

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 44

H.P. 45

House of Representatives, January 9, 2019

An Act Regarding the Maine Criminal Code

Reported by Representative WARREN of Hallowell for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **PART A**

3 **Sec. A-1. 17-A MRSA §554, sub-§1, ¶¶B-3 and C**, as amended by PL 2015, c.
4 358, §3, are further amended to read:

5 B-3. Being the parent, foster parent, guardian or other person having the care and
6 custody of a child, knowingly deprives the child of necessary health care, with a
7 result that the child is placed in danger of serious harm. Violation of this paragraph is
8 a Class D crime; or

9 C. ~~Otherwise recklessly endangers~~ Endangers the health, safety or welfare of the
10 child by recklessly violating a duty of care or protection. Violation of this paragraph
11 is a Class D crime; ~~or~~

12 **Sec. A-2. 17-A MRSA §554, sub-§1, ¶D** is enacted to read:

13 D. Endangers the health, safety or welfare of a child by recklessly violating a duty of
14 care or protection resulting in death or serious bodily injury to the child. Violation of
15 this paragraph is a Class C crime.

16 **PART B**

17 **Sec. B-1. 17-A MRSA §253, sub-§1, ¶B**, as amended by PL 2003, c. 711, Pt. B,
18 §2, is further amended to read:

19 B. The other person, not the actor's spouse, has not in fact attained the age of 14
20 years and the actor is at least 3 years older. Violation of this paragraph is a Class A
21 crime; or

22 **Sec. B-2. 17-A MRSA §253, sub-§1, ¶C**, as enacted by PL 2003, c. 711, Pt. B,
23 §2, is amended to read:

24 C. The other person, not the actor's spouse, has not in fact attained 12 years of age
25 and the actor is at least 3 years older. Violation of this paragraph is a Class A crime.

26 **PART C**

27 **Sec. C-1. 15 MRSA §393, sub-§1, ¶A-1**, as amended by PL 2015, c. 470, §1, is
28 further amended to read:

29 A-1. Has been convicted of committing or found not criminally responsible by
30 reason of insanity of committing:

31 (1) A crime in this State that is punishable by imprisonment for a term of one
32 year or more;

33 (2) A crime under the laws of the United States that is punishable by
34 imprisonment for a term exceeding one year;

35 (3) A crime under the laws of ~~any other state~~ another jurisdiction that, in
36 accordance with the laws of that jurisdiction, is punishable by a term of

1 imprisonment exceeding one year. This subparagraph does not include a crime
2 under the laws of another state jurisdiction that is classified by the laws of that
3 state jurisdiction as a misdemeanor and is punishable by a term of imprisonment
4 of 2 years or less;

5 (4) A crime under the laws of ~~any other state~~ another jurisdiction that, in
6 accordance with the laws of that jurisdiction, does not come within subparagraph
7 (3) but is elementally substantially similar to a crime in this State that is
8 punishable by a term of imprisonment for one year or more; or

9 (5) A crime under the laws of ~~the United States, this State or any other state or~~
10 ~~the Passamaquoddy Tribe or Penobscot Nation~~ another jurisdiction in a
11 proceeding in which the prosecuting authority was required to plead and prove
12 that the person committed the crime with the use of:

13 (a) A firearm against a person; or

14 (b) Any other dangerous weapon.

15 Violation of this paragraph is a Class C crime;

16 **Sec. C-2. 15 MRSA §393, sub-§1, ¶¶C and D**, as amended by PL 2015, c. 470,
17 §1, are further amended to read:

18 C. Has been adjudicated in this State or under the laws of ~~the United States or any~~
19 ~~other state~~ another jurisdiction to have engaged in conduct as a juvenile that, if
20 committed by an adult, would have been a disqualifying conviction:

21 (1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another
22 person was threatened or resulted; or

23 (3) Under paragraph A-1, subparagraph (5).

24 Violation of this paragraph is a Class C crime;

25 D. Is subject to an order of a court of ~~the United States or a state, territory,~~
26 ~~commonwealth~~ another jurisdiction or a tribe that restrains that person from
27 harassing, stalking or threatening an intimate partner, as defined in 18 United States
28 Code, Section 921(a), of that person or a child of the intimate partner of that person,
29 or from engaging in other conduct that would place the intimate partner in reasonable
30 fear of bodily injury to the intimate partner or the child, except that this paragraph
31 applies only to a court order that was issued after a hearing for which that person
32 received actual notice and at which that person had the opportunity to participate and
33 that:

34 (1) Includes a finding that the person represents a credible threat to the physical
35 safety of an intimate partner or a child; or

36 (2) By its terms, explicitly prohibits the use, attempted use or threatened use of
37 physical force against an intimate partner or a child that would reasonably be
38 expected to cause bodily injury.

39 Violation of this paragraph is a Class D crime;

1 **Sec. C-3. 15 MRSA §393, sub-§1-A**, as amended by PL 2015, c. 470, §2, is
2 further amended to read:

3 **1-A. Limited prohibition for nonviolent juvenile offenses.** A person who has been
4 adjudicated in this State or under the laws of ~~the United States or any other state~~ another
5 jurisdiction to have engaged in conduct as a juvenile that, if committed by an adult,
6 would have been a disqualifying conviction under subsection 1, paragraph A-1 or
7 subsection 1-B, paragraph A but is not an adjudication under subsection 1, paragraph C or
8 an adjudication under subsection 1-B, paragraph B in which bodily injury to another
9 person was threatened or resulted may not own or have in that person's possession or
10 control a firearm for a period of 3 years following completion of any disposition imposed
11 or until that person reaches 18 years of age, whichever is later. Violation of this
12 subsection by a person at least 18 years of age is a Class C crime.

13 **Sec. C-4. 15 MRSA §393, sub-§1-B, ¶¶A and B**, as amended by PL 2015, c.
14 470, §3, are further amended to read:

15 A. Has been convicted of committing or found not criminally responsible by reason
16 of insanity of committing:

17 (1) A Class D crime in this State in violation of Title 17-A, section 207-A,
18 209-A, 210-B, 210-C or 211-A; or

19 (2) A crime under the laws of ~~the United States or any other state~~ another
20 jurisdiction that in accordance with the laws of that jurisdiction is elementally
21 substantially similar to a crime in subparagraph (1).

22 Violation of this paragraph is a Class C crime; or

23 B. Has been adjudicated in this State or under the laws of ~~the United States or any~~
24 ~~other state~~ another jurisdiction to have engaged in conduct as a juvenile that, if
25 committed by an adult, would have been a disqualifying conviction under this
26 subsection. Violation of this paragraph is a Class C crime.

27 **Sec. C-5. 15 MRSA §393, sub-§7, ¶C**, as enacted by PL 2001, c. 549, §4, is
28 repealed.

29 **Sec. C-6. 15 MRSA §393, sub-§7, ¶F** is enacted to read:

30 F. "Another jurisdiction" has the same meaning as in Title 17-A, section 2,
31 subsection 3-B.

32 **PART D**

33 **Sec. D-1. 15 MRSA §1026, sub-§5**, as amended by PL 2007, c. 374, §10, is
34 further amended to read:

35 **5. Contents of release order.** In a release order issued under subsection 2-A or 3,
36 the judicial officer shall:

1 A. Include a written statement that sets forth all the conditions to which the ~~release~~
2 defendant is subject in a manner sufficiently clear and specific to serve as a guide for
3 the defendant's conduct; and

4 B. Advise the defendant of:

5 ~~(1) The penalties if the defendant fails to appear as required~~ That the conditions
6 of release take effect and are fully enforceable immediately as of the time the
7 judicial officer sets the conditions, unless the bail order expressly excludes a
8 condition or conditions of release from immediate applicability; and

9 ~~(2) The penalties for and consequences of violating a condition of release,~~
10 ~~including the immediate issuance of a warrant for the defendant's arrest~~ That
11 failure to appear or comply with a condition or conditions may subject the
12 defendant to revocation of bail and additional criminal penalties.

13 **Sec. D-2. 15 MRSA §1026, sub-§7**, as enacted by PL 1995, c. 356, §5, is
14 repealed.

15 **Sec. D-3. 15 MRSA §1026, sub-§8** is enacted to read:

16 **8. Applicability of conditions of release.** A condition of release takes effect and is
17 fully enforceable immediately as of the time the judicial officer sets the condition, unless
18 the bail order expressly excludes a condition of release from immediate applicability, if
19 the defendant is advised:

20 A. Of the conditions; and

21 B. That failure to appear or comply with the conditions may subject the defendant to
22 revocation of bail and additional criminal penalties.

23 **PART E**

24 **Sec. E-1. 17-A MRSA §1203, sub-§1-A**, as amended by PL 2017, c. 128, §4, is
25 further amended to read:

26 **1-A.** The court may sentence a person to a term of imprisonment, not to exceed the
27 maximum term authorized for the crime, an initial portion of which must be served and
28 the remainder of which must be suspended. The period of probation commences on the
29 date the person is released from the initial unsuspended portion of the term of
30 imprisonment, unless the court orders it to commence on an earlier date. If the period of
31 probation commences on the date the person is released from the initial unsuspended
32 portion of the term of imprisonment, that day is counted as the first full day of the period
33 of probation.

34 A. If the period of probation commences upon release of the person from the initial
35 unsuspended portion of the term of imprisonment, the court may revoke probation for
36 any criminal conduct committed during that initial period of imprisonment.

37 B. The court may revoke probation if, during the initial unsuspended portion of the
38 term of imprisonment, a person sentenced as a repeat sexual assault offender,
39 pursuant to section 1252, subsection 4-B, refuses to actively participate in a sex

1 offender treatment program in accordance with the expectations and judgment of the
2 treatment providers, when requested to do so by the Department of Corrections.

3 B-1. The court may revoke probation if, during an unsuspended portion of the term
4 of imprisonment:

5 (1) The person has contact with a victim with whom the person has been ordered
6 not to have contact as a condition of probation;

7 (2) In the case of a person who has been committed to the Department of
8 Corrections, the person has contact with any victim with whom the person has
9 been prohibited to have contact by the Department of Corrections; or

10 (3) In the case of a person who has been committed to a county or regional jail,
11 the person has contact with any victim with whom the person has been prohibited
12 to have contact by the county or regional jail.

13 "Victim," as used in this paragraph, has the same meaning as in section 1171,
14 subsection 2 and section 1175.

15 C. As to both the suspended and unsuspended portions of the sentence, the place of
16 imprisonment must be as follows.

17 (1) For a Class D or Class E crime the court must specify a county jail as the
18 place of imprisonment.

19 (2) For a Class A, Class B or Class C crime the court must:

20 (a) Specify a county jail as the place of imprisonment for any portion of the
21 sentence that is 9 months or less; and

22 (b) Commit the person to the Department of Corrections for any portion of
23 the sentence that is more than 9 months.

24 D. If execution of the sentence is stayed, the court may revoke probation for criminal
25 conduct committed during the period of stay or for failure to report as ordered.

26 **Sec. E-2. 17-A MRSA §1203-C, first ¶**, as enacted by PL 1999, c. 24, §4, is
27 amended to read:

28 The court may sentence a person to a term of imprisonment not to exceed the
29 maximum term authorized for the crime, suspend the entire term of imprisonment and
30 accompany the suspension with a period of probation not to exceed the maximum period
31 authorized for the crime, to commence on the date the person goes into actual execution
32 of the sentence. That day is counted as the first full day of the period of probation.

33 **Sec. E-3. 17-A MRSA §1206, sub-§7-C**, as amended by PL 2005, c. 507, §14, is
34 further amended to read:

35 **7-C.** The running of the period of probation is tolled upon either the delivery of the
36 summons, the filing of the written notice with the court that the person can not be located
37 or the arrest of the person. If the court finds a violation of probation, the day upon which
38 the tolling occurs does not count toward the period of probation. If the motion is
39 dismissed or withdrawn, or if the court finds no violation of probation, the running of the

1 period of probation is deemed not to have been tolled. The conditions of probation
2 continue in effect during the tolling of the running of the period of probation, and any
3 violation of a condition subjects the person to a revocation of probation pursuant to the
4 provisions of this chapter.

5 **Sec. E-4. 17-A MRSA §1209** is enacted to read:

6 **§1209. Completion of period of probation**

7 A period of probation is completed when the last day of the period, excluding any
8 days during which the running of the period of probation is tolled, ends.

9 **SUMMARY**

10 This bill contains the following provisions.

11 1. In Part A it amends the crime of endangering the welfare of a child by enacting in
12 the Maine Revised Statutes, Title 17-A, section 554, subsection 1, paragraph D a new
13 Class C crime for the reckless violation of a duty of care or protection that results in death
14 or serious bodily injury to the child. It amends the crime of endangering the welfare of a
15 child under Title 17-A, section 554, subsection 1, paragraph C to cover recklessly
16 violating a duty of care or protection.

17 2. In Part B it amends the crime of gross sexual assault against a person under 12
18 years of age or under 14 years of age, both of which are Class A crimes, by requiring that
19 the actor be at least 3 years older than the other person.

20 3. In Part C it amends Title 15, section 393 to recognize that convictions in the tribal
21 courts of the Passamaquoddy Tribe and the Penobscot Nation are disqualifying domestic
22 violence convictions for the purposes of the prohibition against firearms created by Title
23 15, section 393, subsection 1-B. It makes Title 15, section 393 more consistent with the
24 Maine Criminal Code by using the phrase "another jurisdiction" to reference the courts
25 defined by that term.

26 4. In Part D, in response to State v. LeBlanc-Simpson, 2018 ME 109, it clarifies that
27 a judicial officer in issuing a written release order under Title 15, section 1026,
28 subsection 2-A or 3 must inform a defendant of the conditions of release, that the
29 conditions take effect and are fully enforceable immediately and that failure to appear or
30 comply with conditions may result in revocation of bail and additional criminal penalties.
31 The bill provides that a condition of release takes effect and is fully enforceable
32 immediately as of the time the judicial officer sets the condition, unless the bail order
33 expressly excludes a condition of release from immediate applicability, if the defendant is
34 advised of the conditions and that failure to appear or comply with the conditions may
35 subject the defendant to revocation of bail and additional criminal penalties.

36 5. In Part E it amends the probation statutes to reflect the current practice of the
37 Department of Corrections with respect to calculating the period of probation. A
38 probationer receives credit for a full day of probation on the day probation commences,

1 regardless of the time of day, and receives no credit for a day on which probation is
2 tolled. The period of probation ends when the final day of the probation period ends.