes.

Basically, the Consumer Solicitation Sales Act (cash or check sales) requires sellers to use written contracts that inform consumers of their three-day right to void the contract. Further, any permanent addition to a house (e.g., driveway paving, a rebuilt chimney, new siding) cannot even be started by the door-to-door seller until the three-day cooling-off period has elapsed, and the contract must specifically tell this to the homeowner.

### 2. WHAT SALES ARE COVERED

A sale is a CONSUMER SOLICITATION SALE if:

- A. the sale<sup>1</sup> involves “merchandise” – objects, wares, goods, commodities, intangibles or services;
- B. the goods or services cost more than \$25
- C. the sale occurs anywhere other than at the seller’s place of business; and
- D. the initial contact was made by the seller, in person or by phone, not the consumer (32 M.R.S.A. §4662).

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<sup>1</sup> /”Sale” includes any sale, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or on credit.

### 3. WHAT ARE DOOR-TO-DOOR SELLERS REQUIRED TO DO

If the sale is a “consumer solicitation sale”, the seller must:

- A. Provide a written contract with:
  - (1) The seller’s name and address,
  - (2) the date,
  - (3) the terms of the sale or offer,
  - (4) the consumer’s three-day right to cancel,
  - (5) the signatures of seller and consumer
  - (6) if the contract involves a permanent addition to the consumer’s home (e.g., a driveway paving job or rebuilt chimney), a statement that work cannot even be started until the consumer’s right to cancel has expired;
  
- B. provide the consumer with a completed copy of the contract signed by both parties;
  
- C. if home repair or improvement-type work is being provided, wait the required three business days before commencing work;
  
- D. if the consumer exercises his right to cancel, the seller must:
  - (1) if a permanent addition to the home is involved (e.g., driveway paving) not start work and return any money. If the work has already begun the homeowner can sue civilly for any damages to his home;
  - (2) Pick up any goods from the consumer within 20 days of cancellation (or else the consumer is free to keep them); and
  - (3) Return the consumer’s money within 15 days of cancellation.

#### **4. CONSUMER RIGHTS AND OBLIGATIONS**

A. The consumer may cancel the agreement within three full business days (only Sundays and legal holidays are not business days) following the day on which the sale is made. All that is required is placing the written notice of cancellation in the mail before the three days. It is best (but not necessary) to send the notice by registered mail. The consumer should keep a copy.

B. The consumer must void the sale IN WRITING. No special words are needed. Anything that in effect says, "I don't want it; give me my money back" is enough.

C. Once the consumer has canceled, he or she must hold any goods for twenty (20) days for the seller to come and get them. **THE CONSUMER DOES NOT HAVE TO TAKE THEM ANYWHERE OR MAIL THEM.** If the seller does not come and get the goods within twenty (20) days, the CONSUMER MAY TREAT THEM AS A GIFT and is still entitled to his or her money back.

D. If the seller started or completed a permanent addition to the home (such as driveway paving) before the three-day right to cancel expired, the consumer may still cancel and is under no obligation to pay for the work already done.

#### **5. CRIMINAL VIOLATION BY DOOR-TO-DOOR SELLERS**

A. A seller's violation of the Consumer Solicitation Sales Act is a Class E crime (32 M.R.S.A. §§4662(2), 4664(2), 4666(2)). If the state pleads and proves that the violation was intentional, then the seller has committed a Class D crime. Violations are also civil violations of the Unfair Trade Practices Act. (32 M.R.S.A. §4670).

B. Solicitations made at the home of a purchaser and which constitute a consumer credit transaction are exempt from this law (32 M.R.S.A. §4668), and should be enforced under the equivalent provisions found at 9 M.R.S.A. §§3-501-3-507 (criminal penalty, fine of up to \$2,500 or up to six months in jail or both). This credit law will rarely come into play with driveway pavers as their sales are almost always cash sales.

**6. WHAT LAW ENFORCEMENT OFFICIALS CAN DO**

If you encounter a door-to-door seller in your community, do the following:

- A. Find out who is the owner (owners) of the business and who are the employees (get everyone's name, address, and birthday and all vehicle identifications).
- B. Find out what he is selling and the location at which the sale is made; remember the seller must initiate the contact or it probably does not meet the definition of a door-to-door solicitation (32 M.R.S.A. §4662).
- C. Find out if a written contract is involved.
- D. Determine if the contract conforms with the law. We never have found a door-to-door driveway paver that has in its written contract the required statement that work cannot begin until the three-day cancellation period has elapsed.
- E. If there is no contract or it does not conform with the law (e.g., both parties have not signed; the seller's name and address are not present; the three-day waiting period is not properly described, etc.), the seller can be charged with a Class D crime.
- F. If the seller is putting in a permanent addition to the household (e.g., a new driveway-paving job or installing a burglar alarm system) and he did not wait three days, then he can be charged. Thus, no warrant is needed if you find him working on the driveway before the three-day waiting period has finished running.

Make sure we receive the sellers name and address and identification of employees and vehicles. Also, any photos of the pavers would be very helpful, as they sometimes "exchange" names.



## **SELLERS WITHOUT A PERMANENT PLACE OF BUSINESS**

### **The Transient Sales Act** **32 M.R.S.A. §§14701-14716 (Criminal Violation)**

#### **1. INTRODUCTION**

The Transient Sales Act has particular application to those sellers who travel into and throughout the State selling services and goods such as driveway paving jobs or magazine subscriptions, and who then seem to “disappear” by the time problems develop.

Transient sellers, by statutory definition, have no permanent place of business in the State. They are difficult to locate when complaints against them are received. The Maine Class D criminal law is designed to protect consumers against financial loss in dealing with such sellers. The law requires that transient sellers be registered by the State Department of Professional and Financial Regulation and post substantial bond or cash, and carry with them at all times a State identification card.

#### **2. WHO IS A TRANSIENT SELLER**

A transient seller is a person (including a corporation) who:

- A. sells<sup>2</sup> any objects, wares, goods, promises, commodities, intangibles, services or other things of value (EXCLUDING food and enrollment at vocational and technical schools located outside of Maine and that are registered with the Department of Educational and Cultural Services);
- B. sells face-to-face or by telephone;
- C. sells to consumers and businesses (except those businesses which will, in turn, resell that product); and
- D. does not have a permanent place of business in Maine: a building which is either owned or rented with at least a 12-month written lease.

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<sup>2</sup> /“Selling” includes any sale, transfer, exchange or barter, offer to sell, promise to sell, attempt to sell or advertisement to sell for cash or for credit.

**3. WHO IS NOT A TRANSIENT SELLER**

A person is NOT a Transient Seller if:

- A. he or she sells the above-mentioned items at public fairs, expositions or bazaars;
- B. he or she is a member of a public service organization selling on its behalf;
- C. he or she sells exclusively by mail contact; or
- D. he or she is a bonafide employee of a transient seller.

**4. WHAT ARE TRANSIENT SELLERS REQUIRED TO DO**

- A. Transient sellers must APPLY FOR A LICENSE with the State Department of Professional and Financial Regulation in Augusta and obtain a license. A substantial bond or cash must be posted before a license is granted (32 M.R.S.A. §14708(3)).
- B. Transient sellers and their employees must carry at all times when engaging in sales a Transient Sellers license and must present the license for inspection upon request of any person (32 M.R.S.A. §14703(2)).
- C. Every time a Transient Seller makes a sale, he must provide the customer with a written receipt which discloses his State license number and discloses his name and permanent place of business (32 M.R.S.A. §14704(2)).
- D. Any advertisement placed by a Transient Seller must disclose the Transient Seller's license number in the following way:

State Department of Professional and Financial Regulation  
Transient Seller's License Number: (fill in number)

The advertisement shall also disclose the Transient Seller's permanent place of business. (32 M.R.S.A. §14704(1)).

- E. Transient Sellers must comply with any relevant municipal ordinances as well as State law.

**5. CRIMINAL AND CIVIL VIOLATIONS BY TRANSIENT SELLERS**

- A. Transient Sellers who sell without a license issued pursuant to this statute commit a Class E crime. If the State pleads and proves that the violation was intentional, then the seller has committed a Class D crime with a maximum penalty of one year in jail and \$1000 fine (32 M.R.S.A. §§14703 (2), 14703(3) 14704(3)).
- B. In addition, any violation of the Transient Sales Act violates the Unfair Trade Practices Act, administered by the Attorney General. (32 M.R.S.A. §14713(2)). The Unfair Trade Practices Act is enforced through civil remedies (5 M.R.S.A. §207).

**6. WHAT LAW ENFORCEMENT OFFICIALS CAN DO**

If you encounter a person selling merchandise in your town and you suspect he might be a Transient Seller, do the following:

- A. find out what he is selling;
- B. find out who he is selling to;
- C. find out who he works for or is he self-employed; obtain company name, addresses and the personal background of the seller;
- D. find out if the business has a permanent place of business in Maine (he must own it or have a 12-month written lease; the seller's home can qualify as a place of business);
- E. if the company (or if he is self-employed, if he himself) has no permanent place of business in Maine, find out if he is licensed with the Department of Professional and Financial Regulation. Call the Licensing and Enforcement Division at 624-8603 and ask if either the company of the seller or both are licensed as a Transient Seller or check online by going to [www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm);
- F. find out if he is properly disclosing in his written receipt or contract his State Transient Seller's license number and permanent place of business;
- G. find out if his advertisements properly disclose his State Transient Seller's number and permanent place of business;
- H. if the company is licensed (or if self-employed seller is licensed) and not violating any local ordinance or the Consumer Solicitation Sales Act (see previous pages 1-4), the salesperson may continue to sell;

- I. if the company is not licensed by the State, the company has committed a Class E or D crime and a summons can be issued;
- J. if the company is unlicensed or if the salesman does not have his license then the owner or the seller or both can be arrested with a warrant or summonsed and charged with a Class E or D crime. (Remember: you cannot arrest if the crime is not committed in your presence, but you can issue a summons or obtain a warrant);

**DOOR-TODOOR TRANSIENT SELLERS OF  
HOME REPAIR CONTRACTS**

**The Door-To-Door Home Repair Transient Sellers Act  
(32 M.R.S.A. §§14501-14513 (Criminal Violation))**

**1. WHAT SALES ARE COVERED**

A sale falls under the Door-To-Door Home Repair Transient Sellers Act if:

- A. The sale involves any home repair service (see statute for the definition).
- B. The sale occurs anywhere other than the seller's place of business in a municipality in which the seller does not have a permanent place of business;
- C. The initial contact was accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact (32 M.R.S.A. §14501(3)).

**2. WHAT ARE TRANSIENT DOOR-TO-DOOR SELLERS OF HOME REPAIR SERVICES REQUIRED TO DO**

If the sale is a door-to-door transient seller of home repair services sale, then the seller must:

- A. Provide the consumer with a written contract that meets the written contract standards for:
  - (1) Consumer Solicitation Sales Act (the three-day right to revoke); see pages 1-4;
  - (2) Transient Seller Act (but not if the seller has a permanent place of business somewhere in Maine); see pages 5-8;
  - (3) Home solicitation sales (see 9-A M.R.S.A. §§3-501-3-507);
  - (4) Home construction contracts (see 10 M.R.S.A. §§1486-1490).
- B. Wait the required three business days before commencing work; and
- C. If the consumer exercises his right to cancel, the seller must return the consumer's money within 15 days of cancellation.

**3. CONSUMER RIGHTS AND OBLIGATIONS**

The consumer rights and obligations are the same as set forth in the Consumer Solicitation Sales Act above (see pages 1-4).

**4. CRIMINAL VIOLATION BY TRANSIENT DOOR-TO-DOOR HOME REPAIR SELLERS**

- A. A seller's violation of the Door-to-Door Home Repair Transient Sellers Act is a Class E crime (32 M.R.S.A. §§14504(2), 14506(2)). If the State pleads and proves the violation was intentional, then the seller has committed a Class D crime. Violations of the Door-to-Door Home Repair Transient Sellers Act also carry civil penalties under the Act. (32 M.R.S.A. §14512(2)). Violations are also civil violations of the Unfair Trade Practices Act. (32 M.R.S.A. §14512(3)).
  
- B. It should be fairly easy to establish whether the seller has violated the statute. If the seller is going door-to-door and does not have a permanent place of business in the municipality in which he is soliciting, then the seller must be licensed by the State. Call the State Licensing Division at 624-8603 and ask if the door-to-door seller is licensed under the Door-T-Door Home Repair Transient Sellers Act. If not, and you can prove he was going door-to-door and he initiated contact with the consumer, then you have a solid Class D criminal violation. You can also check online by going to [www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm).

## 5. WHAT LAW ENFORCEMENT OFFICIALS CAN DO

If you encounter a transient door-to-door seller of home repair services in the act of working in your community, do the following:

- A. Find out who is the owner (owners) of the business and who are the employees (get everyone's name, address, and birth date and all vehicle identifications).
- B. Find out what is being sold and where the sale was made; remember, the seller must initiate the sales discussion or it probably does not meet the definition of a door-to-door solicitation (32 M.R.S.A. §4662).
- C. Find out if the owner has a permanent place of business in the State (owns the business location or has a 12-month lease) (32 M.R.S.A. §14701(5)).
- D. If the seller is soliciting in a municipality in which he does not have a permanent place of business, find out if the seller is licensed through the State as a door-to-door home repair transient seller (32 M.R.S.A §14504). To do this, call the State Division of Licensing and Enforcement at 207-624-8603 or go to [www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm).
- E. If you find the seller actually in the act of soliciting or in the act of doing the repair work, and he is in violation of any of our criminal door-to-door laws (i.e., is not licensed through the State, is not using the required written contract, not waiting the full three days before beginning work, etc.), then no warrant is needed in order to make an arrest.
- F. Any complaints of this nature may be reported to the Consumer Protection Division of the Attorney General's Office at 1(800) 436-2131 or [consumer.mediation@maine.gov](mailto:consumer.mediation@maine.gov). Make sure you obtain the seller's name and address and identification of employees and vehicles. Also, any photos of the repairers would be very helpful, as they sometimes "exchange" names.

## **APPENDIX A**

1. Hypothetical Fact Pattern of a Door-to-Door Driveway Paver and Sample Criminal Complaints (pp. A-1 to A-2)
2. Sample Criminal Complaints (pp. A-3 to A-5)



**HYPOTHETICALFACT PATTERN OF A  
DOOR-TO-DOOR CRIVEWAY PAVER  
AND SAMPLE CRIMINAL COMPLAINTS**

On April 15, 2012 **John Seller** and his crew of driveway pavers drove into Portland. Mr. Seller resides in Biddeford but moves around the State selling his home repair services. Mr. Seller often sends an employee to the doors to do the initial solicitation.<sup>3</sup>

The crew arrives at consumer **Jane Doe's** house at approximately 4:30 p.m. One of Mr. Seller's employees goes to the front door and tells Ms. Doe that they just finished a job in the neighborhood and that they had a little bit of blacktop left over and could give her a real good deal.

Ms. Doe agrees to pay \$600.00 for the crew to blacktop her entire driveway. She also agrees that he should not wait 3 days and instead should start to work immediately.<sup>4</sup> She signs a simple form contract, which has the heading:

**John Seller's Paving Company  
Biddeford, Maine**

The contract does not have a business address<sup>5</sup> and there is no provision that reads the consumer has three (3) days in which to cancel this contract and that the work will not be started until this three (3) days period has passed.<sup>6</sup>

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<sup>3/</sup> If his crew members are acting as his agents, Mr. Seller is responsible for his crew member's actions.

<sup>4/</sup> A consumer cannot waive his or her rights to the three-day "cooling off" period provided by the Consumer Solicitation Sales Act.

<sup>5/</sup> A door-to-door seller's contract must have the name and mailing address of the seller's permanent place of business (32 M.R.S.A. §4662). If the seller does not have a permanent place of business then he must be licensed with the State as a "transient seller" (32 M.R.S.A. §14703) (call State Licensing Division at 624-8603 to confirm that the paver is registered).

<sup>6/</sup> This contract clearly violates the Consumer Solicitation Sales Act. See 32 M.R.S.A. §4662.

Once Ms. Doe agreed to the job, Seller's crew immediately began work.<sup>7</sup> They quickly laid on the blacktop, rolled it smooth, and cleaned up after themselves. It appeared to be a reasonably good job. Seller then approached Ms. Doe for his money. He stated to her: "I'm afraid the driveway was longer than we estimated. Therefore, I'm going to have to charge you \$900.00." Ms. Doe protested but she finally agreed and paid him by check.<sup>8</sup>

While the job was being completed,<sup>9</sup> Portland Police had been alerted by a neighbor. They drove up to inspect the job and were told by John Seller that he had a contract with Ms. Doe, and that she had authorized him to do the work immediately and not wait three (3) days.<sup>10</sup>

This fact pattern could result in the following four criminal complaints.

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<sup>7</sup>/ Seller must wait 3 days before beginning a permanent addition to the homestead (e.g., driveway repair, new siding, chimney repair, etc.). (32 M.R.S.A. §4664-A).

<sup>8</sup>/ Seller cannot change the terms of the contract. If his inflated charge was intentional fraud, then this could be Theft by Deception (17-A M.R.S.A. §354).

<sup>9</sup>/ If the police arrive while the job is being completed, then Seller has been caught in the midst of a three count Class D crime (Seller's contract was illegal and he did not wait three days (Consumer Solicitation Sales Act); he was not licensed with the State as a "transient seller" (Transient Sellers Act); and he is not licensed with the State as a door-to-door seller of home repairs (Door-to-Door Sellers of Home Repairs Contracts Act). Call State Licensing Division at 624-8603 to confirm the paver is licensed).

<sup>10</sup>/ The contract is illegal. Seller cannot persuade Ms. Doe to waive her right to revoke after a three day waiting period (32 M.R.S.A. §4664-A).



contacting her at home and (3) he failed to provide the consumer with a written contract which met the requirements of the Consumer Solicitation Sales Act, 32 M.R.S.A. §§4661-4671.

### **COUNT II**

On or about April 15, 2013, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in business of Consumer Solicitation of Sales in that (1) he entered into a contract with the consumer Jane Doe for the purpose of repairing her driveway paving and (2) the initial contact with the consumer was made by the Defendant by contacting her at home and (3) he commenced work without waiting three (3) days from the date the contract was entered into, all in violation of the Consumer Solicitation Sales Act, 32 M.R.S.A. §§4661-4671.

### **COUNT III**

On or about April 15, 2013, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in business of selling driveway repair services to consumer Jane Doe by (1) personally contacting her at her home for the purpose of carrying on such business and (2) not having any permanent place of business within this state and (3) not being licensed with the Department of Professional and Financial Regulation as a Transient Seller, all in violation of the Transient Sales Act, 32 M.R.S.A. §§14701-14716.

### **COUNT IV**

On or about April 15, 2013, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in business of selling driveway repair services to consumer Jane Doe by (1) personally contacting her at her home for the purpose of carrying on such business and (2) not having any permanent place of business within this state and (3) not

having a valid license in his immediate possession at all times when engaging in the sale of consumer merchandise, all in violation of the Transient Sales Act, 32 M.R.S.A. §§14701-14716.

**COUNT V**

On or about April 15, 2013, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in the door-to-door sale of home repair services with the consumer Jane Doe to repair her driveway paving and (1) at the time of the sale did not have a permanent place of business in the municipality in which the sale occurred, namely, Portland and (2) was not licensed with the Department of Professional and Financial Regulation as a Transient Seller of home repair services, all in violation of the Door-to-Door Home Repair Transient Sellers Act, 32 M.R.S.A. §§14501-14513.

**COUNT VI**

On or about April 15, 2013, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in the door-to-door sale of home repair services with the consumer Jane Doe to repair her driveway paving and (1) at the time of the sale did not have a permanent place of business in the municipality in which the sale occurred, namely, Portland and (2) failed to include in a written contract for door-to-door sales of home repair services his state door-to-door sales registration number, all in violation of 32 M.R.S.A. §§14501-14513.

\_\_\_\_\_  
COMPLAINANT

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2013.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CLERK/COMPLAINT JUSTICE/JUDGE

*Jail and Restitution*