

MAINE STATE LEGISLATURE

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L.D. 1603

Date: 3/16/16

(Filing No. H-566)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1094, L.D. 1603, Bill, "An Act To Implement the Recommendations of the Criminal Law Advisory Commission Relative to the Maine Criminal Code and Related Statutes"

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

Sec. 1. 15 MRSA §393, sub-§1, as amended by PL 2015, c. 287, §§1 to 3, is further amended to read:

1. Possession prohibited. A person may not own, possess or have under that person's control a firearm, 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 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

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 1094, L.D. 1603

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

5 (a) A firearm against a person; or

6 (b) Any other dangerous weapon;

7 Violation of this paragraph is a Class C crime;

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

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

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

14 Violation of this paragraph is a Class C crime;

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

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

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

28 Violation of this paragraph is a Class D crime;

29 E. Has been:

30 (1) Committed involuntarily to a hospital pursuant to an order of the District
31 Court under Title 34-B, section 3864 because the person was found to present a
32 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
33 4-A, paragraphs A to C;

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

36 (3) Found not competent to stand trial with respect to a criminal charge;

37 Violation of this paragraph is a Class D crime;

- 1 F. Is a fugitive from justice. For the purposes of this paragraph, "fugitive from
2 justice" has the same meaning as in section 201, subsection 4. Violation of this
3 paragraph is a Class D crime;
- 4 G. Is an unlawful user of or is addicted to any controlled substance and as a result is
5 prohibited from possession of a firearm under 18 United States Code, Section
6 922(g)(3). Violation of this paragraph is a Class D crime;
- 7 H. Is an alien who is illegally or unlawfully in the United States or who was admitted
8 under a nonimmigrant visa and who is prohibited from possession of a firearm under
9 18 United States Code, Section 922(g)(5). Violation of this paragraph is a Class D
10 crime;
- 11 I. Has been discharged from the United States Armed Forces under dishonorable
12 conditions. Violation of this paragraph is a Class D crime; or
- 13 J. Has, having been a citizen of the United States, renounced that person's
14 citizenship. Violation of this paragraph is a Class D crime.

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

18 In the case of a deferred disposition, ~~unless the person is alleged to have committed one~~
19 ~~or more of the offenses listed in section 1023, subsection 4, paragraph B-1,~~ a person is
20 deemed to have been convicted when the court imposes the sentence. In the case of a
21 deferred disposition for a person alleged to have committed one or more of the offenses
22 listed in section 1023, subsection 4, paragraph B-1, that person may not possess a firearm
23 ~~beginning at the start of~~ during the deferred disposition period. Violation of this
24 paragraph is a Class C crime.

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

30 **Sec. 2. 15 MRSA §393, sub-§1-A,** as amended by PL 2015, c. 287, §4, is further
31 amended to read:

32 **1-A. Limited prohibition for nonviolent juvenile offenses.** A person who has been
33 adjudicated in this State or under the laws of the United States or any other state to have
34 engaged in conduct as a juvenile that, if committed by an adult, would have been a
35 disqualifying conviction under subsection 1, paragraph A-1 or subsection 1-B, paragraph
36 A but is not an adjudication under subsection 1, paragraph C or an adjudication under
37 subsection 1-B, paragraph B in which bodily injury to another person was threatened or
38 resulted may not own or have in that person's possession or control a firearm for a period
39 of 3 years following completion of any disposition imposed or until that person reaches
40 18 years of age, whichever is later. Violation of this subsection by a person at least 18
41 years of age is a Class C crime.

42 **Sec. 3. 15 MRSA §393, sub-§1-B,** as enacted by PL 2015, c. 287, §5, is amended
43 to read:

1 **1-B. Prohibition for domestic violence offenses.** A person may not own, possess
2 or have under that person's control a firearm if that person:

3 A. Has been convicted of committing or found not criminally responsible by reason
4 of insanity of committing:

5 (1) A Class D crime in this State in violation of Title 17-A, section 207-A,
6 209-A, 210-B, 210-C or 211-A; or

7 (2) A crime under the laws of the United States or any other state that in
8 accordance with the laws of that jurisdiction is elementally substantially similar
9 to a crime in subparagraph (1); ~~or.~~

10 Violation of this paragraph is a Class C crime; or

11 B. Has been adjudicated in this State or under the laws of the United States or any
12 other state to have engaged in conduct as a juvenile that, if committed by an adult,
13 would have been a disqualifying conviction under this subsection. Violation of this
14 paragraph is a Class C crime.

15 Except as provided in subsection 1-A, the prohibition created by this subsection for a
16 conviction or adjudication of an offense listed in paragraph A or B expires 5 years from
17 the date the person is finally discharged from the sentence imposed as a result of the
18 conviction or adjudication if that person has no subsequent criminal convictions during
19 that 5-year period. If a person is convicted of a subsequent crime within the 5-year
20 period, the 5-year period starts anew from the date of the subsequent conviction. In the
21 case of a deferred disposition, the 5-year period begins at the start of the deferred
22 disposition period. If, at the conclusion of the deferred disposition period, the court
23 grants the State's motion to allow a person to withdraw the plea and the State dismisses
24 the pending charging instrument with prejudice, the 5-year period terminates.

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

29 For the purposes of this subsection, a person is deemed to have been found not criminally
30 responsible by reason of insanity upon the acceptance of a plea of not criminally
31 responsible by reason of insanity or a verdict or finding of not criminally responsible by
32 reason of insanity, or of the equivalent in a juvenile case, by a court of competent
33 jurisdiction.

34 The provisions of this subsection apply only to a person convicted, adjudicated or placed
35 on deferred disposition on or after ~~the effective date of this subsection~~ October 15, 2015.

36 **Sec. 4. 15 MRSA §393, sub-§8**, as amended by PL 2007, c. 670, §12, is repealed.

37 **Sec. 5. 15 MRSA §709, sub-§1-A**, as amended by PL 2013, c. 267, Pt. B, §5, is
38 repealed.

39 **Sec. 6. 15 MRSA §709, sub-§1-C** is enacted to read:

40 **1-C. Administration of juvenile justice.** "Administration of juvenile justice" has
41 the same meaning as in section 3308-A, subsection 1, paragraph A.

1 **Sec. 7. 15 MRSA §709, sub-§4-B**, as amended by PL 2011, c. 507, §3, is further
2 amended to read:

3 **4-B. Jail investigative officer.** "Jail investigative officer" means an employee of a
4 jail designated by the jail administrator as having the authority to conduct investigations
5 of crimes relating to the security or orderly management of the jail and engage in any
6 other activity that is related to the administration of criminal justice as defined in Title 16,
7 section 703, subsection 1 for the purposes of the Criminal History Record Information
8 Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence
9 and Investigative Record Information Act.

10 **Sec. 8. 15 MRSA §712, sub-§2**, as amended by PL 2013, c. 80, §4, is further
11 amended to read:

12 **2. Investigative officers.** It is not a violation of this chapter for an investigative
13 officer, or for another employee of the Department of Corrections authorized to exercise
14 law enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or
15 use that communication in the normal course of employment while engaged in any
16 activity that is related to the administration of criminal justice ~~or as defined in Title 16,~~
17 section 703, subsection 1 for the purposes of the Criminal History Record Information
18 Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence
19 and Investigative Record Information Act; while engaged in any activity that is related to
20 the administration of juvenile justice; or while engaged in any activity that is related to
21 the administration of juvenile criminal justice as defined in section 3308, subsection 7,
22 paragraph A, subparagraph (2); if:

23 A. Either the sender or receiver of that communication is a person residing in an
24 adult or juvenile correctional facility administered by the Department of Corrections;
25 and

26 B. Notice of the possibility of interception is provided in a way sufficient to make
27 the parties to the communication aware of the possibility of interception, which
28 includes:

29 (1) Providing the resident with a written notification statement;

30 (2) Posting written notification next to every telephone at the facility that is
31 subject to monitoring; and

32 (3) Informing the recipient of a telephone call from the resident by playing a
33 recorded warning before the recipient accepts the call.

34 This subsection does not authorize any interference with the attorney-client privilege.

35 **Sec. 9. 15 MRSA §712, sub-§3**, as amended by PL 2011, c. 507, §5, is further
36 amended to read:

37 **3. Jail investigative officer.** It is not a violation of this chapter for a jail
38 investigative officer, as defined in this chapter, or for a jail employee acting at the
39 direction of a jail investigative officer to intercept, disclose or use that communication in
40 the normal course of employment while engaged in any activity that is related to the
41 administration of criminal justice as defined in Title 16, section 703, subsection 1 for the
42 purposes of the Criminal History Record Information Act or as defined in Title 16,

1 section 803, subsection 2 for the purposes of the Intelligence and Investigative Record
2 Information Act if:

3 A. Either the sender or the receiver of that communication is a person residing in an
4 adult section of the jail; and

5 B. Notice of the possibility of interception is provided in a way sufficient to make
6 the parties to the communication aware of the possibility of interception, which
7 includes:

8 (1) Providing the resident with a written notification statement;

9 (2) Posting written notification next to every telephone at the jail that is subject
10 to monitoring; and

11 (3) Informing the recipient of a telephone call from the resident by playing a
12 recorded warning before the recipient accepts the call.

13 This subsection does not authorize any interference with the attorney-client privilege.

14 **Sec. 10. 15 MRSA §713, sub-§2**, as enacted by PL 2011, c. 507, §7, is amended
15 to read:

16 **2. Contents obtained under this chapter.** The contents of an interception of any
17 oral communication or wire communication that has been legally obtained pursuant to
18 section 712, subsection 2 or 3 are admissible in the courts of this State, subject to the
19 Maine Rules of Evidence, if related to the administration of criminal justice ~~or~~ as defined
20 in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record
21 Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of
22 the Intelligence and Investigative Record Information Act; the administration of juvenile
23 justice; the administration of juvenile criminal justice; or the statutory functions of a state
24 agency.

25 **Sec. 11. 17-A MRSA §210-A, sub-§1, ¶C**, as amended by PL 2015, c. 357, §2,
26 is further amended to read:

27 C. The actor violates paragraph A and has one or more prior convictions in this State
28 or another jurisdiction. Notwithstanding section 2, subsection 3-B, as used in this
29 paragraph, "another jurisdiction" also includes any Indian tribe.

30 Violation of this paragraph is a Class C crime. In determining the sentence for a
31 violation of this paragraph the court shall impose a ~~sentence of imprisonment by~~
32 ~~using a 2-step process. In the first step the court shall determine a base term of~~
33 ~~imprisonment of one year. In the 2nd step the court shall determine and impose a~~
34 ~~term of imprisonment for the defendant the length of which is appropriate for the~~
35 ~~defendant after consideration of the factors required by section 1252, subsection 5-D~~
36 ~~and aggravating and mitigating factors, including, but not limited to, the character of~~
37 ~~the defendant and the defendant's criminal history, the effect of the offense on the~~
38 ~~victim and the protection of the public interest~~ sentencing alternative pursuant to
39 section 1152 that includes a term of imprisonment. In determining the basic term of
40 imprisonment as the first step in the sentencing process, the court shall select a term
41 of at least one year.

1 For the purposes of this paragraph, "prior conviction" means a conviction for a
2 violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19,
3 section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary,
4 emergency, interim or final protective order; an order of a tribal court of the
5 Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court
6 of the United States or of any other state, territory, commonwealth or tribe; or a
7 court-approved consent agreement. Section 9-A governs the use of prior convictions
8 when determining a sentence;

9 **Sec. 12. 17-A MRSA §210-A, sub-§1, ¶E**, as enacted by PL 2015, c. 357, §3, is
10 amended to read:

11 E. The actor violates paragraph C and at least one prior conviction was for a
12 violation of paragraph D.

13 Violation of this paragraph is a Class B crime. In determining the sentence for a
14 violation of this paragraph the court shall impose a ~~sentence of imprisonment by~~
15 ~~using a 2 step process. In the first step the court shall determine a base term of~~
16 ~~imprisonment of 2 years. In the 2nd step the court shall determine and impose a term~~
17 ~~of imprisonment for the defendant the length of which is appropriate for the~~
18 ~~defendant after consideration of the factors required by section 1252, subsection 5-D~~
19 ~~and aggravating and mitigating factors, including, but not limited to, the character of~~
20 ~~the defendant and the defendant's criminal history, the effect of the offense on the~~
21 ~~victim and the protection of the public interest~~ sentencing alternative pursuant to
22 section 1152 that includes a term of imprisonment. In determining the basic term of
23 imprisonment as the first step in the sentencing process, the court shall select a term
24 of at least 2 years.

25 **Sec. 13. 17-A MRSA §1252, sub-§4-A**, as amended by PL 2007, c. 476, §45, is
26 further amended to read:

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

42 **Sec. 14. 34-A MRSA §1001, sub-§10-A**, as amended by PL 2013, c. 80, §5, is
43 further amended to read:

1 **10-A. Investigative officer.** "Investigative officer" means an employee of the
2 department designated by the commissioner as having the authority to conduct
3 investigations of crimes or juvenile crimes relating to the security or orderly management
4 of a facility administered by the department and engage in any other activity that is
5 related to the administration of criminal justice ~~or as defined in Title 16, section 703,~~
6 ~~subsection 1 for the purposes of the Criminal History Record Information Act or as~~
7 ~~defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and~~
8 ~~Investigative Record Information Act, the administration of juvenile criminal justice as~~
9 ~~defined in Title 15, section 3308, subsection 7, paragraph A, subparagraph (2) or the~~
10 ~~administration of juvenile justice~~ and who is certified by the Board of Trustees of the
11 Maine Criminal Justice Academy as a full-time law enforcement officer.

12 **Sec. 15. 34-A MRSA §1001, sub-§19,** as amended by PL 2013, c. 267, Pt. B,
13 §26, is repealed.

14 **Sec. 16. 34-A MRSA §1001, sub-§22** is enacted to read:

15 **22. Administration of juvenile justice.** "Administration of juvenile justice" has the
16 same meaning as in Title 15, section 3308-A, subsection 1, paragraph A.

17 **Sec. 17. 34-A MRSA §1214, sub-§4,** as enacted by PL 2001, c. 439, Pt. G, §1, is
18 amended to read:

19 **4. Confidentiality.** Requests for action by the office must be treated confidentially
20 and may be disclosed only to a state agency if necessary to carry out the statutory
21 functions of that agency or to a criminal justice agency if necessary to carry out the
22 administration of criminal justice as defined in Title 16, section 703, subsection 1 or the
23 administration of juvenile criminal justice. In no case may a victim's request for notice of
24 release be disclosed outside the department and the office of the attorney for the State
25 with which the request was filed.

26 **Sec. 18. 34-A MRSA §1216, sub-§1, ¶D,** as repealed and replaced by PL 2013,
27 c. 588, Pt. A, §44, is amended to read:

28 D. To any criminal justice agency if necessary to carry out the administration of
29 criminal justice as defined in Title 16, section 703, subsection 1 or the administration
30 of juvenile criminal justice or for criminal justice agency employment;

31 **Sec. 19. 34-A MRSA §3011, sub-§1,** as amended by PL 2013, c. 80, §6, is
32 further amended to read:

33 **1. Exercise of law enforcement powers.** Investigative officers and other employees
34 of the department who are certified by the Board of Trustees of the Maine Criminal
35 Justice Academy as law enforcement officers may exercise the powers of other law
36 enforcement officers with respect to crimes or juvenile crimes relating to the security or
37 orderly management of a facility and engage in any other activity that is related to the
38 administration of criminal justice ~~or as defined in Title 16, section 703, subsection 1~~
39 ~~for the purposes of the Criminal History Record Information Act or as defined in Title 16,~~
40 ~~section 803, subsection 2 for the purposes of the Intelligence and Investigative Record~~
41 ~~Information Act, the administration of juvenile criminal justice as defined in Title 15,~~
42 ~~section 3308, subsection 7, paragraph A, subparagraph (2) or the administration of~~
43 ~~juvenile justice~~, if authorized to exercise these powers by the commissioner. These

1 employees may issue administrative subpoenas, if authorized to exercise these powers by
2 the commissioner and by the Attorney General or the Attorney General's designee. These
3 powers are in addition to any powers the employees may otherwise have as employees of
4 the department. Internal investigations of employees of the department must be
5 conducted pursuant to any applicable collective bargaining agreement.'

6 **SUMMARY**

7 This amendment strikes the bill and does the following.

8 1. The amendment designates the classes of crime in the subsections or paragraphs of
9 the Maine Revised Statutes, Title 15, section 393 on prohibited possession of firearms to
10 conform to the Maine Criminal Code drafting standards. The amendment repeals the
11 subsection that does not conform to current drafting standards.

12 2. Like the bill, the amendment terminates the 5-year period of prohibited possession
13 of firearms when charges of violating the prohibition for domestic violence offenses are
14 dismissed at the end of a period of deferred disposition.

15 3. Like the bill, the amendment defines or standardizes the use of certain terms and
16 references to those terms in the laws governing interception of wire and oral
17 communications to reference actions taken under the Criminal History Record
18 Information Act and the Intelligence and Investigative Record Information Act; the
19 amendment also makes these changes in the laws governing the Department of
20 Corrections.

21 4. Like the bill, the amendment amends the Class C sentencing provision for a
22 person convicted of stalking who has one or more prior convictions to clarify that
23 although the court continues to have discretion to impose any other authorized sentencing
24 alternative, the court is required to impose a sentencing alternative that includes a term of
25 imprisonment of at least one year.

26 5. Like the bill, the amendment amends the Class B sentencing provision for a
27 person convicted of stalking who has one or more prior convictions, at least one of which
28 was for stalking 2 or more specific persons that are members of an identifiable group, to
29 require the court in determining the basic term of imprisonment as the first step in the
30 sentencing process to select a term of at least 2 years.

31 6. Like the bill, the amendment strikes redundant provisions requiring the court, in
32 imposing a sentencing alternative for the crime of stalking, to consider whether the victim
33 was being stalked by the person being sentenced.

34 Current law provides that for the purpose of imposing a sentence for certain crimes, if
35 the defendant has 2 or more convictions for those crimes, the sentencing class for the
36 crime is one class higher. Like the bill, the amendment provides that an attempt to
37 commit such crimes also results in a higher sentencing class.

38 **FISCAL NOTE REQUIRED**

39 (See attached)



127th MAINE LEGISLATURE

LD 1603

LR 2588(02)

An Act To Implement the Recommendations of the Criminal Law Advisory Commission Relative to the Maine Criminal Code and Related Statutes

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-566)
Committee: Criminal Justice and Public Safety
Fiscal Note Required: Yes

Fiscal Note

Potential future biennium cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the class of certain crimes if the person has 2 prior convictions.
The collection of additional fines may also increase General Fund revenue by minor amounts.