

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND SPECIAL SESSION-2004

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Legislative Document

No. 1844

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H.P. 1370

House of Representatives, February 5, 2004

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**An Act To Amend the Maine Criminal Code and Motor Vehicle  
Laws as Recommended by the Criminal Law Advisory Commission**

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Reported by Representative BLANCHETTE of Bangor for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, chapter 55.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

**Sec. 1. 15 MRSA §3314, sub-§6**, as corrected by RR 2001, c. 2, Pt. A, §24 and affected by §25, is amended to read:

**6. Forfeiture of firearms.** As part of every disposition in every proceeding under this code, every firearm that constitutes the basis for an adjudication for a juvenile crime that, if committed by an adult, would constitute a violation of section 393; Title 17-A, section 1105-A, subsection 1, paragraph C-1; Title 17-A, section 1105-B, subsection 1, paragraph C; Title 17-A, section 1105-C, subsection 1, paragraph C-1; or Title 17-A, section 1105-D, subsection 1, paragraph B-1 and every firearm used by the juvenile or any accomplice during the course of conduct for which the juvenile has been adjudicated to have committed a juvenile crime that would have been forfeited pursuant to Title 17-A, section ~~1158~~ 1158-A if the criminal conduct had been committed by an adult must be forfeited to the State and the juvenile court shall so order unless another person satisfies the court prior to the dispositional hearing and by a preponderance of the evidence that the other person had a right to possess the firearm, to the exclusion of the juvenile, at the time of the conduct that constitutes the juvenile crime. Rules adopted by the Attorney General that govern the disposition of firearms forfeited pursuant to Title 17-A, section ~~1158~~ 1158-A govern forfeitures under this subsection.

**Sec. 2. 17-A MRSA §15-A, sub-§§1, 2 and 3**, as amended by PL 1991, c. 459, §4, are further amended to read:

1. A law enforcement officer who has probable cause to believe a crime has been or is being committed by a person may issue or have delivered a written summons to that person directing that person to appear in the District Court to answer the allegation that the person has committed the crime. The summons must include the signature of the officer, a brief description of the alleged crime, the time and place of the alleged crime and the time, place and date the person is to appear in court. The form used must be the Uniform Summons and Complaint, ~~except that, if the agency by whom the officer is employed has on May 1, 1991 current stocks of forms that the agency is authorized to use, the agency may permit officers to use those forms until those stocks are depleted.~~ A person to whom a summons is issued or delivered must give a written promise to appear. If the person refuses to sign the summons after having been ordered to do so by a law enforcement officer, the person commits a Class E crime. As soon as practicable after service of the summons, the officer shall cause a copy of the summons to be filed with the court.

2           2. Any person who a law enforcement officer has probable  
3 cause to believe has committed or is committing a crime other  
4 than one listed under section 15, subsection 1, paragraph A, and  
5 to whom a law enforcement officer is authorized to deliver a  
6 summons pursuant to subsection 1, who intentionally fails or  
7 refuses to provide to that officer reasonably credible evidence  
8 of that person's correct name and, address or date of birth  
9 commits a Class E crime, ~~provided that~~ if the person persists in  
10 the failure or refusal after having been informed by the officer  
11 of the provisions of this subsection. If that person furnishes  
12 the officer evidence of the person's correct name and, address  
13 and date of birth and the evidence does not appear to be  
14 reasonably credible, the officer shall attempt to verify the  
15 evidence as quickly as is reasonably possible. During the period  
16 the verification is being attempted, the officer may require the  
17 person to remain in the officer's presence for a period not to  
18 exceed 2 hours. During this period, if the officer reasonably  
19 believes that the officer's safety or the safety of others  
20 present requires, the officer may search for any dangerous weapon  
21 by an external patting of that person's outer clothing. If in  
22 the course of the search the officer feels an object that the  
23 officer reasonably believes to be a dangerous weapon, the officer  
24 may take such action as is necessary to examine the object, but  
25 may take permanent possession of the object only if it is subject  
26 to forfeiture. The requirement that the person remain in the  
27 presence of the officer does not constitute an arrest. After  
28 informing that person of the provisions of this subsection, the  
29 officer may arrest the person either if the person intentionally  
30 refuses to furnish any evidence of that person's correct name,  
31 and address or date of birth or if, after attempting to verify  
32 the evidence as provided for in this subsection, the officer has  
33 probable cause to believe that the person has intentionally  
34 failed to provide reasonably credible evidence of the person's  
correct name and, address or date of birth.

36           3. If, at any time subsequent to an arrest made pursuant to  
37 subsection 2, it appears that the evidence of the person's  
38 correct name and, address and date of birth was accurate, the  
39 person must be released from custody and any record of that  
40 custody must show that the person was released for that reason.  
41 If, upon trial for violating subsection 2, a person is acquitted  
42 on the ground that the evidence of the person's correct name and,  
43 address and date of birth was accurate, the record of acquittal  
44 must show that that was the ground.

46           **Sec. 3. 17-A MRSA §17, sub-§1,** as amended by PL 1995, c. 65,  
47 Pt. A, §56 and affected by §153 and Pt. C, §15, is further  
48 amended to read:

1. A law enforcement officer who has probable cause to believe that a civil violation has been committed by a person must issue or have delivered a written summons to that person directing the person to appear in the District Court to answer the allegation that the person has committed the violation. The summons must include the signature of the officer, a brief description of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. The form used must be the Violation Summons and Complaint, as prescribed in Title 29-A, section 2601, for traffic infractions and the Uniform Summons and Complaint for other civil violations, ~~except that, if the agency by whom the officer is employed has on May 1, 1991 current stocks of forms that the agency is authorized to use, the agency may permit officers to use those forms in place of the Uniform Summons and Complaint until those stocks are depleted.~~ A person to whom a summons is issued or delivered must give a written promise to appear. If the person refuses to sign the summons after having been ordered to do so by a law enforcement officer, the person commits a Class E crime. The law enforcement officer may not order a person to sign the summons for a civil violation unless the civil violation is an offense defined in Title 12; Title 23, section 1980; Title 28-A, section 2052; or Title 29-A.

Every law enforcement officer issuing a Violation Summons and Complaint charging the commission of a traffic infraction shall file the original of the Violation Summons and Complaint with the violations bureau within 5 days of the issuance of that Violation Summons and Complaint. Every law enforcement officer issuing a Uniform Summons and Complaint that charges the commission of an offense shall file the original of the Uniform Summons and Complaint with the District Court having jurisdiction over the offense or in such other location as instructed by the Chief Judge of the District Court without undue delay and, in any event, within 5 days after the issuance of the Uniform Summons and Complaint.

**Sec. 4. 17-A MRSA §17, sub-§§2 and 3,** as amended by PL 1991, c. 459, §5, are further amended to read:

2. Any person to whom a law enforcement officer is authorized to issue or deliver a summons pursuant to subsection 1 who intentionally fails or refuses to provide the officer reasonably credible evidence of the person's correct name and address or date of birth commits a Class E crime, ~~provided that~~ if the person persists in that failure or refusal after having been informed by the officer of the provisions of this subsection. If the person furnishes the officer evidence of that person's correct name and address and date of birth and the evidence does not appear to be reasonably credible, the officer

2 shall attempt to verify the evidence as quickly as is reasonably  
3 possible. During the period that verification is being  
4 attempted, the officer may require the person to remain in the  
5 officer's presence for a period not to exceed 2 hours. During  
6 this period, if the officer reasonably believes that the  
7 officer's safety or the safety of others present requires, the  
8 officer may search for any dangerous weapon by an external  
9 patting of the person's outer clothing. If in the course of the  
10 search the officer feels an object that the officer reasonably  
11 believes to be a dangerous weapon, the officer may take such  
12 action as is necessary to examine the object, but may take  
13 permanent possession of the object only if it is subject to  
14 forfeiture. The requirement that the person remain in the  
15 presence of the officer does not constitute an arrest.

16 After informing the person of the provisions of this subsection,  
17 the officer may arrest the person either if the person  
18 intentionally refuses to furnish any evidence of that person's  
19 correct name and, address or date of birth or if, after  
20 attempting to verify the evidence as provided for in this  
21 subsection, the officer has probable cause to believe that the  
22 person has intentionally failed to provide reasonably credible  
23 evidence of the person's correct name and, address or date of  
24 birth.

26 3. If, at any time subsequent to an arrest made pursuant to  
27 subsection 2, it appears that the evidence of the person's  
28 correct name and, address and date of birth was accurate, the  
29 person must be released from custody and any record of that  
30 custody must show that the person was released for that reason.  
31 If, upon trial for violating subsection 2, a person is acquitted  
32 on the ground that the evidence of the person's correct name and,  
33 address and date of birth was accurate, the record of acquittal  
34 must show that that was the ground.

36 **Sec. 5. 17-A MRSA §751, sub-§1,** as amended by PL 1997, c. 351,  
37 §2, is further amended to read:

38 1. A person is guilty of obstructing government  
39 administration if the person uses intentionally interferes by  
40 force, violence or intimidation or ~~engages in any criminal act~~  
41 ~~with the intent to interfere by any physical act~~ with a public  
42 servant performing or purporting to perform an official function.  
43

44 **Sec. 6. 17-A MRSA §1158,** as amended by PL 2003, c. 143, §7,  
45 is repealed.

46 **Sec. 7. 17-A MRSA §1158-A** is enacted to read:

47 **§1158-A. Forfeiture of firearms**

2           1. As part of every sentence imposed, except as provided in  
3           subsection 2, a court shall order that a firearm must be  
4           forfeited to the State if:

6           A. That firearm constitutes the basis for conviction under:

8                   (1) Title 15, section 393;

10                   (2) Section 1105-A, subsection 1, paragraph C-1;

12                   (3) Section 1105-B, subsection 1, paragraph C;

14                   (4) Section 1105-C, subsection 1, paragraph C-1; or

16                   (5) Section 1105-D, subsection 1, paragraph B-1; or

18           B. The State pleads and proves that the firearm is used by  
19           the defendant or an accomplice during the commission of any  
20           murder or Class A, Class B or Class C crime or any Class D  
21           crime defined in chapter 9, 11 or 13.

22           2. A court may not order the forfeiture of a firearm  
23           otherwise qualifying for forfeiture under subsection 1 if another  
24           person can satisfy the court prior to the imposition of the  
25           defendant's sentence and by a preponderance of the evidence that:

28           A. Other than in the context of either subsection 1,  
29           paragraph A, subparagraph (1) or subsection 1, paragraph B  
30           relative to murder or any other unlawful homicide crime in  
31           which the firearm used is a handgun, the other person, at  
32           the time of the commission of the crime, had a right to  
33           possess the firearm to the exclusion of the defendant;

34           B. In the context of subsection 1, paragraph A,  
35           subparagraph (1), the other person, at the time of the  
36           commission of the crime, had a right to possess the firearm  
37           to the exclusion of the defendant and the other person  
38           either did not know or should not have known that the  
39           defendant was a prohibited person under Title 15, section  
40           393 or, even if the other person did know or should have  
41           known, nonetheless did not intentionally, knowingly or  
42           recklessly allow the defendant to possess or have under the  
43           defendant's control the firearm; or

46           C. In the context of paragraph B relating to murder or any  
47           other unlawful homicide crime in which the firearm used is a  
48           handgun, the other person, at the time of the commission of  
              the crime, was the rightful owner from whom the handgun had

2           been stolen and the other person was not a principal or  
3           accomplice in the commission of the crime.

4           3. The Attorney General shall adopt rules governing the  
5           disposition to state, county and municipal agencies of firearms  
6           forfeited under this section. A handgun not excepted under  
7           subsection 2, paragraph C must be destroyed by the State.

8           4. As used in this section, "handgun" means a firearm,  
9           including a pistol or revolver, that has a short stock and is  
10           designed to be held and fired by the use of a single hand.

11           **Sec. 8. 17-A MRSA §1202, sub-§1-B**, as amended by PL 2003, c.  
12           154, §1, is repealed and the following enacted in its place:

13           1-B. Notwithstanding subsection 1, if the State pleads and  
14           proves that the enumerated Class D or Class E crime was committed  
15           by the person against a family or household member, and if the  
16           court orders the person to complete a certified batterers'  
17           intervention program as defined in Title 19-A, section 4014, the  
18           person may be placed on probation for a period not to exceed 2  
19           years, except that the term of probation must be terminated by  
20           the court when the probationer has served at least one year of  
21           probation, has completed the certified batterers' intervention  
22           program and has met all other conditions of probation.

23           A. As used in this subsection, the following definitions  
24           apply.

25                   (1) "Enumerated Class D or Class E crime" means any  
26                   Class D crime in chapter 9, any Class D or Class E  
27                   crime in chapter 11, the Class D crimes described in  
28                   section 506-B and the Class D crimes described in  
29                   sections 554, 555 and 758.

30                   (2) "Family or household member" has the same meaning  
31                   as in Title 19-A, section 4002, subsection 4.

32           B. Termination under this subsection requires a judicial  
33           finding that the probationer has served at least one year of  
34           probation, has successfully completed a certified batterers'  
35           intervention program and has met all other conditions of  
36           probation.

37           **Sec. 9. 17-A MRSA §1205-C, sub-§6**, as enacted by PL 1999, c.  
38           246, §3, is amended to read:

39           6. Failure to comply with the time limits set forth in this  
40           section is not grounds for dismissal of a motion for probation



2 revocation but is may be grounds for the probationer's release on  
personal recognizance pending further proceedings.

4 **Sec. 10. 17-A MRSA §1252, sub-§2, ¶A**, as amended by PL 1995,  
c. 473, §1, is further amended to read:

6  
8 A. In the case of a Class A crime, the court shall set a  
definite period not to exceed 40 30 years. ~~The court may~~  
10 ~~consider a serious criminal history of the defendant and~~  
12 ~~impose a maximum period of incarceration in excess of 20~~  
14 ~~years based on either the nature and seriousness of the~~  
~~crime alone or on the nature and seriousness of the crime~~  
~~coupled with the serious criminal history of the defendant;~~

16 **Sec. 11. 25 MRSA §3503-A**, as amended by PL 1999, c. 47, §1,  
is further amended to read:

18 **§3503-A. Disposal of firearms and ammunition**

20 Notwithstanding any other provision of this chapter, a  
22 police department or other law enforcement agency retaining  
firearms and ammunition covered by this chapter, Title 15,  
24 section 3314 or chapter 517, or Title 17-A, section ~~1158~~ 1158-A  
may auction the firearms to federally licensed firearms dealers  
26 or the public, use the firearms and ammunition for training  
purposes or destroy the firearms and ammunition.

28 **Sec. 12. 29-A MRSA §105, sub-§4**, as amended by PL 1997, c.  
30 653, §5, is further amended to read:

32 **4. Violation.** A person is guilty of a Class E crime if a  
law enforcement officer has probable cause to believe the person  
34 violated or is violating this Title and the person intentionally  
fails or refuses upon request to give the person's correct name,  
36 address or date of birth to a law enforcement officer.

38 **SUMMARY**

40 This bill does the following.

42 The bill adds "date of birth" to the information that must  
be provided to a law enforcement officer upon request by the  
44 person to whom a summons is issued or delivered under either the  
Maine Revised Statutes, Title 17-A, section 15-A or 17.  
46 Currently, the information required of the person is limited to  
name and address. Date of birth is an important aid in properly  
48 identifying the person being summonsed and is currently required  
in Title 29-A, section 105, subsection 4. The bill also adds the  
50 word "correct" relative to the information to be supplied by the

2 person. The bill also strikes an exception relative to use of  
nonconforming forms that no longer is relevant.

4 The bill addresses a defect in the statute prohibiting  
obstruction of government administration revealed by the recent  
6 case of State v. Matson, 2003 ME 34, 818 A.2d 213. In Matson,  
the defendant had been convicted under the statute for physically  
8 interfering with the arrest of another person. Because the  
physical interference, intentionally standing in the way and  
10 refusing to move, was held to constitute something less than  
"force, violence or intimidation," the conviction was reversed.

12 The focus of the crime is intentional physical interference  
with an official function, not "intimidation" of an officer.  
14 Harassing speech alone is not sufficient, but when it is  
16 accompanied by a physical act that actually interferes with an  
official function, the further requirement of "intimidation" is  
18 unnecessary.

20 The bill repeals Title 17-A, section 1158 and replaces it  
with section 1158-A, which differs in the following ways.

- 22 1. It makes technical drafting changes to clarify the law.
- 24 2. It clarifies that forfeiture of a firearm under certain  
26 circumstances is conditioned on the State's both alleging  
that the firearm was used by the defendant or an accomplice  
28 during the commission of the crime in the indictment or  
information and proving that allegation to the fact finder  
30 beyond a reasonable doubt.
- 32 3. It clarifies when a court may not order as part of the  
sentence the forfeiture of a firearm otherwise qualifying  
34 for forfeiture. Access to the exception is available only  
to a person other than the defendant. The exception must be  
36 established by the other person at a point in time prior to  
the actual imposition of the defendant's sentence, and the  
38 burden imposed on the other person is to satisfy the court  
of the exception by a preponderance of the evidence.

40 The bill also addresses forfeiture of firearms other than in  
42 the context of a conviction under possession of a firearm by a  
prohibited person or in the context of a handgun used by the  
44 defendant or an accomplice during the commission of murder or any  
other unlawful homicide crime. The other person's burden is  
46 satisfied by proof by a preponderance of the evidence that at the  
time of the commission of the crime, the other person had a right  
48 to possess the firearm to the exclusion of the defendant. This  
burden is the same as under Title 17-A, section 1158.

50

2           The bill also addresses forfeiture of firearms in the  
3 context of the conviction under Title 15, section 393. The other  
4 person's burden is satisfied by proof by a preponderance of the  
5 evidence that, at the time of the commission of the crime, the  
6 person had a right to possess the firearm to the exclusion of the  
7 defendant and the person either did not know or should not have  
8 known that the defendant was a prohibited person under Title 15,  
9 section 393 or, even if the other person did know or should have  
10 known, nonetheless did not intentionally, knowingly or recklessly  
11 allow the defendant to possess or have under the defendant's  
12 control the firearm. This burden imposed upon the other person  
13 is greater than under Title 17-A, section 1158.

14           The bill also addresses forfeiture of a handgun used by the  
15 defendant or an accomplice during the commission of murder or any  
16 other unlawful homicide crime. The other person's burden is  
17 satisfied by proof by a preponderance of the evidence that, at  
18 the time of the commission of the crime, the other person was the  
19 rightful owner from whom the handgun had been stolen and the  
20 other person was not a principal or an accomplice in the  
21 commission of the crime. It also defines "handgun" for purposes  
22 of Title 17-A, section 1158-A.

24           The bill replaces Title 17-A, section 1202, subsection 1-B  
25 in order to address the constitutional defect revealed in the  
26 recent case of State v. Hodgkins, 2003 ME 57, 822 A.2d 1187. The  
27 bill also eliminates the necessity of the State's pleading and  
28 the jury's having to find that the Class D or Class E crime  
29 involved "domestic violence" by specifically enumerating the  
30 Class D or Class E crimes that automatically qualify and by  
31 having the State plead and the jury find that the qualifying  
32 crime was committed by the person "against a family or household  
33 member," as defined in Title 19-A, section 4002, subsection 4.  
34 The bill also makes clear that imposition of the extended period  
35 of probation is further conditioned upon the court's ordering the  
36 person to complete a certified batterers' intervention program as  
37 defined in Title 19-A, section 4014. This precondition is  
38 necessary because only one program currently exists for female  
39 defendants, and a program may not be reasonably available for  
40 certain male defendants. The bill also clarifies that  
41 termination of the extended probation period requires a judicial  
42 finding that the probationer has served at least one year of  
43 probation, has successfully completed a certified batterers'  
44 program and has met all other conditions of probation.

46           The bill is intended to make clear that in the event there  
47 is a failure by the State to comply with the time limits set  
48 forth in Title 17-A, section 1205-C, a court may, but is not  
49 required to, issue an order that, pending initial appearance, the  
50 probationer be released on personal recognizance.

2 In 1988 the Legislature doubled the maximum sentence of  
imprisonment for all Class A crimes from 20 years to 40 years.  
4 In 1991 the Law Court examined the legislative history of the  
relevant act and determined that the legislative intent was to  
6 "make available two discrete ranges of sentences for Class A  
crimes." See State v. Lewis, 590 A.2d 149, 151 (Me. 1991). Most  
8 Class A crime sentences were intended to remain in the original  
0- to 20-year range, while the "expanded range" of 20- to 40-year  
10 sentences was reserved "only for the most heinous and violent  
crimes committed against a person." The sentencing court was to  
12 apply this "heinousness" standard "in its discretion" as a  
sentencing factor, subject to appellate review.

14  
16 This 2-tier system has been placed under a constitutional  
cloud by the decision of the United States Supreme Court in  
Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that  
18 sentencing factors increasing punishment beyond the maximum  
authorized must be treated as elements of crimes to be pleaded  
20 and proved beyond a reasonable doubt rather than as sentencing  
factors. Since the "heinousness" standard can be interpreted as  
22 increasing maximum punishment of up to 20 years to the "expanded  
range" of 20 to 40 years, it is potentially unconstitutional  
24 absent legislative correction.

26 The bill eliminates the constitutional cloud by replacing  
the 2-tier system with a single 0- to 30-year range. This change  
28 anticipates that the Law Court, through the case-by-case sentence  
review process, will develop and apply criteria that will avoid  
30 the imposition of excessively harsh sentences within the single  
range. In solving the Apprendi problem, this change will affect  
32 few actual sentences.

34 The bill adds the culpable mental state of "intentionally"  
to Title 29-A, section 105, subsection 4, regarding the  
36 enforcement of the motor vehicle laws, to conform it to Title  
17-A, sections 15-A and 17.