

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1844

H.P. 1370

House of Representatives, February 5, 2004

**An Act To Amend the Maine Criminal Code and Motor Vehicle
Laws as Recommended by the Criminal Law Advisory Commission**

Reported by Representative BLANCHETTE of Bangor for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, chapter 55.

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 15 MRSA §3314, sub-§6**, as corrected by RR 2001, c. 2,
4 Pt. A, §24 and affected by §25, is amended to read:

6 **6. Forfeiture of firearms.** As part of every disposition in
8 every proceeding under this code, every firearm that constitutes
10 the basis for an adjudication for a juvenile crime that, if
12 committed by an adult, would constitute a violation of section
14 393; Title 17-A, section 1105-A, subsection 1, paragraph C-1;
16 Title 17-A, section 1105-B, subsection 1, paragraph C; Title
18 17-A, section 1105-C, subsection 1, paragraph C-1; or Title 17-A,
20 section 1105-D, subsection 1, paragraph B-1 and every firearm
22 used by the juvenile or any accomplice during the course of
24 conduct for which the juvenile has been adjudicated to have
26 committed a juvenile crime that would have been forfeited
pursuant to Title 17-A, section 1158 1158-A if the criminal
conduct had been committed by an adult must be forfeited to the
State and the juvenile court shall so order unless another person
satisfies the court prior to the dispositional hearing and by a
preponderance of the evidence that the other person had a right
to possess the firearm, to the exclusion of the juvenile, at the
time of the conduct that constitutes the juvenile crime. Rules
adopted by the Attorney General that govern the disposition of
firearms forfeited pursuant to Title 17-A, section 1158 1158-A
govern forfeitures under this subsection.

28 **Sec. 2. 17-A MRSA §15-A, sub-§§1, 2 and 3**, as amended by PL
30 1991, c. 459, §4, are further amended to read:

32 **1.** A law enforcement officer who has probable cause to
34 believe a crime has been or is being committed by a person may
36 issue or have delivered a written summons to that person
38 directing that person to appear in the District Court to answer
40 the allegation that the person has committed the crime. The
42 summons must include the signature of the officer, a brief
44 description of the alleged crime, the time and place of the
46 alleged crime and the time, place and date the person is to
48 appear in court. The form used must be the Uniform Summons and
Complaint,--except--that,--if--the--agency--by--whom--the--officer--is
employed--has--en--May--1,--1991--current--stocks--of--forms--that--the
agency--is--authorized--to--use,--the--agency--may--permit--officers--to
use--those--forms--until--those--stocks--are--depleted. A person to
whom a summons is issued or delivered must give a written promise
to appear. If the person refuses to sign the summons after
having been ordered to do so by a law enforcement officer, the
person commits a Class E crime. As soon as practicable after
service of the summons, the officer shall cause a copy of the
summons to be filed with the court.

2 2. Any person who a law enforcement officer has probable
3 cause to believe has committed or is committing a crime other
4 than one listed under section 15, subsection 1, paragraph A, and
5 to whom a law enforcement officer is authorized to deliver a
6 summons pursuant to subsection 1, who intentionally fails or
7 refuses to provide to that officer reasonably credible evidence
8 of that person's correct name and, address or date of birth
9 commits a Class E crime, provided that if the person persists in
10 the failure or refusal after having been informed by the officer
11 of the provisions of this subsection. If that person furnishes
12 the officer evidence of the person's correct name and, address
13 and date of birth and the evidence does not appear to be
14 reasonably credible, the officer shall attempt to verify the
15 evidence as quickly as is reasonably possible. During the period
16 the verification is being attempted, the officer may require the
17 person to remain in the officer's presence for a period not to
18 exceed 2 hours. During this period, if the officer reasonably
19 believes that the officer's safety or the safety of others
20 present requires, the officer may search for any dangerous weapon
21 by an external patting of that person's outer clothing. If in
22 the course of the search the officer feels an object that the
23 officer reasonably believes to be a dangerous weapon, the officer
24 may take such action as is necessary to examine the object, but
25 may take permanent possession of the object only if it is subject
26 to forfeiture. The requirement that the person remain in the
27 presence of the officer does not constitute an arrest. After
28 informing that person of the provisions of this subsection, the
29 officer may arrest the person either if the person intentionally
30 refuses to furnish any evidence of that person's correct name,
31 and address or date of birth or if, after attempting to verify
32 the evidence as provided for in this subsection, the officer has
33 probable cause to believe that the person has intentionally
34 failed to provide reasonably credible evidence of the person's
correct name and, address or date of birth.

36 3. If, at any time subsequent to an arrest made pursuant to
37 subsection 2, it appears that the evidence of the person's
38 correct name and, address and date of birth was accurate, the
39 person must be released from custody and any record of that
40 custody must show that the person was released for that reason.
41 If, upon trial for violating subsection 2, a person is acquitted
42 on the ground that the evidence of the person's correct name and,
43 address and date of birth was accurate, the record of acquittal
44 must show that that was the ground.

46 **Sec. 3. 17-A MRSA §17, sub-§1,** as amended by PL 1995, c. 65,
47 Pt. A, §56 and affected by §153 and Pt. C, §15, is further
48 amended to read:

1. A law enforcement officer who has probable cause to
2 believe that a civil violation has been committed by a person
4 must issue or have delivered a written summons to that person
6 directing the person to appear in the District Court to answer
8 the allegation that the person has committed the violation. The
10 summons must include the signature of the officer, a brief
12 description of the alleged violation, the time and place of the
14 alleged violation and the time, place and date the person is to
16 appear in court. The form used must be the Violation Summons and
18 Complaint, as prescribed in Title 29-A, section 2601, for traffic
20 infractions and the Uniform Summons and Complaint for other civil
22 violations,~~--except--that--if--the--agency--by--whom--the--officer--is~~
~~employed--has--on--May--1--1991--current--stocks--of--forms--that--the~~
~~agency--is--authorized--to--use--the--agency--may--permit--officers--to~~
~~use--those--forms--in--place--of--the--Uniform--Summons--and--Complaint~~
~~until--those--stocks--are--depleted.~~ A person to whom a summons is
24 issued or delivered must give a written promise to appear. If
26 the person refuses to sign the summons after having been ordered
28 to do so by a law enforcement officer, the person commits a Class
30 E crime. The law enforcement officer may not order a person to
32 sign the summons for a civil violation unless the civil violation
34 is an offense defined in Title 12; Title 23, section 1980; Title
36 28-A, section 2052; or Title 29-A.

Every law enforcement officer issuing a Violation Summons and
26 Complaint charging the commission of a traffic infraction shall
28 file the original of the Violation Summons and Complaint with the
30 violations bureau within 5 days of the issuance of that Violation
32 Summons and Complaint. Every law enforcement officer issuing a
34 Uniform Summons and Complaint that charges the commission of an
36 offense shall file the original of the Uniform Summons and
Complaint with the District Court having jurisdiction over the
offense or in such other location as instructed by the Chief
Judge of the District Court without undue delay and, in any
event, within 5 days after the issuance of the Uniform Summons
and Complaint.

Sec. 4. 17-A MRSA §17, sub-§§2 and 3, as amended by PL 1991, c.
459, §5, are further amended to read:

2. Any person to whom a law enforcement officer is
42 authorized to issue or deliver a summons pursuant to subsection 1
44 who intentionally fails or refuses to provide the officer
46 reasonably credible evidence of the person's correct name and
48 address or date of birth commits a Class E crime, provided--that
50 if the person persists in that failure or refusal after having
been informed by the officer of the provisions of this
subsection. If the person furnishes the officer evidence of that
person's correct name and, address and date of birth and the
evidence does not appear to be reasonably credible, the officer

2 shall attempt to verify the evidence as quickly as is reasonably
4 possible. During the period that verification is being
6 attempted, the officer may require the person to remain in the
8 officer's presence for a period not to exceed 2 hours. During
10 this period, if the officer reasonably believes that the
12 officer's safety or the safety of others present requires, the
14 officer may search for any dangerous weapon by an external
patting of the person's outer clothing. If in the course of the
search the officer feels an object that the officer reasonably
believes to be a dangerous weapon, the officer may take such
action as is necessary to examine the object, but may take
permanent possession of the object only if it is subject to
forfeiture. The requirement that the person remain in the
presence of the officer does not constitute an arrest.

16 After informing the person of the provisions of this subsection,
18 the officer may arrest the person either if the person
20 intentionally refuses to furnish any evidence of that person's
correct name and, address or date of birth or if, after
attempting to verify the evidence as provided for in this
22 subsection, the officer has probable cause to believe that the
person has intentionally failed to provide reasonably credible
evidence of the person's correct name and, address or date of
birth.

26 3. If, at any time subsequent to an arrest made pursuant to
28 subsection 2, it appears that the evidence of the person's
correct name and, address and date of birth was accurate, the
30 person must be released from custody and any record of that
custody must show that the person was released for that reason.
If, upon trial for violating subsection 2, a person is acquitted
32 on the ground that the evidence of the person's correct name and,
address and date of birth was accurate, the record of acquittal
34 must show that that was the ground.

36 **Sec. 5. 17-A MRSA §751, sub-§1**, as amended by PL 1997, c. 351,
38 §2, is further amended to read:

40 1. A person is guilty of obstructing government
42 administration if the person uses intentionally interferes by
force, violence or intimidation or engages-in-any-criminal-act
with-the-intent-to-interfere by any physical act with a public
servant performing or purporting to perform an official function.

44 **Sec. 6. 17-A MRSA §1158**, as amended by PL 2003, c. 143, §7,
46 is repealed.

48 **Sec. 7. 17-A MRSA §1158-A** is enacted to read:

50 **§1158-A. Forfeiture of firearms**

2 1. As part of every sentence imposed, except as provided in
3 subsection 2, a court shall order that a firearm must be
4 forfeited to the State if:

6 A. That firearm constitutes the basis for conviction under:

8 (1) Title 15, section 393;

10 (2) Section 1105-A, subsection 1, paragraph C-1;

12 (3) Section 1105-B, subsection 1, paragraph C;

14 (4) Section 1105-C, subsection 1, paragraph C-1; or

16 (5) Section 1105-D, subsection 1, paragraph B-1; or

18 B. The State pleads and proves that the firearm is used by
19 the defendant or an accomplice during the commission of any
20 murder or Class A, Class B or Class C crime or any Class D
21 crime defined in chapter 9, 11 or 13.

22 2. A court may not order the forfeiture of a firearm
23 otherwise qualifying for forfeiture under subsection 1 if another
24 person can satisfy the court prior to the imposition of the
25 defendant's sentence and by a preponderance of the evidence that:

28 A. Other than in the context of either subsection 1,
29 paragraph A, subparagraph (1) or subsection 1, paragraph B
30 relative to murder or any other unlawful homicide crime in
31 which the firearm used is a handgun, the other person, at
32 the time of the commission of the crime, had a right to
33 possess the firearm to the exclusion of the defendant;

34 B. In the context of subsection 1, paragraph A,
35 subparagraph (1), the other person, at the time of the
36 commission of the crime, had a right to possess the firearm
37 to the exclusion of the defendant and the other person
38 either did not know or should not have known that the
39 defendant was a prohibited person under Title 15, section
40 393 or, even if the other person did know or should have
41 known, nonetheless did not intentionally, knowingly or
42 recklessly allow the defendant to possess or have under the
43 defendant's control the firearm; or

46 C. In the context of paragraph B relating to murder or any
47 other unlawful homicide crime in which the firearm used is a
48 handgun, the other person, at the time of the commission of
49 the crime, was the rightful owner from whom the handgun had

2 been stolen and the other person was not a principal or
accomplice in the commission of the crime.

4 3. The Attorney General shall adopt rules governing the
disposition to state, county and municipal agencies of firearms
forfeited under this section. A handgun not excepted under
subsection 2, paragraph C must be destroyed by the State.

8 4. As used in this section, "handgun" means a firearm,
10 including a pistol or revolver, that has a short stock and is
designed to be held and fired by the use of a single hand.

12 **Sec. 8. 17-A MRSA §1202, sub-§1-B**, as amended by PL 2003, c.
14 154, §1, is repealed and the following enacted in its place:

16 1-B. Notwithstanding subsection 1, if the State pleads and
18 proves that the enumerated Class D or Class E crime was committed
20 by the person against a family or household member, and if the
22 court orders the person to complete a certified batterers'
24 intervention program as defined in Title 19-A, section 4014, the
26 person may be placed on probation for a period not to exceed 2
28 years, except that the term of probation must be terminated by
30 the court when the probationer has served at least one year of
32 probation, has completed the certified batterers' intervention
34 program and has met all other conditions of probation.

26 A. As used in this subsection, the following definitions
28 apply.

30 (1) "Enumerated Class D or Class E crime" means any
32 Class D crime in chapter 9, any Class D or Class E
34 crime in chapter 11, the Class D crimes described in
 section 506-B and the Class D crimes described in
 sections 554, 555 and 758.

36 (2) "Family or household member" has the same meaning
38 as in Title 19-A, section 4002, subsection 4.

40 B. Termination under this subsection requires a judicial
42 finding that the probationer has served at least one year of
44 probation, has successfully completed a certified batterers'
 intervention program and has met all other conditions of
 probation.

46 **Sec. 9. 17-A MRSA §1205-C, sub-§6**, as enacted by PL 1999, c.
48 246, §3, is amended to read:

48 6. Failure to comply with the time limits set forth in this
 section is not grounds for dismissal of a motion for probation

2 revocation but ~~is~~ may be grounds for the probationer's release on
personal recognizance pending further proceedings.

4 **Sec. 10. 17-A MRSA §1252, sub-§2, ¶A,** as amended by PL 1995,
c. 473, §1, is further amended to read:

6 A. In the case of a Class A crime, the court shall set a
8 definite period not to exceed 40 ~~30~~ years.---~~The court may~~
10 consider a serious criminal history of the defendant and
12 impose a maximum period of incarceration in excess of 20
years based on either the nature and seriousness of the
14 crime alone or on the nature and seriousness of the crime
coupled with the serious criminal history of the defendant;

16 **Sec. 11. 25 MRSA §3503-A,** as amended by PL 1999, c. 47, §1,
is further amended to read:

18 **§3503-A. Disposal of firearms and ammunition**

20 Notwithstanding any other provision of this chapter, a
22 police department or other law enforcement agency retaining
24 firearms and ammunition covered by this chapter, Title 15,
section 3314 or chapter 517, or Title 17-A, section ~~1158~~ 1158-A
26 may auction the firearms to federally licensed firearms dealers
purposes or destroy the firearms and ammunition.

28 **Sec. 12. 29-A MRSA §105, sub-§4,** as amended by PL 1997, c.
653, §5, is further amended to read:

30 **4. Violation.** A person is guilty of a Class E crime if a
32 law enforcement officer has probable cause to believe the person
34 violated or is violating this Title and the person intentionally
fails or refuses upon request to give the person's correct name,
address or date of birth to a law enforcement officer.

38 **SUMMARY**

40 This bill does the following.

42 The bill adds "date of birth" to the information that must
44 be provided to a law enforcement officer upon request by the
46 person to whom a summons is issued or delivered under either the
48 Maine Revised Statutes, Title 17-A, section 15-A or 17.
50 Currently, the information required of the person is limited to
name and address. Date of birth is an important aid in properly
identifying the person being summonsed and is currently required
in Title 29-A, section 105, subsection 4. The bill also adds the
word "correct" relative to the information to be supplied by the

2 person. The bill also strikes an exception relative to use of
nonconforming forms that no longer is relevant.

4 The bill addresses a defect in the statute prohibiting
6 obstruction of government administration revealed by the recent
8 case of State v. Matson, 2003 ME 34, 818 A.2d 213. In Matson,
10 the defendant had been convicted under the statute for physically
interfering with the arrest of another person. Because the
physical interference, intentionally standing in the way and
refusing to move, was held to constitute something less than
"force, violence or intimidation," the conviction was reversed.
12

14 The focus of the crime is intentional physical interference
16 with an official function, not "intimidation" of an officer.
Harassing speech alone is not sufficient, but when it is
18 accompanied by a physical act that actually interferes with an
official function, the further requirement of "intimidation" is
unnecessary.

20 The bill repeals Title 17-A, section 1158 and replaces it
with section 1158-A, which differs in the following ways.
22

24 1. It makes technical drafting changes to clarify the law.
26 2. It clarifies that forfeiture of a firearm under certain
28 circumstances is conditioned on the State's both alleging
30 that the firearm was used by the defendant or an accomplice
during the commission of the crime in the indictment or
information and proving that allegation to the fact finder
beyond a reasonable doubt.

32 3. It clarifies when a court may not order as part of the
34 sentence the forfeiture of a firearm otherwise qualifying
36 for forfeiture. Access to the exception is available only
38 to a person other than the defendant. The exception must be
40 established by the other person at a point in time prior to
the actual imposition of the defendant's sentence, and the
burden imposed on the other person is to satisfy the court
of the exception by a preponderance of the evidence.

42 The bill also addresses forfeiture of firearms other than in
44 the context of a conviction under possession of a firearm by a
46 prohibited person or in the context of a handgun used by the
48 defendant or an accomplice during the commission of murder or any
other unlawful homicide crime. The other person's burden is
satisfied by proof by a preponderance of the evidence that at the
time of the commission of the crime, the other person had a right
to possess the firearm to the exclusion of the defendant. This
burden is the same as under Title 17-A, section 1158.

50

2 The bill also addresses forfeiture of firearms in the
3 context of the conviction under Title 15, section 393. The other
4 person's burden is satisfied by proof by a preponderance of the
5 evidence that, at the time of the commission of the crime, the
6 person had a right to possess the firearm to the exclusion of the
7 defendant and the person either did not know or should not have
8 known that the defendant was a prohibited person under Title 15,
9 section 393 or, even if the other person did know or should have
10 known, nonetheless did not intentionally, knowingly or recklessly
11 allow the defendant to possess or have under the defendant's
12 control the firearm. This burden imposed upon the other person
is greater than under Title 17-A, section 1158.

14 The bill also addresses forfeiture of a handgun used by the
15 defendant or an accomplice during the commission of murder or any
16 other unlawful homicide crime. The other person's burden is
17 satisfied by proof by a preponderance of the evidence that, at
18 the time of the commission of the crime, the other person was the
19 rightful owner from whom the handgun had been stolen and the
20 other person was not a principal or an accomplice in the
21 commission of the crime. It also defines "handgun" for purposes
22 of Title 17-A, section 1158-A.

24 The bill replaces Title 17-A, section 1202, subsection 1-B
25 in order to address the constitutional defect revealed in the
26 recent case of State v. Hodgkins, 2003 ME 57, 822 A.2d 1187. The
27 bill also eliminates the necessity of the State's pleading and
28 the jury's having to find that the Class D or Class E crime
29 involved "domestic violence" by specifically enumerating the
30 Class D or Class E crimes that automatically qualify and by
31 having the State plead and the jury find that the qualifying
32 crime was committed by the person "against a family or household
33 member," as defined in Title 19-A, section 4002, subsection 4.
34 The bill also makes clear that imposition of the extended period
35 of probation is further conditioned upon the court's ordering the
36 person to complete a certified batterers' intervention program as
37 defined in Title 19-A, section 4014. This precondition is
38 necessary because only one program currently exists for female
39 defendants, and a program may not be reasonably available for
40 certain male defendants. The bill also clarifies that
41 termination of the extended probation period requires a judicial
42 finding that the probationer has served at least one year of
43 probation, has successfully completed a certified batterers'
44 program and has met all other conditions of probation.

46 The bill is intended to make clear that in the event there
47 is a failure by the State to comply with the time limits set
48 forth in Title 17-A, section 1205-C, a court may, but is not
49 required to, issue an order that, pending initial appearance, the
50 probationer be released on personal recognizance.

2 In 1988 the Legislature doubled the maximum sentence of
4 imprisonment for all Class A crimes from 20 years to 40 years.
6 In 1991 the Law Court examined the legislative history of the
8 relevant act and determined that the legislative intent was to
10 "make available two discrete ranges of sentences for Class A
12 crimes." See State v. Lewis, 590 A.2d 149, 151 (Me. 1991). Most
14 Class A crime sentences were intended to remain in the original
16 0- to 20-year range, while the "expanded range" of 20- to 40-year
18 sentences was reserved "only for the most heinous and violent
20 crimes committed against a person." The sentencing court was to
22 apply this "heinousness" standard "in its discretion" as a
24 sentencing factor, subject to appellate review.

14 This 2-tier system has been placed under a constitutional
16 cloud by the decision of the United States Supreme Court in
18 Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that
20 sentencing factors increasing punishment beyond the maximum
22 authorized must be treated as elements of crimes to be pleaded
24 and proved beyond a reasonable doubt rather than as sentencing
 factors. Since the "heinousness" standard can be interpreted as
 increasing maximum punishment of up to 20 years to the "expanded
 range" of 20 to 40 years, it is potentially unconstitutional
 absent legislative correction.

26 The bill eliminates the constitutional cloud by replacing
28 the 2-tier system with a single 0- to 30-year range. This change
30 anticipates that the Law Court, through the case-by-case sentence
32 review process, will develop and apply criteria that will avoid
 the imposition of excessively harsh sentences within the single
 range. In solving the Apprendi problem, this change will affect
 few actual sentences.

34 The bill adds the culpable mental state of "intentionally"
36 to Title 29-A, section 105, subsection 4, regarding the
 enforcement of the motor vehicle laws, to conform it to Title
 17-A, sections 15-A and 17.