

# MAINE STATE LEGISLATURE

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L.D. 1766

DATE: 3/22/96

(Filing No. H-828 )

M A J O R I T Y  
CRIMINAL JUSTICE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1286, L.D. 1766, Bill, "An Act to Prohibit Stalking"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 1995, c. 224, §1 and c. 356, §20, is repealed and the following enacted in its place:

A. Any person who the officer has probable cause to believe has committed or is committing:

(1) Murder;

(2) Any Class A, Class B or Class C crime;

(3) Assault while hunting;

(4) Any offense defined in chapter 45;

(5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;

(5-A) Assault or reckless conduct, if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 15, section 321;

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2 (6) Theft, as defined in section 357, when the value  
3 of the services is \$2,000 or less, if the officer  
4 reasonably believes that the person will not be  
5 apprehended unless immediately arrested;

6 (7) Forgery, if the officer reasonably believes that  
7 the person will not be apprehended unless immediately  
8 arrested;

10 (8) Negotiating a worthless instrument, if the officer  
11 reasonably believes that the person will not be  
12 apprehended unless immediately arrested;

14 (9) A violation of a condition of probation when  
15 requested by an official of the Division of Probation  
16 and Parole;

18 (10) Violation of a condition of release in violation  
19 of Title 15, section 1026, subsection 3; Title 15,  
20 section 1027, subsection 3; Title 15, section 1051,  
21 subsection 2; and Title 15, section 1092;

22 (11) Theft involving a detention under Title 17,  
23 section 3521;

24 (12) Harassment, as set forth in section 506-A; or

25 (13) Violation of a protection order, as specified in  
26 Title 5, section 4659, subsection 2; Title 15, section  
27 321, subsection 6; Title 19, section 769, subsection 2;  
28 and Title 19, section 770, subsection 5; and

30 **Sec. 2. 17-A MRSA §210-A is enacted to read:**

32 **§210-A. Stalking**

34 **1. A person is guilty of stalking if:**

36 **A. The person intentionally or knowingly engages in a**  
37 **course of conduct directed at another specific person that**  
38 **would in fact cause a reasonable person:**

39 **(1) To suffer intimidation or serious inconvenience,**  
40 **annoyance or alarm;**

41 **(2) To fear bodily injury or to fear bodily injury to**  
42 **a member of that person's immediate family; or**

43 **(3) To fear death or to fear the death of a member of**  
44 **that person's immediate family; and**

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COMMITTEE AMENDMENT "A" to H.P. 1286, L.D. 1766

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B. The person's course of conduct in fact causes the other specific person:

(1) To suffer intimidation or serious inconvenience, annoyance or alarm;

(2) To fear bodily injury or to fear bodily injury to a member of that person's immediate family; or

(3) To fear death or to fear the death of a member of that person's immediate family.

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

A. "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying oral or written threats, threats implied by conduct or a combination of threats and conduct directed at or toward a person. For purposes of this section, "course of conduct" also includes, but is not limited to, gaining unauthorized access to personal, medical, financial or other identifying information, including access by computer network, mail, telephone or written communication. "Course of conduct" does not include activity protected by the Constitution of Maine, the United States Constitution or by state or federal statute.

B. "Immediate family" means a spouse, parent, child, sibling, stepchild, stepparent or any person who regularly resides in the household or who within the prior 6 months regularly resided in the household.

C. "Repeatedly" means on 2 or more occasions.

3. Stalking is a Class D crime for which the court shall impose a sentencing alternative involving a term of imprisonment of at least 60 days, of which 48 hours may not be suspended, and may order the actor to attend an abuser education program approved by the court, except that stalking is a Class C crime when the actor has 2 or more prior convictions for violations of this section, 2 or more convictions under Title 5, section 4659; Title 15, section 321; or Title 19, section 769 or 2 or more prior convictions for violations of any other temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation, any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe or a court-approved consent agreement. The court shall impose a

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2 sentencing alternative involving a term of imprisonment, in the  
3 case of a Class C crime, of at least 6 months, of which 14 days  
4 may not be suspended, and may order the actor to attend an abuser  
5 education program approved by the court. For purposes of this  
6 subsection, the dates of both of the prior convictions must  
7 precede the commission of the offense being enhanced by no more  
8 than 10 years, although both prior convictions may have occurred  
9 on the same day. Stalking is not a Class C crime if the  
10 commission of the 2 prior offenses occurred within a 3-day  
11 period. The date of the conviction is determined to be the date  
12 that the sentence is imposed, even though an appeal was taken.  
13 The date of a commission of a prior offense is presumed to be  
14 that stated in the complaint, information, indictment or other  
15 formal charging instrument, notwithstanding the use of the words  
16 "on or about" or the equivalent.

17 **Sec. 3. 19 MRSA §769, sub-§3** is enacted to read:

18 **3. Notice to law enforcement.** To assist in the enforcement  
19 of protective orders issued by tribunals outside this State, the  
20 person who obtained the order may provide a copy to a Superior  
21 Court clerk or a District Court clerk who, in cooperation with  
22 the Department of Public Safety, shall file the order in the  
23 Maine Criminal Justice Information System described in Title 16,  
24 section 631.'

25 Further amend the bill by inserting at the end before the  
26 statement of fact the following:

27 **FISCAL NOTE**

28 This bill may increase prosecutions for Class C and Class D  
29 crimes. Sentences of more than 9 months imposed for Class C  
30 crimes must be served in a state correctional institution. The  
31 cost to the State per sentence is \$55,711 based upon an average  
32 length of stay of one year and 10 months. The State also must  
33 reimburse counties for sentences served in county jails of 9  
34 months or less for Class C crimes.

35 If a jail sentence is imposed for Class D crimes, the  
36 additional costs to the counties are estimated to be \$83.70 per  
37 day per prisoner. These costs are not reimbursed by the State.  
38 The number of prosecutions that may result in a jail sentence and  
39 the resulting costs to the county jail system are expected to be  
40 insignificant.

41 The Judicial Department may require additional General Fund  
42 appropriations to cover indigent defense costs related to these  
43 new cases. The amounts can not be estimated at this time. The  
44 additional workload and administrative costs associated with the  
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minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.'

### STATEMENT OF FACT

This amendment is the majority report of the Joint Standing Committee on Criminal Justice. This amendment replaces the bill and does the following.

1. It removes sections 1 and 2 of the bill, which created an additional 2% surcharge on all fines, forfeitures and penalties collected by the Government Operations Surcharge Fund. One percent of the additional 2% surcharge would have been distributed to the State Court Administrator to pay for the operation of the Judicial Department's computer system and 1% would have been distributed to the Department of Public Safety for use by the Maine Criminal Justice Information System.

2. It clarifies the definition of the crime of "stalking."

3. It specifies that a law enforcement officer who has probable cause to believe a person has committed or is committing the crime of stalking may make a warrantless arrest of that person.

4. It specifies that, for the purpose of stalking, the definition "course of conduct" does not include activity protected by the Constitution of Maine, the United States Constitution or any state or federal statute. It is also the Legislature's intent that "course of conduct" does not include an otherwise lawful activity.

5. It makes the enhanced penalty provision consistent with current law by classifying stalking a Class C crime after 2 or more prior convictions.

6. It adds a fiscal note.