

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1764

H.P. 1266

House of Representatives, February 10, 2014

**An Act To Implement Certain Recommendations of the Criminal
Law Advisory Commission Relative to the Maine Bail Code, the
Maine Juvenile Code and the Maine Criminal Code and Related
Statutes**

Reported by Representative DION of Portland 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 pursuant to Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 15 MRSA §393, sub-§1**, as amended by PL 2009, c. 651, §1, is further
3 amended to read:

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

7 A-1. Has been convicted of committing or found not criminally responsible by
8 reason of insanity of committing:

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

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

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

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

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

26 (a) A firearm against a person; or

27 (b) Any other dangerous weapon;

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

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

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

34 D. Is subject to an order of a court of the United States or a state, territory,
35 commonwealth or tribe that restrains that person from harassing, stalking or
36 threatening an intimate partner, as defined in 18 United States Code, Section 921(a),
37 of that person or a child of the intimate partner of that person, or from engaging in
38 other conduct that would place the intimate partner in reasonable fear of bodily injury
39 to the intimate partner or the child, except that this paragraph applies only to a court

1 order that was issued after a hearing for which that person received actual notice and
2 at which that person had the opportunity to participate and that:

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

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

8 E. Has been:

9 (1) Committed involuntarily to a hospital pursuant to an order of the District
10 Court under Title 34-B, section 3864 because the person was found to present a
11 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
12 4-A, paragraphs A to C;

13 (2) Found not criminally responsible by reason of insanity with respect to a
14 criminal charge; or

15 (3) Found not competent to stand trial with respect to a criminal charge.

16 For the purposes of this subsection, a person is deemed to have been convicted upon the
17 acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of
18 the equivalent in a juvenile case, by a court of competent jurisdiction. In the case of a
19 deferred disposition, a person is deemed to have been convicted when the court imposes
20 the sentence.

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

26 **Sec. 2. 15 MRSA §1023, sub-§4, ¶D**, as enacted by PL 2011, c. 341, §2, is
27 amended to read:

28 D. Set preconviction or post-conviction bail for a violation of condition of release
29 pursuant to section 1092, except as provided in section 1092, subsection 4; or

30 **Sec. 3. 15 MRSA §1092, sub-§4**, as enacted by PL 2011, c. 341, §3, is amended
31 to read:

32 **4. Limitations on authority of bail commissioner to set bail.** A court may, but a
33 bail commissioner may not, set bail for a defendant granted preconviction or post-
34 conviction bail who has been arrested for an alleged violation of this section if:

35 A. The condition of release alleged to be violated relates to new criminal conduct for
36 a crime classified as Class C or above or for a Class D or Class E crime involving
37 domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual
38 exploitation of minors pursuant to Title 17-A, chapter 12;

39 B. The underlying crime for which preconviction or post-conviction bail was granted
40 is classified as Class C or above; or

1 C. The underlying crime for which preconviction or post-conviction bail was granted
2 is a crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter
3 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12.

4 If a bail commissioner does not have sufficient information to determine whether the
5 violation of the condition of release meets the criteria set forth under this subsection, the
6 bail commissioner may not set bail on the violation of the condition of release.

7 **Sec. 4. 15 MRSA §3318-B, sub-§2**, as enacted by PL 2011, c. 282, §5, is
8 amended to read:

9 **2. No substantial probability that juvenile will be competent in the foreseeable**
10 **future.** If, following the competency determination hearing provided in section 3318-A,
11 subsection ~~8~~ 7, the Juvenile Court finds that the juvenile is incompetent to proceed and
12 that there does not exist a substantial probability that the juvenile will be competent in the
13 foreseeable future, the Juvenile Court shall promptly hold a hearing to determine whether
14 or not the Juvenile Court should:

15 A. Order the Commissioner of Health and Human Services to evaluate the
16 appropriateness of providing mental health and behavioral support services to the
17 juvenile; or

18 B. Order the juvenile into the custody of the Commissioner of Health and Human
19 Services utilizing the procedures set forth in section 3314, subsection 1, paragraph
20 C-1 for purposes of placement and treatment.

21 At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-
22 adjudication, vacate the adjudication order and dismiss the petition.

23 **Sec. 5. 16 MRSA §642**, as enacted by PL 2013, c. 402, §1, is amended to read:

24 **§642. Authority to obtain and disclose content information held by a provider of**
25 **electronic communication service**

26 **1. Authority to obtain.** A government entity may obtain portable electronic device
27 content information directly from a provider of electronic communication service only in
28 accordance with a valid warrant issued by a duly authorized ~~judge or justice, judge or~~
29 justice of the peace using procedures established pursuant to Title 15, section 55 or as
30 otherwise provided in this subchapter.

31 **2. Authority to disclose.** A provider of electronic communication service may
32 disclose portable electronic device content information to a government entity only
33 pursuant to a warrant issued by a duly authorized ~~judge or justice, judge or justice of the~~
34 peace or as otherwise provided in this subchapter.

35 **Sec. 6. 16 MRSA §648**, as reallocated by RR 2013, c. 1, §29, is amended to read:

1 **§648. Warrant needed for acquisition of location information**

2 Except as provided in this subchapter, a government entity may not obtain location
3 information without a valid warrant issued by a duly authorized ~~judge or justice, judge or~~
4 justice of the peace using procedures established pursuant to Title 15, section 55.

5 A ~~judge or justice, judge or justice of the peace~~ may issue a warrant for the location
6 information of an electronic device pursuant to this section for a period of time necessary
7 to achieve the objective of the authorization, but in any case the warrant is not valid for
8 more than 10 days after the issuance. A ~~judge or justice, judge or justice of the peace~~ may
9 grant an extension of a warrant upon a finding of continuing probable cause and a finding
10 that the extension is necessary to achieve the objective of the authorization. An extension
11 may not exceed 30 days.

12 **Sec. 7. 17-A MRSA §431, sub-§9-A** is enacted to read:

13 **9-A.** "Criminal justice agency" means a governmental agency of the State or any
14 subunit of a governmental agency of the State at any governmental level that performs the
15 administration of criminal justice pursuant to statute. "Criminal justice agency" includes
16 the Department of the Attorney General and district attorneys' offices. As used in this
17 subsection, "administration of criminal justice" means activities relating to the
18 investigation of all or specific crimes and the prosecution of offenders.

19 **Sec. 8. 17-A MRSA §1348-A, sub-§4,** as enacted by PL 2009, c. 336, §15, is
20 amended to read:

21 **4.** For purposes of a deferred disposition, a person is deemed to have been convicted
22 when the court imposes the sentence. Notwithstanding Title 15, section 1003, subsection
23 9, prior to sentence imposition, preconviction bail applies to the person.

24 **Sec. 9. 30-A MRSA §1606, sub-§2,** as amended by PL 2001, c. 171, §9, is
25 further amended to read:

26 **2. Sentence prorated.** Inmates participating in a public works-related project or an
27 improvement of property owned by a charitable organization under this section may have
28 their sentences to the jail prorated at the rate of up to one day removed from the sentences
29 for every 16 hours of participation in the project, except that inmates committed to the
30 custody of the sheriff for nonpayment of fines under Title 17-A, section 1304 must have
31 their sentences prorated at the rate of \$5 removed from the fines for every one hour of
32 participation in the project that is applicable to the individual inmate pursuant to Title
33 17-A, section 1304, subsection 3, paragraph A, subparagraph (1).

34 **SUMMARY**

35 This bill implements the following Criminal Law Advisory Commission
36 recommendations.

1 1. In regard to the prohibition on the possession of firearms for certain persons, it
2 adds an exception to the prohibition for a person under a deferred disposition until
3 sentence imposition.

4 2. In the laws concerning limitations on the authority of a bail commissioner to set
5 bail for an alleged violation of a condition of release, it imposes the same limitations on
6 the setting of post-conviction bail as previously imposed on the setting of preconviction
7 bail for that alleged violation.

8 3. It makes a technical correction to the laws concerning competency of a juvenile.

9 4. It adds a justice of the peace to those judicial officers authorized to issue a warrant
10 to obtain portable electronic device content information and to obtain location
11 information and, as to the latter, grant an extension of the warrant.

12 5. In the laws concerning computer crimes in the Maine Criminal Code, it adds a
13 definition for "criminal justice agency."

14 6. In the laws concerning deferred disposition in the Maine Criminal Code, it
15 clarifies that preconviction bail applies to a person on a deferred disposition until
16 sentence imposition notwithstanding the definition of "preconviction" for purposes of the
17 Maine Bail Code.

18 7. It replaces an outdated directive to reflect recent changes made to the Maine
19 Revised Statutes, Title 17-A, section 1304 regarding the prorotation of sentences for
20 inmates committed to the custody of a sheriff for nonpayment of fines.