

MAINE STATE LEGISLATURE

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L.D. 2163

DATE: 3-7-02

(Filing No. H-883)

MINORITY
CRIMINAL JUSTICE

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

COMMITTEE AMENDMENT "A" to H.P. 1658, L.D. 2163, Bill, "An Act to Implement the Recommendations of the Commission to Study Domestic Violence"

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

PART A

Sec. A-1. 15 MRSA §1023, sub-§4, as enacted by PL 1987, c. 758, §20, is repealed and the following enacted in its place:

4. Limitations on authority. A bail commissioner may not:

A. Set preconviction bail for a defendant confined in jail or held under arrest by virtue of any order issued by a court in which bail has not been authorized;

B. Change bail set by a court; or

C. In a case involving domestic violence, set preconviction bail for a defendant before making a good faith effort to obtain from the arresting officer, the district attorney, a jail employee or other law enforcement officer:

(1) A brief history of the alleged abuser;

(2) The relationship of the parties;

(3) The name, address, phone number and date of birth of the victim; and

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(4) Existing conditions of protection from abuse orders, conditions of bail and conditions of probation.

Sec. A-2. 15 MRSA §1023, sub-§7, as amended by PL 1989, c. 147, §1, is further amended to read:

7. Mandatory training. As a condition of appointment and continued service, a bail commissioner must successfully complete a bail training program, as prescribed and scheduled by the Chief Judge of the District Court, not later than one-year 180 days following appointment, unless the Chief Judge of the District Court determines that the bail commissioner is qualified to carry out the responsibilities of a bail commissioner based on equivalent experience or training. The Maine Criminal Justice Academy shall provide assistance to the Chief Judge of the District Court in establishing an appropriate training program for bail commissioners. The program shall include instruction on the provisions of this chapter, the relevant constitutional provisions on bail and any other matters pertinent to bail that the Chief Judge of the District Court considers appropriate and necessary. The Chief Judge of the District Court ~~may~~ shall establish a regional continuing education program for bail commissioners that includes regular meetings of the bail commissioners and members of the judiciary and, at a minimum, training in accepted practices in domestic violence cases and best practices concerning uniform bail conditions.

PART B

Sec. B-1. 25 MRSA §2803-B, sub-§§1, 2 and 3, as enacted by PL 1993, c. 744, §5, are amended to read:

1. Law enforcement policies. All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

- A. Use of force;
- B. Barricaded persons and hostage situations;
- C. Persons exhibiting deviant behavior;
- D. Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

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2 (2) A risk assessment for the defendant that includes
4 the defendant's previous history, the parties'
6 relationship, the name of the victim and a process to
relay this information to a bail commissioner before a
bail determination is made; and

8 (3) A process for the safe retrieval of personal
10 property belonging to the victim or the defendant that
12 includes identification of a neutral location for
retrieval, the presence of at least one law enforcement
officer during the retrieval and at least 24 hours
notice to each party prior to the retrieval;

- 14 E. Hate or bias crimes;
- 16 F. Police pursuits;
- 18 G. Citizen complaints of police misconduct; and
- 20 H. Criminal conduct engaged in by law enforcement officers.

22 The chief administrative officer of each agency shall certify to
24 the board that attempts are were made to obtain public comment
during the formulation of policies.

26 **2. Minimum policy standards.** The board shall establish
28 minimum standards for each law enforcement policy no later than
30 June 1, 1995, except that policies for expanded requirements for
domestic violence under subsection 1, paragraph D, subparagraphs
(1) to (3) may be established no later than January 1, 2003.

32 **3. Agency compliance.** The chief administrative officer of
34 each law enforcement agency shall certify to the board no later
36 than January 1, 1996 that the agency has adopted written policies
38 pursuant to subsection 2, except that certification to the board
for expanded policies for domestic violence under subsection 1,
paragraph D, subparagraphs (1) to (3) must be made to the board
no later than June 1, 2003. This certification must be
40 accompanied by copies of the agency policies. The chief
42 administrative officer of each agency shall certify to the board
44 no later than June 1, 1996 that the agency has provided
orientation and training for its members with respect to the
policies, except that certification for orientation and training
with respect to expanded policies for domestic violence under
subsection 1, paragraph D must be made to the board no later than
January 1, 2004.

50 **PART C**

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2 **Sec. C-1. 30-A MRSA §290** is enacted to read:

4 **§290. Investigators; appointments and removal**

6 The district attorney may appoint in one or more counties of
8 the prosecutorial district, subject to the requirements of
 section 501, full-time or part-time investigators, whose duties
10 are to enforce the criminal laws in the county.

12 **1. Qualifications for appointment.** To be eligible for
 appointment, an investigator must be a law enforcement officer
14 who has met the requirements of Title 25, section 2804-C and is
 certified as a full-time law enforcement officer.

16 **2. Powers.** An investigator has the statutory powers of a
 deputy sheriff in the county in which the investigator is
18 appointed. An investigator's powers may include those under
 sections 404 and 405.

22 **PART D**

24 **Sec. D-1. 34-A MRSA §1214, sub-§5** is enacted to read:

26 **5. Report regarding batterers intervention programs.**
28 Beginning January 2003 and annually thereafter, the department
 shall report to the joint standing committee of the Legislature
30 having jurisdiction over criminal justice matters regarding the
 work of batterers intervention programs. The report must include
32 information regarding: meeting program benchmarks and goals,
 developing and implementing new programs, measuring effectiveness
34 of existing programs and communicating and coordinating efforts
 with providers of substance abuse services, literacy support and
36 other services with whom batterers may need to work in order to
 participate meaningfully in a batterers intervention program.

38 **PART E**

40 **Sec. E-1. Commission established.** The Commission to Study
42 Domestic Violence, referred to in this Part as the "commission,"
 is established.

44 **Sec. E-2. Commission membership.** The commission consists of
46 the members who served on the Commission to Study Domestic
 Violence established pursuant to Resolve 1999, chapter 126 as of
48 that commission's final meeting. If any of those members can not
 serve, the person responsible for appointing that member pursuant
50 to Resolve 1999, chapter 126 shall appoint a new member.

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Sec. E-3. Chairs. The chairs of the Commission to Study Domestic Violence pursuant to Resolve 1999, chapter 126 shall continue to serve as chairs, unless unable to do so. If new chairs must be appointed, the President of the Senate shall appoint the Senate chair of the commission and the Speaker of the House shall appoint the House chair of the commission.

Sec. E-4. Appointments; meetings. All appointments must be made no later than 21 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chairs of the commission shall call and convene the first meeting of the commission no later than 30 days after all appointments have been made. The commission may hold up to 6 meetings.

Sec. E-5. Duties. The commission shall invite the participation of experts and interested parties, gather information and request necessary data from public and private entities in order to review the following issues and develop recommendations and implementing legislation if appropriate:

1. Predominant aggressors;
2. Models of supervised visitation;
3. Conflicts created by coexisting orders and conditions, including mutual orders for protection from abuse, visitation or other family law issues, probation conditions and bail conditions;
4. Models of uniform domestic violence incident reports and other standard reporting tools for law enforcement officers;
5. The inconsistency in the definitions of "family or household members" in the statutes;
6. Confidentiality programs that allow access to public records without disclosing the location of domestic violence victims;
7. Whether Maine Rules of Criminal Procedure, Rule 4 needs clarification or amendment to authorize courts to set conditions of bail on warrants;
8. The following elements of protection from abuse proceedings:
 - A. Legal representation;

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- 2 B. Additional courthouse security and victim safety in
courthouses;
- 4 C. Space for victims to fill out protection from abuse
6 paperwork;
- 8 D. Twenty-four-hour availability of protection from abuse
orders;
- 10 E. Service issues;
- 12 F. Conditions placed on amendment or dismissal of
14 protection from abuse orders; for example, whether courts
should require a plaintiff to speak with a domestic violence
16 advocate or legal advocate before the court will amend or
dismiss an order; and
- 18 G. Giving the court authority to access additional
20 information about children, including the use of limited
hearsay and guardians ad litem;
- 22 9. Educational components of training and continuing
24 education for bail commissioners;
- 26 10. Conditions of bail that bail commissioners may order;
- 28 11. The status and progress of communications across the
criminal justice system, including a review of technology and
30 computerization of criminal history records, protection orders
and bail conditions;
- 32 12. Application of the statute authorizing a 2-year period
34 of probation for persons convicted of crimes involving domestic
violence since the case Charles C. Apprendi, Jr., Petitioner v.
36 New Jersey, 530 U.S. 466 (2000); and
- 38 13. Workplace initiatives for domestic violence victims.

40 **Sec. E-6. Staff assistance.** Upon approval of the Legislative
Council, the Office of Policy and Legal Analysis shall provide
42 necessary staffing services to the commission.

44 **Sec. E-7. Compensation.** The members of the commission who
are Legislators are entitled to the legislative per diem, as
46 defined in the Maine Revised Statutes, Title 3, section 2, and
reimbursement for necessary expenses incurred for their
48 attendance at authorized meetings of the commission. Other
members of the commission who are not otherwise compensated by
50 their employers or other entities that they represent are

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entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings.

Sec. E-8. Report. The commission shall submit its report, together with any necessary implementing legislation, to the First Regular Session of the 121st Legislature no later than November 6, 2002. The commission is authorized to introduce legislation related to its report to the First Regular Session of the 121st Legislature. If the commission requires a limited extension of time to conclude its work, it may apply to the Legislative Council, which may grant the extension.

Sec. E-9. Budget. The chairs of the commission, with assistance from the commission staff, shall administer the commission's budget. Within 10 days after its first meeting, the commission shall present a work plan and proposed budget to the Legislative Council for approval. The commission may not incur expenses that would result in the commission exceeding its approved budget. Upon request from the commission, the Executive Director of the Legislative Council shall promptly provide the commission chairs and staff with a status report on the commission's budget, expenditures incurred and paid and available funds.

PART F

Sec. F-1. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Domestic Violence Investigative Services

Initiative: Provides funds to be distributed as grants at the beginning of each fiscal year in equal lump sum amounts to each prosecutorial district to allow each District Attorney's office to purchase investigative services for domestic violence matters in accordance with the purchasing procedures of its respective county.

General Fund	2001-02	2002-03
All Other	\$0	\$400,000

ATTORNEY GENERAL, DEPARTMENT OF THE DEPARTMENT TOTALS

	2001-02	2002-03
GENERAL FUND	\$0	\$400,000
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$400,000

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JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District

Initiative: Provides funds to establish a regional continuing education program for all bail commissioners.

General Fund	2001-02	2002-03
All Other	\$0	\$20,000

JUDICIAL DEPARTMENT

DEPARTMENT TOTALS

	2001-02	2002-03
GENERAL FUND	\$0	\$20,000
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$20,000

LEGISLATURE

Commission to Study Domestic Violence

Initiative: Provides funds for the per diem and expenses of legislative members and the reimbursement of necessary expenses of other members of the Commission to Study Domestic Violence and to print the required report.

General Fund	2001-02	2002-03
Personal Services	\$0	\$1,650
All Other	0	4,400
General Fund Total	\$0	\$6,050

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DEPARTMENT TOTALS

	2001-02	2002-03
GENERAL FUND	\$0	\$6,050
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$6,050

SECTION TOTALS

	2001-02	2002-03
GENERAL FUND	\$0	\$426,050
SECTION TOTAL - ALL FUNDS	\$0	\$426,050'

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

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FISCAL NOTE

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2001-02 2002-03

APPROPRIATIONS/ALLOCATIONS

General Fund	\$0	\$426,050
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This bill includes General Fund appropriations totalling \$426,050 in fiscal year 2002-03. It provides \$400,000 to the Department of the Attorney General to pass through a \$50,000 annual grant to each prosecutorial district to be used to purchase investigative services for domestic violence efforts.

It also includes a General Fund appropriation of \$20,000 for the Judicial Department to establish a regional continuing education program for bail commissioners. Beginning in fiscal year 2003-04, the annual cost is estimated to be \$12,000.

The Legislature will require an additional General Fund appropriation of \$6,050 in fiscal year 2002-03 for the per diem and expenses of legislative members and the expenses of other members of the Commission to Study Domestic Violence and to print the required report.

The additional costs associated with providing staffing assistance to the commission during the interim between legislative sessions can be absorbed by the Legislature utilizing existing budgeted resources. If an extension of the reporting deadline is granted and the commission requires staffing assistance during the legislative session, the Legislature may require an additional General Fund appropriation to contract for staff services.

The Department of Public Safety will incur some minor additional costs to revise certain written policies pertaining to domestic violence. These costs can be absorbed within the department's existing budgeted resources.

The additional costs associated with reporting requirements can be absorbed by the Department of Corrections utilizing existing budgeted resources.'

SUMMARY

This amendment is the minority report of the Joint Standing Committee on Criminal Justice. The amendment implements the same recommendations of the Commission to Study Domestic Violence,

2 pursuant to Resolve 1999, chapter 126, as the majority report,
3 except that this report does not propose amending the law to give
4 the court authority to prohibit the possession of firearms and
5 other dangerous weapons as a condition of a temporary protection
6 order if the court determines that the defendant has a history of
7 violence. The amendment does the following.

8 1. It amends the law regarding bail commissioners to
9 specify that, in a case involving domestic violence, a bail
10 commissioner may not set preconviction bail for a defendant
11 before the bail commissioner has made a good faith effort to
12 obtain from the arresting officer, the district attorney, a jail
13 employee or other law enforcement officer, the following: a brief
14 history of the alleged abuser; the relationship of the parties;
15 the name, address, phone number and date of birth of the victim;
16 and existing conditions of protection from abuse orders,
17 conditions of bail and conditions of probation.

18 2. It requires that bail commissioners receive mandatory
19 training not later than 180 days following appointment, unless
20 the Chief Judge of the District Court determines that the bail
21 commissioner is qualified to carry out the responsibilities of a
22 bail commissioner based on equivalent experience or training.

23 3. It requires the Chief Judge of the District Court to
24 establish a regional continuing education program for bail
25 commissioners that includes regular meetings of the bail
26 commissioners and members of the judiciary and, at a minimum,
27 training in accepted practices in domestic violence cases and
28 best practices concerning uniform bail conditions.

29 4. It amends the requirements of law enforcement agencies
30 to develop certain policies by specifying that policies regarding
31 domestic violence must include, at a minimum, the following: a
32 process to ensure that victims receive notification of the
33 defendant's release from jail; a risk assessment for a defendant
34 that includes the defendant's previous history, the parties'
35 relationship, the name of the victim and a process to relay this
36 information to a bail commissioner before a bail determination is
37 made; and a process for the safe retrieval of personal property
38 belonging to the victim or the defendant that includes
39 identification of a neutral location for retrieval, the presence
40 of at least one law enforcement officer during the retrieval and
41 at least 24 hours notice to each party prior to the retrieval.

42 5. It enacts language that authorizes district attorneys to
43 appoint law enforcement officers as domestic violence
44 investigators. Investigators must meet the requirements of the
45 Maine Revised Statutes, Title 25, section 2804-C and be certified

as full-time law enforcement officers. Investigators have the same statutory powers as deputy sheriffs.

6. It requires the Department of Corrections to report annually to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the work of batterers intervention programs.

7. It reestablishes the Commission to Study Domestic Violence, with the same members as the study commission established pursuant to Resolve 1999, chapter 126. This commission is charged with inviting the participation of experts and interested parties and gathering information and requesting necessary data from public and private entities in order to review the following issues and develop recommendations and implementing legislation if appropriate: predominant aggressors; models of supervised visitation; conflicts created by coexisting orders and conditions, including mutual orders; models of uniform domestic violence incident reports and other standard reporting tools for law enforcement officers; the inconsistency in the definitions of "family or household members" in the statutes; confidentiality programs that allow access to public records without disclosing the location of domestic violence victims; whether Maine Rules of Criminal Procedure, Rule 4 needs clarification or amendment to authorize courts to set conditions of bail on warrants; a number of elements of the protection from abuse process; educational components of bail commissioner training and continuing education; conditions of bail that bail commissioners can order; and the status and progress of technology and computerization of criminal history records, protection orders and bail conditions. The commission shall report its recommendations and legislation to the Legislature by November 6, 2002.

8. It appropriates General Fund money as equal lump sum grants at the beginning of each fiscal year to each district attorney to contract with a law enforcement officer to fill at least one dedicated investigator position in each prosecutorial district to investigate and provide support in cases of crimes involving domestic violence.

9. It appropriates General Fund money to pay for the expenses of the Commission to Study Domestic Violence.

10. It adds a fiscal note to the bill.