

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 2001

H.P. 1403

House of Representatives, February 7, 2006

An Act To Implement Recommendations of 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, section 1354, subsection 2.

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:

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

CHAPTER 15

**POSSESSION OF FIREARMS OR CROSSBOWS
BY PROHIBITED PERSONS**

Sec. 2. 15 MRSA §393, sub-§1, as amended by PL 2005, c. 419, §7 and affected by §12, is further amended to read:

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

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

2 (a) A firearm or crossbow against a person; or

4 (b) Any other dangerous weapon;

6 C. Has been adjudicated in this State or under the laws of
8 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:

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

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

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

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

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

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

44 For the purposes of this subsection, a person is deemed to have
46 been found not criminally responsible by reason of ~~mental-disease~~
~~or--defect~~ insanity upon the acceptance of a plea of not
48 criminally responsible by reason of insanity or a verdict or
finding of not criminally responsible by reason of ~~mental-disease~~

2 ~~or-defect~~ insanity, or of the equivalent in a juvenile case, by a
court of competent jurisdiction.

4 **Sec. 3. 15 MRSA §393, sub-§3**, as amended by PL 2005, c. 419,
§10 and affected by §12, is further amended to read:

6 **3. Contents.** An application under subsection 2 must be on a
8 form prepared by the Commissioner of Public Safety. The
application must include the following: the applicant's full
10 name; all aliases; date and place of birth; place of legal
residence; occupation; make, model and serial number of the
12 firearm or crossbow sought to be possessed; date, place and
nature of conviction; sentence imposed; place of incarceration;
14 name and address of probation or parole officer; date of
discharge or release from prison or jail or termination of
16 probation, supervised release for sex offenders, parole or
administrative release; the reason for the request; and any other
18 information determined by the commissioner to be of assistance.
The application must be accompanied by certified or attested
20 copies of the indictment, information or complaint, judgment and
commitment and discharge that are the subject of the conviction.

22 **Sec. 4. 15 MRSA §393, sub-§7, ¶B**, as enacted by PL 2001, c.
24 549, §4, is amended to read:

26 B. "Not criminally responsible by reason of ~~mental-disease~~
~~or-defect~~ insanity" has the same meaning as used in Title
28 17-A, section 39 103 and ~~includes-the-former-finding-in-this~~
~~State-under-former-provisions-of-section-103-of-"not-guilty~~
30 ~~by---reason---of---mental---disease---or---defect---excluding~~
~~responsibility"---as-well-as~~ any comparable finding under the
32 laws of the United States or any other state.

34 **Sec. 5. 15 MRSA §393, sub-§8**, as amended by PL 2001, c. 549,
§5, is further amended to read:

36 **8. Penalty.** A violation of subsection 1, paragraph A-1 or
38 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
40 least 18 years of age is a Class C crime.

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

46 **Sec. 6. 17-A MRSA §352, sub-§5, ¶D**, as amended by PL 2005, c.
48 199, §3, is further amended to read:

2 D. If the value of property or services cannot be
4 ascertained beyond a reasonable doubt pursuant to the
6 standards set forth in paragraphs A to C, the trier of fact
8 may find the value to be not less than a certain amount, and
10 if no such minimum value can be thus ascertained, the value
12 is deemed to be an amount less than \$500. ~~Notwithstanding
14 this provision, for the purposes of this chapter, the value
of any audio or visual recording of all or any part of a
motion picture that is obtained through the use of any type
of recording device in a motion picture theater while a
motion picture is being exhibited, without the written
consent of the motion picture theater owner, is deemed to be
more than \$500 but not more than \$1,000, unless a higher
value can be proven.~~

16 **Sec. 7. 17-A MRSA §760, sub-§1**, as enacted by PL 2005, c. 329,
18 §3, is amended to read:

20 1. A person is guilty of failure to report a sexual assault
22 of a person in custody if that person is a member of the staff of
24 a hospital, prison or other institution who and that staff person
26 knows that a person detained in that institution is the victim of
28 a crime of sexual assault that occurred while the detained person
was in the institution but and, in fact, each staff person does
not report that crime to an appropriate criminal justice agency
is guilty of failure to report a sexual assault of a person in
custody.

30 **Sec. 8. 17-A MRSA §760, sub-§2-A** is enacted to read:

32 2-A. It is an affirmative defense to prosecution under this
34 section that the defendant knew that the crime of sexual assault
had already been reported to an appropriate criminal justice
agency by another mandated reporter.

36 **Sec. 9. 17-A MRSA §1058**, as enacted by PL 2005, c. 175, §1,
38 is amended to read:

40 **§1058. Possession of firearm in courthouse**

42 1. A person may--not--possess is guilty of unauthorized
44 possession of a firearm in a courthouse if that person in fact
possesses a firearm in a courthouse.

46 2. This section does not apply to:

48 A. A person--who--is--a law enforcement officer or, a
50 corrections officer acting within the course and scope of
the officer's employment or a corrections supervisor engaged
in the performance of the law enforcement officer's,

corrections officer's or corrections supervisor's public duty; or

B. A person possessing a an unloaded firearm for the purpose of offering the firearm as evidence in a civil or criminal proceeding if the presiding judge or justice has provided granted prior written approval in writing to the person and the person possesses a copy of the written approval.

2-A. It is not a defense to a prosecution under this section that the person holds a valid permit to carry a concealed firearm issued under Title 25, chapter 252.

~~3. A person who violates subsection 1 commits~~ Unauthorized possession of a firearm in a courthouse is a Class D crime.

Sec. 10. 17-A MRSA §1111-A, sub-§4, ¶A, as amended by PL 2005, c. 386, Pt. DD, §1, is further amended to read:

A. The person uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of ~~not less--than~~ \$300 must be adjudged, none of which may be suspended;

Sec. 11. 17-A MRSA §1111-A, sub-§4, ¶B, as amended by PL 2005, c.386, Pt. DD, §1, is further amended to read:

B. The person possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of ~~not--less--than~~ \$300 must be adjudged, none of which may be suspended;

Sec. 12. 17-A MRSA §1152, sub-§2, as amended by PL 2005, c. 265, §§1 to 3, is further amended to read:

2. Every natural person convicted of a crime ~~shall~~ must be sentenced to at least one of the following sentencing alternatives:

2 A. Unconditional discharge as authorized by chapter 54-D;

4 B. A split sentence of imprisonment with probation as authorized by chapter 49;

6 C. A fine, suspended in whole or in part, with, at the court's discretion, probation as authorized by chapter 49;

10 D. A suspended term of imprisonment with probation as authorized by chapter 49;

12 E. A split sentence of imprisonment, the initial unsuspended portion of which is served in whole or in part with intensive supervision, followed by probation as authorized by chapter 52;

18 F. A term of imprisonment as authorized by chapter 51;

20 G. A fine as authorized by chapter 53. Such a fine may be imposed in addition to the sentencing alternatives in paragraphs B, D, E, F, H, I, L and, M and N;

24 H. A county jail reimbursement fee as authorized by chapter 54-B;

26 I. A specified number of hours of community service work as authorized by chapter 54-C;

30 ~~J. --Deferred disposition as authorized by chapter 54-F;~~

32 K. A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 54-G;

36 L. A suspended term of imprisonment with administrative release as authorized by chapter 54-G; ~~or~~

38 M. A split sentence of imprisonment with administrative release as authorized by chapter 54-G; or

42 N. A term of imprisonment followed by a period of supervised release as authorized by chapter 50.

44 **Sec. 13. 17-A MRSA §1152, sub-§3,** as amended by PL 1993, c. 103, §3, is further amended to read:

46 **3.** Every organization convicted of a crime ~~shall~~ must be sentenced to at least one of the following sentencing alternatives:

2 A. Unconditional discharge as authorized by chapter 49;

4 B. A fine, suspended in whole or in part, with probation as
authorized by chapter 49;

6 C. A fine as authorized by chapter 53. Such a fine may be
8 imposed in addition to the sentencing alternative in
paragraph D; or

10 D. A sanction authorized by section 1153. This sanction may
12 be imposed in addition to the sentencing alternatives in
paragraphs B and, C, and E; or

14 E. A fine, suspended in whole or in part, with
16 administrative release as authorized by chapter 54-G.

18 **Sec. 14. 17-A MRSA §1175, first ¶**, as amended by PL 2003, c.
186, §1, is further amended to read:

20 Upon complying with subsection 1, a victim of a crime of
22 murder or stalking or of a Class A, Class B or Class C crime for
24 which the defendant is committed to the Department of Corrections
or to a county jail, or is ~~placed in institutional confinement~~
26 committed to the custody of the Commissioner of Health and Human
Services either under Title 15, section 103 after having been
28 found not criminally responsible by reason of ~~mental disease or~~
~~defect, insanity~~ or ~~is placed in institutional confinement~~ under
Title 15, section 101-B after having been found incompetent to
30 stand trial, must receive notice of the defendant's unconditional
release and discharge from institutional confinement upon the
32 expiration of the sentence or upon release from commitment under
Title 15, section 101-B or upon discharge under Title 15, section
34 104-A and must receive notice of any conditional release of the
defendant from institutional confinement, including probation,
36 supervised release for sex offenders, parole, furlough, work
release, intensive supervision, supervised community confinement,
38 home release monitoring or similar program, administrative
release or release under Title 15, section 104-A.

40 **Sec. 15. 17-A MRSA §1175, sub-§3, ¶B**, as enacted by PL 1995,
42 c. 680, §5, is amended to read:

44 B. The nature of the release authorized, whether it is a
conditional release, including probation, supervised release
46 for sex offenders, parole, furlough, work release, intensive
supervision, supervised community confinement, home release
48 monitoring or a similar program, administrative release, or
release under Title 15, section 104-A, or an unconditional
50 release and discharge upon the expiration of a sentence or

2 upon release from commitment under Title 15, section 101-B
3 or upon discharge under Title 15, section 104-A;

4 **Sec. 16. 17-A MRSA §1175, sub-§4, ¶A,** as enacted by PL 1995,
5 c. 680, §5, is amended to read:

6 A. Notice has been provided of an unconditional release or
7 discharge upon the expiration of the sentence or upon
8 release under Title 15, section 101-B or upon discharge
9 under Title 15, section 104-A; or

10 **Sec. 17. 17-A MRSA §1252, sub-§4,** as amended by PL 1977, c.
11 510, §78, is further amended to read:

12 4. If the State pleads and proves that a Class B, C, D or E
13 crime was committed with the use of a dangerous weapon then the
14 sentencing class for such crime is one class higher than it would
15 otherwise be. In the case of a Class A crime committed with the
16 use of a dangerous weapon, such use should be given serious
17 consideration by the court in exercising its sentencing
18 discretion. This subsection ~~shall~~ does not apply to a violation
19 or an attempted violation of section 208, to any other offenses
20 to which use of a dangerous weapon serves as an element or to any
21 offense for which the sentencing class is otherwise increased
22 because the actor or an accomplice to ~~his~~ that actor's or
23 accomplice's knowledge is armed with a firearm or other dangerous
24 weapon.

25 **Sec. 18. 17-A MRSA §1252, sub-§4-A,** as amended by PL 2005, c.
26 447, §1, is further amended to read:

27 4-A. If the State pleads and proves that, at the time any
28 crime, excluding murder, under chapter 9, 11, 13 or 27; section
29 402-A, subsection 1, paragraph A; or section 752-A or 752-C was
30 committed, the defendant had been convicted of 2 or more crimes
31 violating chapter 9, 11, 13 or 27; section 402-A, subsection 1,
32 paragraph A; or section 752-A or 752-C or essentially similar
33 crimes in other jurisdictions, the sentencing class for the crime
34 is one class higher than it would otherwise be. In the case of a
35 Class A crime, the sentencing class is not increased, but the
36 prior record must be given serious consideration by the court
37 when imposing a sentence. Section 9-A governs the use of prior
38 convictions when determining a sentence, except that, for the
39 purposes of this subsection, for violations under chapter 11, the
40 dates of prior convictions may have occurred at any time. This
41 subsection does not apply to section 210-A if the prior
42 convictions have already served to enhance the sentencing class
43 under section 210-A, subsection 1, paragraph C or any other
44 offense in which prior convictions have already served to enhance
45 the sentencing class.

Sec. 19. 17-A MRSA §1252, sub-§4-B, ¶B, as enacted by PL 1999, c. 788, §8, is amended to read:

B. "Accompanied by sexual assault" as used with respect to attempted murder, murder and crimes involving substantially similar conduct in other jurisdictions is satisfied if the ~~sentencing court at the time of sentence imposition makes such a finding~~ it was definitionally an element of the crime or was pleaded and proved beyond a reasonable doubt at trial by the State or other jurisdiction.

Sec. 20. 17-A MRSA §1252, sub-§9 is enacted to read:

9. Subsections in this section that make the sentencing class for a crime one class higher than it would otherwise be when pled and proved may be applied successively if the subsections to be applied successively contain different class enhancement factors.

Sec. 21. 17-A MRSA §1348, as enacted by PL 2003, c. 711, Pt. A, §19, is amended to read:

§1348. Eligibility for deferred disposition

A person who has pled guilty to a Class C, Class D or Class E crime, ~~except a crime expressly providing that one or more punishment alternatives it authorizes may not be suspended,~~ and who consents to a deferred disposition in writing, is eligible for a deferred disposition.

SUMMARY

This bill amends the law regarding possession by prohibited persons of firearms or crossbows to:

1. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in the Maine Revised Statutes, Title 17-A, sections 39 and 40 in the statute governing possession by prohibited persons of firearms or crossbows. This change is made pursuant to Public Law 2005, chapter 263, sections 5 to 7:

2. Add a reference to parole, supervised release for sex offenders and administrative release; and

3. Change a cross-reference for the definition of "not criminally responsible by reason of insanity" and remove language no longer needed because of this change.

2 This bill eliminates the need to specify in the charge and
4 prove at trial the value of an audio or visual recording of all
6 or any part of an illegally obtained motion picture. This is
8 consistent with theft involving a firearm or an explosive device
 in which pecuniary loss is not an element and the absence of a
 pecuniary loss is not a defense.

10 This bill amends the crime of failure to report a sexual
12 assault of a person in custody to clarify that the crime's
14 forbidden conduct element of failing to report the sexual assault
16 to an appropriate criminal justice agency has no accompanying
18 culpable mental state element. This bill also provides an
 affirmative defense to prosecution under the section when the
 defendant knew that the crime of sexual assault had already been
 reported to an appropriate criminal justice agency by another
 mandated reporter.

20 This bill amends the crime of possession of a firearm in a
 courthouse by:

22 1. Adding the word "unauthorized";

24 2. Clarifying that the crime's forbidden conduct element of
26 possessing a firearm in a courthouse has no accompanying culpable
 mental state element;

28 3. Adding "corrections supervisor" to the list of persons
30 to whom the prohibition does not apply;

32 4. Requiring that the firearm be unloaded if possessed
 under the evidence exception;

34 5. Clarifying that the proceeding in which the firearm is
36 to be offered as evidence may be either civil or criminal;

38 6. Adding a new provision that specifies that possession of
40 a valid permit to carry a concealed firearm is not a defense to
 this crime; and

42 7. Making a number of nonsubstantive changes to the
 language for purposes of clarity.

44 This bill provides that the civil penalty for the sale and
46 use of drug paraphernalia is \$300.

48 This bill adds to the list of sentencing alternatives the
50 sentencing alternative of supervised release for sex offenders as
 authorized by the Maine Revised Statutes, Title 17-A, chapter
 50. The bill also adds a reference to this alternative since a

2 fine may be imposed in addition to a chapter 50 sentencing
alternative. Further, the bill repeals the option of a deferred
4 disposition as authorized by Title 17-A, chapter 54-F since it is
not a sentencing alternative. The bill makes clear that every
6 natural person convicted of a crime must be sentenced to at least
one of the listed sentencing alternatives. Depending upon which
8 sentencing alternatives are used, a court may impose more than
one and when mandated by the Legislature must do so.

10 The bill adds to the list of sentencing alternatives
applicable to an organization the sentencing alternative of a
12 fine, suspended in whole or in part, with administrative release
as authorized by Title 17-A, chapter 54-G. The bill adds a
14 reference to this alternative since a sanction authorized by
section 1153 may be imposed in addition to a chapter 54-G
16 sentencing alternative. The bill makes clear that every
organization convicted of a crime must be sentenced to at least
18 one of the listed sentencing alternatives. Depending upon which
sentencing alternatives are used, a court may impose more than
20 one and when mandated by the Legislature must do so.

22 The bill amends the law regarding notification of a
defendant's release to:

24 1. Conform the terminology regarding the affirmative
26 defense of insanity to that recently adopted in Title 17-A,
sections 39 and 40 pursuant to Public Law 2005, chapter 263,
28 sections 5 to 7;

30 2. Replace the reference to "placed in institutional
confinement" under both Title 15, section 103 and Title 15,
32 section 104-A with "committed to the custody of the Commissioner
of Health and Human Services";

34 3. Add references to supervised release for sex offenders
36 pursuant to Title 17-A, chapter 50 and administrative release
pursuant to Title 17-A, chapter 54-G; and

38 4. Add "release from commitment under Title 15, section
40 101-B" in provisions addressing releases that are unconditional.

42 Current law increasing the sentencing class one class higher
for a Class B, C, D or E crime committed with the use of a
44 dangerous weapon excludes from its application the crimes of
aggravated assault and attempted aggravated assault. This
46 exclusion was added because use of a dangerous weapon serves as a
factual element of one form of the crime of aggravated assault.
48 This bill broadens the exclusion to include any crime that
contains "use of a dangerous weapon" as a factual element.

2 Current law provides for the sentencing enhancement by one
3 class if the defendant had 2 or more prior convictions of certain
4 crimes, except for a conviction for stalking if the prior
5 convictions have already served to enhance the sentencing class.
6 The bill broadens this exclusion to include any crime in which a
7 prior conviction has already served to enhance the class of the
8 crime.

9 This bill clarifies that when 2 or more provisions in Title
10 17-A, section 1252 are pled and proved by the State to enhance
11 the class of the crime these provisions may be applied
12 successively as long as those to be made successive contain
13 different class enhancement factors. For example, if the State
14 pled and proved that the Class D crime of reckless conduct was
15 committed with the use of a dangerous weapon and, at the time of
16 its commission, the defendant had been convicted of 2 or more
17 qualifying crimes, the class of the reckless conduct would be
18 elevated successively from Class D to Class C and from Class C to
19 Class B because subsections 4 and 4-A constitute enhancement
20 factors reflecting different public policy concerns.

21 This bill removes the current exception for eligibility for
22 deferred disposition, which is that the crime expressly provides
23 that one or more punishment alternatives it authorizes may not be
24 suspended. It also is important to remove this exception in
25 order to allow the flexibility in sentencing options now
26 available under Title 17-A, section 1348-B, subsection 1 and to
27 recognize the fact that the Legislature also recently added a
28 mandatory minimum fine to the Maine Criminal Code crime for
29 assault and all drug crimes in Title 17-A, chapter 45.

30 The bill removes that portion of the paragraph authorizing
31 judicial fact-finding at the sentencing hearing and requires
32 instead that "accompanied by sexual assault" be pleaded and
33 proved beyond a reasonable doubt to the fact-finder at the
34 trial. The change is required under both the United States
35 Constitution and the Constitution of Maine because "accompanied
36 by sexual assault" is a fact incident to attempted murder or
37 murder that makes the person a "repeat sexual assault offender"
38 who consequently is subject to a term of imprisonment for any
39 term of years rather than a lesser definite term as specified
40 under Title 17-A, section 1252, subsection 2. See Blakely v.
41 Washington, 542 U.S. 296 (2004); State v. Schofield, 2005 ME 82,
42 876 A.2d 43.