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L.D. 1867

Date: 4/5/12

(Filing No. H-907)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1381, L.D. 1867, Bill, "An Act To Protect Victims of Domestic Violence"

Amend the bill in Part A by striking out all of sections 1 to 5 and inserting the following:

Sec. A-1. 15 MRSA §1023, sub-§4, ¶B-1 is enacted to read:

B-1. Set preconviction bail for a defendant alleged to have committed any of the following offenses against a family or household member as defined in Title 19-A, section 4002, subsection 4:

(1) A violation of a protection from abuse order provision set forth in Title 19-A, section 4006, subsection 5, paragraph A, B, C, D, E or F or Title 19-A, section 4007, subsection 1, paragraph A, A-1, A-2, B, C, D, E or G;

(2) Any Class A, B or C crime under Title 17-A, chapter 9;

(3) Any Class A, B or C sexual assault offense under Title 17-A, chapter 11;

(4) Kidnapping under Title 17-A, section 301;

(5) Criminal restraint under Title 17-A, section 302, subsection 1, paragraph A, subparagraph (4) or Title 17-A, section 302, subsection 1, paragraph B, subparagraph (2);

(6) Domestic violence stalking that is a Class C crime under Title 17-A, section 210-C, subsection 1, paragraph B;

(7) Domestic violence criminal threatening that is a Class C crime under Title 17-A, section 209-A, subsection 1, paragraph B or domestic violence criminal threatening that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1252, subsection 4;

(8) Domestic violence terrorizing that is a Class C crime under Title 17-A, section 210-B, subsection 1, paragraph B or domestic violence terrorizing that is

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1 elevated to a Class C crime by the use of a dangerous weapon under Title 17-A,
2 section 1252, subsection 4; or

3 (9) Domestic violence reckless conduct that is a Class C crime under Title 17-A,
4 section 211-A, subsection 1, paragraph B or domestic violence reckless conduct
5 that is elevated to a Class C crime by the use of a dangerous weapon under Title
6 17-A, section 1252, subsection 4;

7 **Sec. A-2. 15 MRSA §1023, sub-§4, ¶C**, as amended by PL 2011, c. 341, §2, is
8 further amended to read:

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

- 12 (1) A brief history of the alleged abuser;
- 13 (2) The relationship of the parties;
- 14 (3) The name, address, phone number and date of birth of the victim; ~~and~~
- 15 (4) Existing conditions of protection from abuse orders, conditions of bail and
16 conditions of probation; and
- 17 (5) Information about the severity of the alleged offense;

18 Amend the bill in Part A in section 6 in subsection 2 in the 11th line (page 2, line 18
19 in L.D.) by striking out the following: "a crime involving domestic violence" and
20 inserting the following: 'an offense specified in section 1023, subsection 4, paragraph
21 B-1'

22 Amend the bill in Part A in section 6 in subsection 2 in the 13th line (page 2, line 20
23 in L.D.) by striking out the following: "written findings" and inserting the following:
24 'findings on the record'

25 Amend the bill in Part A by striking out all of section 7 and inserting the following:

26 **'Sec. A-7. 15 MRSA §1097, sub-§2-A** is enacted to read:

27 **2-A. Crimes involving domestic violence.** If the underlying crime is an offense
28 specified in section 1023, subsection 4, paragraph B-1 and the new conduct found by the
29 court pursuant to section 1096 involves new allegations of domestic violence or contact
30 with a victim or witness in the underlying case, the judge or justice shall issue an order
31 denying bail, unless the judge or justice makes the findings on the record required by both
32 subsections 1 and 2. The judge or justice shall issue an order denying bail if there has
33 been a previous revocation of preconviction bail pursuant to section 1096.'

34 Amend the bill in Part B by inserting before section 1 the following:

35 **'Sec. B-1. 17-A MRSA §207-A, sub-§1, ¶B**, as enacted by PL 2007, c. 436, §1
36 and affected by §7, is amended to read:

37 B. The person violates paragraph A and at the time of the offense:

1 (1) ~~The person has~~ Has one or more prior convictions for violating paragraph A
2 or for violating section 209-A, 210-B, 210-C or 211-A or one or more prior
3 convictions for engaging in conduct substantially similar to that contained in
4 paragraph A or in section 209-A, 210-B, 210-C or 211-A in another jurisdiction;

5 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
6 subsection 1 or one or more prior convictions for engaging in conduct
7 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
8 another jurisdiction; or

9 (3) Has one or more prior convictions for violating Title 15, section 1092,
10 subsection 1, paragraph B when the condition of release violated is specified in
11 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or
12 subparagraph (8) when the alleged victim in the case for which the defendant was
13 on bail was a family or household member as defined in Title 19-A, section 4002,
14 subsection 4.

15 Violation of this paragraph is a Class C crime.'

16 Amend the bill in Part B by inserting after section 1 the following:

17 '**Sec. B-2. 17-A MRSA §209-A, sub-§1, ¶B,** as enacted by PL 2007, c. 436, §2
18 and affected by §7, is amended to read:

19 B. The person violates paragraph A and at the time of the offense:

20 (1) ~~The person has~~ Has one or more prior convictions for violating paragraph A
21 or for violating section 207-A, 210-B, 210-C or 211-A or one or more prior
22 convictions for engaging in conduct substantially similar to that contained in
23 paragraph A or in section 207-A, 210-B, 210-C or 211-A in another jurisdiction;

24 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
25 subsection 1 or one or more prior convictions for engaging in conduct
26 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
27 another jurisdiction; or

28 (3) Has one or more prior convictions for violating Title 15, section 1092,
29 subsection 1, paragraph B when the condition of release violated is specified in
30 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or
31 subparagraph (8) when the alleged victim in the case for which the defendant was
32 on bail was a family or household member as defined in Title 19-A, section 4002,
33 subsection 4.

34 Violation of this paragraph is a Class C crime.

35 **Sec. B-3. 17-A MRSA §210-B, sub-§1, ¶B,** as enacted by PL 2007, c. 436, §3
36 and affected by §7, is amended to read:

37 B. The person violates paragraph A and at the time of the offense:

38 (1) ~~The person has~~ Has one or more prior convictions for violating paragraph A
39 or for violating section 207-A, 209-A, 210-C or 211-A or one or more prior

1 convictions for engaging in conduct substantially similar to that contained in
2 paragraph A or in section 207-A, 209-A, 210-C or 211-A in another jurisdiction;

3 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
4 subsection 1 or one or more prior convictions for engaging in conduct
5 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
6 another jurisdiction; or

7 (3) Has one or more prior convictions for violating Title 15, section 1092,
8 subsection 1, paragraph B when the condition of release violated is specified in
9 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or
10 ~~subparagraph~~ (8) when the alleged victim in the case for which the defendant was
11 on bail was a family or household member as defined in Title 19-A, section 4002,
12 subsection 4.

13 Violation of this paragraph is a Class C crime.

14 **Sec. B-4. 17-A MRSA §210-C, sub-§1, ¶B,** as enacted by PL 2007, c. 436, §4
15 and affected by §7, is amended to read:

16 B. The person violates paragraph A and at the time of the offense:

17 (1) ~~The person has~~ Has one or more prior convictions for violating paragraph A
18 or for violating section 207-A, 209-A, 210-B or 211-A or one or more prior
19 convictions for engaging in conduct substantially similar to that contained in
20 paragraph A or in section 207-A, 209-A, 210-B or 211-A in another jurisdiction;

21 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
22 subsection 1 or one or more prior convictions for engaging in conduct
23 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
24 another jurisdiction; or

25 (3) Has one or more prior convictions for violating Title 15, section 1092,
26 subsection 1, paragraph B when the condition of release violated is specified in
27 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or
28 ~~subparagraph~~ (8) when the alleged victim in the case for which the defendant was
29 on bail was a family or household member as defined in Title 19-A, section 4002,
30 subsection 4.

31 Violation of this paragraph is a Class C crime.

32 **Sec. B-5. 17-A MRSA §211-A, sub-§1, ¶B,** as enacted by PL 2007, c. 436, §5
33 and affected by §7, is amended to read:

34 B. The person violates paragraph A and at the time of the offense:

35 (1) ~~The person has~~ Has one or more prior convictions for violating paragraph A
36 or for violating section 207-A, 209-A, 210-B or 210-C or one or more prior
37 convictions for engaging in conduct substantially similar to that contained in
38 paragraph A or in section 207-A, 209-A, 210-B or 210-C in another jurisdiction;

39 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
40 subsection 1 or one or more prior convictions for engaging in conduct

1 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
2 another jurisdiction; or

3 (3) Has one or more prior convictions for violating Title 15, section 1092,
4 subsection 1, paragraph B when the condition of release violated is specified in
5 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or
6 subparagraph (8) when the alleged victim in the case for which the defendant was
7 on bail was a family or household member as defined in Title 19-A, section 4002,
8 subsection 4.

9 Violation of this paragraph is a Class C crime.'

10 Amend the bill in Part B in section 2 in paragraph A-1 by striking out all of
11 subparagraph (10) (page 3, lines 33 to 35 in L.D.) and inserting the following:

12 '(10) A Class E crime under Title 15, section 1092, subsection 1, paragraph A, if
13 the condition of release violated is specified in Title 15, section 1026, subsection
14 3, paragraph A, subparagraph (5) or (8) and the underlying crime involved
15 domestic violence.'

16 Amend the bill in Part C by striking out all of section 1 and inserting the following:

17 '**Sec. C-1. 19-A MRSA §4002, sub-§4**, as amended by PL 2007, c. 518, §8, is
18 further amended to read:

19 **4. Family or household members.** "Family or household members" means spouses
20 or domestic partners or former spouses or former domestic partners, individuals presently
21 or formerly living together as spouses, natural parents of the same child, adult household
22 members related by consanguinity or affinity or minor children of a household member
23 when the defendant is an adult household member and, for the purposes of Title 15,
24 section 1023, subsection 4, paragraph B-1, this chapter and Title 17-A, sections 15,
25 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 only, includes individuals
26 presently or formerly living together and individuals who are or were sexual partners.
27 Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For
28 purposes of this subsection, "domestic partners" means 2 unmarried adults who are
29 domiciled together under long-term arrangements that evidence a commitment to remain
30 responsible indefinitely for each other's welfare.'

31 Amend the bill by inserting after Part C the following:

32 **'PART D**

33 **Sec. D-1. 25 MRSA §2803-B, sub-§1, ¶D**, as amended by PL 2011, c. 265, §2,
34 is further amended to read:

35 D. Domestic violence, which must include, at a minimum, the following:

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

38 (2) A process for the collection of information regarding the defendant that
39 includes the defendant's previous history, the parties' relationship, whether the

1 commission of an alleged crime included the use of strangulation as defined in
2 Title 17-A, section 208, subsection 1, paragraph C, the name of the victim and a
3 process to relay this information to a bail commissioner before a bail
4 determination is made;

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

10 (4) Standard procedures to ensure that protection from abuse orders issued under
11 Title 19-A, section 4006 or 4007 are served on the defendant as quickly as
12 possible;

13 **PART E**

14 **Sec. E-1. Report.** The judicial branch shall study the application of the provisions
15 of this Act. The study must include, but is not limited to, information, if available, about
16 the number of domestic violence cases in which preconviction bail for a person arrested
17 for a domestic violence offense listed under the Maine Revised Statutes, Title 15, section
18 1023, subsection 4, paragraph B-1 was set or denied by a judge or justice without prior
19 review by a bail commissioner. The judicial branch shall report the results of the study to
20 the joint standing committee of the Legislature having jurisdiction over criminal justice
21 matters no later than January 30, 2013. The joint standing committee of the Legislature
22 having jurisdiction over criminal justice matters may submit legislation to the First
23 Regular Session of the 126th Legislature that is related to the report.'

24 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
25 section number to read consecutively.

26 **SUMMARY**

27 This amendment does the following.

28 1. In certain cases involving domestic violence, it prohibits a bail commissioner from
29 setting preconviction bail for a defendant alleged to have violated a protection from abuse
30 order or alleged to have committed a Class A, B or C crime under the Maine Revised
31 Statutes, Title 17-A, chapter 9; a sexual offense that is a Class A, B or C crime;
32 kidnapping; or a Class C crime involving criminal restraint, domestic stalking, domestic
33 threatening, domestic terrorizing or domestic reckless conduct.

34 2. In addition to information already required under the Maine Bail Code in cases
35 involving domestic violence, it requires the bail commissioner to make a good faith effort
36 to obtain from the arresting officer, the responsible prosecutorial office, a jail employee
37 or other law enforcement officer information about the severity of the alleged offense.

38 3. It requires a judge to order a defendant in a domestic violence case to be
39 committed without bail pending a bail revocation hearing unless the judge makes certain
40 findings on the record but does not require the findings to be reduced to writing.

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- 1 4. It directs the judicial branch to study the application of the provisions of this
2 legislation and report its findings to the joint standing committee of the Legislature
3 having jurisdiction over criminal justice matters by January 30, 2013 and authorizes that
4 committee to submit legislation to the First Regular Session of the 126th Legislature that
5 is related to the report.
- 6 5. It requires law enforcement agencies to adopt written policies for cases involving
7 domestic violence to collect information about whether the commission of the crime
8 included the use of strangulation.
- 9 6. It corrects a number of cross-referencing errors in current domestic violence laws
10 so that the proper section in the Maine Bail Code is identified.