

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 526, L.D. 681, Bill, "An Act to Amend the Law Concerning Possession of Firearms by Persons Convicted in Other States"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Possession of Firearms by Prohibited Persons'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 15 MRSA c. 15 is amended by repealing the chapter headnote and enacting in its place the following:

CHAPTER 15

POSSESSION OF FIREARMS BY PROHIBITED PERSONS

Sec. 2. 15 MRSA §393, sub-§1, as amended by PL 1997, c. 334, §§1 and 2, is further amended to read:

1. Possession prohibited. A person may not own, possess or have under that person's control a firearm, unless that person has obtained a permit under this section, if that person:

~~A. Has been convicted of a crime, under the laws of the United States, this State or any other state, that is punishable by imprisonment for one year or more;~~

A-1. Has been convicted of committing or found not criminally responsible by reason of mental disease or defect of committing;

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

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

(3) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;

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

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

(a) A firearm against a person; or

(b) Any other dangerous weapon;

~~B. Has been convicted of a crime, under the laws of the United States, this State or any other state, that was committed with the use of a dangerous weapon or a firearm against a person, except for a violation of former Title 12, chapter 319, subchapter III;~~

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

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

~~(2) Under paragraph B, or~~

(3) Under paragraph A-1, subparagraph (5); or

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

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

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

For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of mental disease or defect upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of mental disease or defect, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

Sec. 3. 15 MRSA §393, sub-§1-A, as enacted by PL 1993, c. 368, §2, is amended to read:

1-A. Limited prohibition for nonviolent juvenile offenses.
A person who has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under subsection 1, paragraph A-A-1 but is not an adjudication under subsection 1, paragraph C may not own or have in that person's possession or control a firearm for a period of 3 years following completion of any

disposition imposed or until that person reaches 18 years of age,
whichever is later.

Sec. 4. 15 MRSA §393, sub-§7, as enacted by PL 1977, c. 225,
§2, is repealed and the following enacted in its place:

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

A. "Firearm" has the same meaning as in Title 17-A, section
2, subsection 12-A.

B. "Not criminally responsible by reason of mental disease
or defect" has the same meaning as used in Title 17-A,
section 39 and includes the former finding in this State
under former provisions of section 103 of "not guilty by
reason of mental disease or defect excluding responsibility"
as well as any comparable finding under the laws of the
United States or any other state.

C. "State" means the State of Maine and "state" means any
other state of the United States and includes the District
of Columbia, the Commonwealth of Puerto Rico and the
possessions of the United States.

D. "Use of a dangerous weapon" has the same meaning as in
Title 17-A, section 2, subsection 9, paragraph A.

Sec. 5. 15 MRSA §393, sub-§8, as repealed and replaced by PL
1997, c. 683, Pt. B, §8, is amended to read:

8. Penalty. A violation of subsection 1, paragraph A,--B
A-1 or C is a Class C crime. A violation of subsection 1,
paragraph D is a Class D crime. A violation of subsection 1-A by
a person at least 18 years of age is a Class C crime.

For the purposes of this subsection, a person is deemed to have
been convicted upon the acceptance of a plea of guilty or nolo
contendere or a verdict or finding of guilty, or the equivalent
in a juvenile case, by a court of competent jurisdiction.

Sec. 6. 25 MRSA §2003, sub-§2, ¶A-1, as enacted by PL 1993, c.
368, §6, is amended to read:

A-1. That the applicant understands that an affirmative
answer to the question in subsection 1, paragraph D,
subparagraph (5), division (c) or (c-1) is cause for refusal
unless the applicant is nonetheless authorized to possess a
firearm under Title 15, section 393,--subsectien-1-A;

2 **Sec. 7. 25 MRSA §2003, sub-§2, ¶B,** as repealed and replaced by
PL 1989, c. 917, §10, is amended to read:

4 B. That the applicant understands that an affirmative
6 answer to one or more of the questions in subsection 1,
paragraph D, subparagraph (5), divisions ~~(e)~~ (d) to (k) is
cause for refusal;'

8
10 Further amend the bill by inserting at the end before the
summary the following:

12
14 **·FISCAL NOTE**

16 The additional enforcement costs can be absorbed by the
Department of Public Safety utilizing existing budgeted
18 resources. The additional costs associated with these changes to
firearm possession laws can be absorbed by the Department of the
Attorney General utilizing existing budgeted resources.'

20
22 **SUMMARY**

24 This amendment replaces the bill, changes the title of the
bill and does the following.

26 1. It amends the headnote of the Maine Revised Statutes,
28 Title 15, chapter 15 to more accurately reflect the intent of the
law.

30 2. In order to address potential inequities that may result
32 from the differences in other states' laws as compared to Maine's
laws, it clarifies language regarding who is prohibited from
34 possessing a firearm to include persons convicted of or found not
criminally responsible by reason of mental disease or defect of
36 committing the following: a crime in this State that is
punishable by imprisonment for one year or more; a crime under
38 the laws of the United States that is punishable by imprisonment
for more than one year; a crime under the laws of any other state
40 that is punishable by imprisonment for more than one year, except
that a crime punishable by imprisonment for more than one year
42 does not include any state misdemeanor that is punishable by a
term of imprisonment of 2 years or less; a crime under the laws
44 of any other state that is not punishable by more than one year
of imprisonment but is elementally substantially similar to a
46 crime in this State that is punishable by imprisonment for one
year or more, thus ensuring that if another state has determined
48 that a particular offense is not serious but the Maine
Legislature has determined that an elementally substantially
50 similar offense is murder or a Class A, B or C crime if committed
in Maine, the person who committed the offense would be

prohibited from possession; or a crime under the laws of the United States, this State or any other state or the Passamaquoddy Tribe or Penobscot Nation that was committed using a firearm against a person or using any other dangerous weapon.

3. It repeals an improper reference to violations of former Title 12, chapter 319, subchapter III as exceptions to the possession prohibition; this chapter has been repealed.

4. It defines "not criminally responsible by reason of mental disease or defect," "State," "state" and "use of a dangerous weapon" for purposes of Title 15, section 393.

5. It clarifies that as a precondition to disqualification for possession of a firearm under Title 15, section 393, subsection 1, paragraph A-1, subparagraph (5) the use of a firearm against a person or the use of a dangerous weapon must be pled in the charging instrument and proven to the fact finder rather than simply being part of the underlying factual matrix of the crime as committed.

6. It amends cross-references in the concealed firearms permit law to be consistent with the proposed changes in this amendment.

7. It adds a fiscal note.