

MAINE STATE LEGISLATURE

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M
R. S.

L.D. 1766

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DATE: 3/22/96

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M I N O R I T Y
C R I M I N A L J U S T I C E

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

COMMITTEE AMENDMENT "B" 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. 4 MRSA §1057, as amended by PL 1991, c. 733, §3, is further amended to read:

§1057. Government Operations Surcharge Fund

1. Fund established. There is hereby established a fund to be known as the Government Operations Surcharge Fund. This fund must be maintained by the Treasurer of State for the sole-purpose purposes of reimbursing counties for costs associated with operations of the jail system and, until January 1, 2001, for funding infrastructure improvements to the Maine Criminal Justice Information System described in Title 16, section 631 and for funding the operation of the Judicial Department's computer system.

2. Surcharge imposed. A surcharge of 10% 12% must be added to every fine, forfeiture or penalty imposed by any court in this State, which, for the purposes of collection and collection procedures, is considered a part of the fine, forfeiture or penalty. Five-sixths of the surcharge collected must be earmarked for counties and disbursed pursuant to subsection 3 for the costs of jails. One-twelfth of the surcharge collected must be paid to the State Court Administrator for funding the operation of the Judicial Department's computer system and 1/12 of the surcharge must be paid to the Department of Public Safety for infrastructure improvements to the Maine Criminal Justice

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2 Information System pursuant to subsection 4 to provide instant
3 access to all available and existing criminal records, including
4 stalking or harassment convictions and protective orders. All
5 funds collected as a result of this surcharge must be deposited
6 monthly in the Government Operations Surcharge Fund. This
7 subsection is repealed January 1, 2001.

8 2-A. Surcharge imposed. A surcharge of 10% must be added
9 to every fine, forfeiture or penalty imposed by any court in this
10 State, which, for the purposes of collection and collection
11 procedures, is considered a part of the fine, forfeiture or
12 penalty. All funds collected as a result of this surcharge must
13 be deposited monthly in the Government Operations Surcharge
14 Fund. This subsection takes effect January 1, 2001.

15 3. Reimbursement to counties. Monthly, the Treasurer of
16 State shall make payments from this--fund the Government
17 Operations Surcharge Fund to each county in the same proportion
18 as the total amount paid to that county from the total amount
19 deposited into the fund during the fiscal year ending June 30,
20 1991 bears to the total amount deposited into the fund during the
21 fiscal year ending June 30, 1991, except that a county may not
22 receive an amount greater than the prior year's expenditures on
23 its jail. The amount of total payments made to counties must
24 equal 2% of the total fines, forfeitures and penalties, including
25 this surcharge, received by the Treasurer of State. The balance
26 remaining in the Government Operations Surcharge Fund at the end
27 of each month must accrue to the General Fund.

28 4. Payment for infrastructure improvements to the Maine
29 Criminal Justice Information System and for operation of the
30 Judicial Department's computer system. Monthly, the Treasurer of
31 State shall make payments from the Government Operations
32 Surcharge Fund to the State Court Administrator and to the
33 Department of Public Safety. The amount of the total payments
34 made to fund the Maine Criminal Justice Information System must
35 equal 1/12 of the surcharges received by the Treasurer of State,
36 and the amount of the total payments made to fund the operations
37 of the Judicial Department's computer system must equal 1/12 of
38 the surcharges received by the Treasurer of State. The balance
39 remaining in the Government Operations Surcharge Fund at the end
40 of each month must accrue to the General Fund. This subsection
41 is repealed January 1, 2001.

42 Sec. 2. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 1995, c.
43 224, §1 and c. 356, §20, is repealed and the following enacted in
44 its place:

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

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- (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;
- (6) Theft, as defined in section 357, when the value of the services is \$2,000 or less, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (8) Negotiating a worthless instrument, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (9) A violation of a condition of probation when requested by an official of the Division of Probation and Parole;
- (10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;
- (11) Theft involving a detention under Title 17, section 3521;
- (12) Harassment, as set forth in section 506-A; or
- (13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 19, section 769, subsection 2; and Title 19, section 770, subsection 5; and

COMMITTEE AMENDMENT

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Sec. 3. 17-A MRSA §210-A is enacted to read:

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§210-A. Stalking

1. A person is guilty of stalking if:

A. The person intentionally or knowingly engages in a course of conduct directed at another specific person that would in fact cause a reasonable 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; and

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

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2 resides in the household or who within the prior 6 months
regularly resided in the household.

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

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

36 **Sec. 4. 19 MRSA §769, sub-§3** is enacted to read:

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

46 **Sec. 5. Allocation.** The following funds are allocated from
48 Other Special Revenue to carry out the purposes of this Act.

50

1996-97

JUDICIAL DEPARTMENT

2

**Judicial - Computer Criminal
Record System**

4

6

All Other

\$173,721

8

Provides for the allocation of funds for the
operation of the Judicial Department's
computer system.

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12

**JUDICIAL DEPARTMENT
TOTAL**

173,721

14

**PUBLIC SAFETY,
DEPARTMENT OF**

16

18

State Police

20

All Other

173,721

22

Provides for the allocation of funds to
maintain the Maine Criminal Justice
Information System.

24

26

**DEPARTMENT OF PUBLIC SAFETY
TOTAL**

173,721

28

30

TOTAL ALLOCATIONS

\$347,442'

32

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

34

FISCAL NOTE

36

1996-97

38

APPROPRIATIONS/ALLOCATIONS

40

Other Funds

\$347,442

42

REVENUES

44

Other Funds

\$347,442

46

48

The additional 2% surcharge on fines, forfeitures and
penalties collected by the Government Operations Surcharge Fund
will increase Other Special Revenue by \$347,442 in fiscal year
1996-97. The Judicial Department will require an Other Special

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2 Revenue allocation of \$173,721 in fiscal year 1996-97 to
authorize expenditures for the operation of the Judicial
4 Department's computer system. In addition, the Department of
Public Safety will require an Other Special Revenue allocation of
6 \$173,721 in fiscal year 1996-97 to maintain the Maine Criminal
Justice Information System.

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

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

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

32 **STATEMENT OF FACT**

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

- 38 1. It clarifies the definition of the crime of "stalking."
- 40 2. It specifies that 1/2 of the additional 2% surcharge on
42 fines, forfeitures and penalties must be paid to the Department
of Public Safety to be distributed pursuant to the Maine Criminal
44 Justice Information System.
- 46 3. It clarifies that 1/2 of the additional 2% surcharge on
48 fines, forfeitures and penalties must be paid to the State Court
Administrator for the purpose of funding the costs of operating
50 the Judicial Department's computer system.

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

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

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

16 7. It adds an allocation section and a fiscal note.
18