

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1903

H.P. 1410

House of Representatives, January 5, 2022

An Act To Update Criminal and Related Statutes and Respond to Decisions of the Law Court

Reported by Representative WARREN of Hallowell 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.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **PART A**

3 **Sec. A-1. 5 MRSA §20071, sub-§1**, as amended by PL 1999, c. 448, §1, is further
4 amended to read:

5 **1. Alcohol-related or other drug-related motor vehicle incident.** "Alcohol-related
6 or other drug-related motor vehicle incident" means a conviction or administrative action
7 resulting in the suspension of a motor vehicle operator's license for a violation under former
8 Title 29, section 1311-A; Title 29, section 1312, subsection 10-A; Title 29, section 1312-C;
9 Title 29, section 1312-B; Title 29, section 1313-B; Title 29, section 2241, subsection 1,
10 paragraph N; Title 29, section 2241-G, subsection 2, paragraph B, subparagraph (2); Title
11 29, section 2241-J; Title 29-A, section 1253; Title 29-A, section 2411; Title 29-A, section
12 2453; Title 29-A, section 2454, subsection 2; Title 29-A, section 2456; Title 29-A, section
13 2457; Title 29-A, section 2472, subsection 3, paragraph B and subsection 4; Title 29-A,
14 section 2503; Title 29-A, sections 2521 to ~~and~~ 2523; or Title 29-A, section 2525 or the
15 rules adopted by the Department of the Secretary of State for the suspension of commercial
16 drivers' licenses.

17 **Sec. A-2. 25 MRSA §2005-A, sub-§3**, as amended by PL 1995, c. 65, Pt. A, §77
18 and affected by §153 and Pt. C, §15, is further amended to read:

19 **3. Suspension in effect during pendancy pendency.** The suspension remains in
20 effect until the entry of judgment if charges are filed of violating Title 17-A, section 1057
21 or of operating a motor vehicle, snowmobile, ATV, or watercraft under the influence of
22 intoxicating liquor or drugs, unless it is determined by the court in which the criminal
23 charge or civil violation is pending, or by the Secretary of State if a hearing is held pursuant
24 to Title 29-A, section 2521, ~~2522~~ or 2523, that the law enforcement officer did not have
25 probable cause to require the permit holder to submit to chemical testing.

26 **Sec. A-3. 29-A MRSA §2431, sub-§3**, as amended by PL 1995, c. 368, Pt. AAA,
27 §15, is further amended to read:

28 **3. Failure as evidence.** Failure of a person to submit to a chemical test is admissible
29 in evidence on the issue of whether that person was under the influence of intoxicants.

30 If the law enforcement officer fails to give the required warnings, the failure of the person
31 to submit to a chemical test is not admissible, ~~except when a test was required under section~~
32 ~~2522.~~

33 If a failure to submit to a chemical test is not admitted into evidence, the court may inform
34 the jury that no test result is available.

35 If a test result is not available for a reason other than failing to submit to a chemical test,
36 the unavailability and the reason is are admissible in evidence.

37 **Sec. A-4. 29-A MRSA §2521, sub-§6-A** is enacted to read:

38 **6-A. Suspension for refusal when probable cause exists to believe death has**
39 **occurred or will occur.** Except when a longer period of suspension is otherwise provided
40 by law, if, in addition to the probable cause set forth in subsection 1, there is also probable
41 cause to believe that death occurred or will occur, the suspension is for a period of one year
42 for a first refusal.

1 stalking or threatening an intimate partner, as defined in 18 United States Code, Section
2 921(a), of that person or a child of the intimate partner of that person, or from engaging
3 in other conduct that would place the intimate partner in reasonable fear of bodily
4 injury to the intimate partner or the child, except that this paragraph applies only to a
5 court order that was issued after a hearing for which that person received actual notice
6 and at which that person had the opportunity to participate and that:

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

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

12 Violation of this paragraph is a Class D crime;

13 **Sec. B-6. 15 MRSA §393, sub-§1-A**, as amended by PL 2015, c. 470, §2, is further
14 amended to read:

15 **1-A. Limited prohibition for nonviolent juvenile offenses.** A person who has been
16 adjudicated in this State or under the laws of ~~the United States or any other state~~ another
17 jurisdiction to have engaged in conduct as a juvenile that, if committed by an adult, would
18 have been a disqualifying conviction under subsection 1, paragraph A-1 or subsection 1-B,
19 paragraph A but is not an adjudication under subsection 1, paragraph C or an adjudication
20 under subsection 1-B, paragraph B in which bodily injury to another person was threatened
21 or resulted may not own or have in that person's possession or control a firearm for a period
22 of 3 years following completion of any disposition imposed or until that person reaches 18
23 years of age, whichever is later. Violation of this subsection by a person at least 18 years
24 of age is a Class C crime.

25 **Sec. B-7. 15 MRSA §393, sub-§1-B, ¶A**, as amended by PL 2015, c. 470, §3, is
26 further amended by amending subparagraph (2) to read:

27 (2) A crime under the laws of ~~the United States or any other state~~ another
28 jurisdiction that in accordance with the laws of that jurisdiction is elementally
29 substantially similar to a crime in subparagraph (1).

30 **Sec. B-8. 15 MRSA §393, sub-§1-B, ¶B**, as amended by PL 2015, c. 470, §3, is
31 further amended to read:

32 B. Has been adjudicated in this State or under the laws of ~~the United States or any~~
33 ~~other state~~ another jurisdiction to have engaged in conduct as a juvenile that, if
34 committed by an adult, would have been a disqualifying conviction under this
35 subsection. Violation of this paragraph is a Class C crime.

36 **Sec. B-9. 15 MRSA §393, sub-§7, ¶C**, as enacted by PL 2001, c. 549, §4, is
37 repealed.

38 **Sec. B-10. 15 MRSA §393, sub-§7, ¶F** is enacted to read:

39 F. "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection
40 3-B.

41 **PART C**

1 **Sec. C-1. 15 MRSA §1026, sub-§5**, as amended by PL 2021, c. 397, §6, is further
2 amended to read:

3 **5. Contents of release order.** In a release order issued under subsection 2-A or 3, the
4 judicial officer shall:

5 A. Include a written statement that sets forth:

6 (1) All the conditions to which the ~~release~~ defendant is subject in a manner
7 sufficiently clear and specific to serve as a guide for the defendant's conduct; and

8 (2) If an agreement to forfeit money under subsection 3, paragraph A,
9 subparagraph (11) or (12) is ordered, the reason the judicial officer has set the
10 amount of money ordered to be forfeited under the agreement; and

11 B. Advise the defendant ~~of that~~:

12 (1) ~~The penalties if the defendant fails to appear as required~~ conditions of release
13 take effect and are fully enforceable immediately as of the time the judicial officer
14 sets the conditions, unless the release order expressly excludes a condition or
15 conditions of release from immediate applicability; and

16 (2) ~~The penalties for and consequences of violating a condition of release,~~
17 ~~including the immediate issuance of a warrant for the defendant's arrest~~ Failure to
18 appear or comply with a condition or conditions of release may subject the
19 defendant to revocation of bail and additional criminal penalties.

20 **Sec. C-2. 15 MRSA §1026, sub-§7**, as enacted by PL 1995, c. 356, §5, is amended
21 to read:

22 **7. Applicability of conditions of release.** A condition of release takes effect and is
23 fully enforceable immediately as of the time the judicial officer sets the condition, unless
24 the ~~bail~~ release order expressly excludes ~~it~~ a condition of release from immediate
25 applicability-; if the defendant is advised by a judicial officer, a law enforcement officer or
26 an employee of a county or regional jail or a correctional facility having custody of the
27 defendant:

28 A. Of the condition; and

29 B. That failure to appear or comply with the condition may subject the defendant to
30 revocation of bail and additional criminal penalties.

31 **PART D**

32 **Sec. D-1. 17-A MRSA §1805, sub-§1**, as enacted by PL 2019, c. 113, Pt. A, §2, is
33 amended to read:

34 **1. Determination of date probation begins; revocation; place of imprisonment.**

35 Unless prohibited pursuant to section 1802, subsection 1, paragraphs A to F, the court may
36 impose a split sentence by sentencing an individual to a term of imprisonment not to exceed
37 the maximum term authorized for the crime, an initial portion of which is to be served and
38 the remainder of which is to be suspended, and accompany the suspension with a period of
39 probation not to exceed the maximum period authorized for the crime. The period of
40 probation commences on the date the individual is released from the unsuspended portion
41 of the term of imprisonment, unless the court orders it to commence on an earlier date. If
42 the period of probation commences on the date the person is released from the initial

1 unsuspended portion of the term of imprisonment, that day is counted as the first full day
2 of the period of probation.

3 A. If the period of probation commences upon release of the individual from an
4 unsuspended portion of the term of imprisonment, the court may revoke probation for
5 any criminal conduct committed during that unsuspended portion of the term of
6 imprisonment.

7 B. If execution of the sentence is stayed, the court may revoke probation for criminal
8 conduct committed during the period of stay or for failure to report as ordered.

9 C. The court may revoke probation if, during any unsuspended portion of the term of
10 imprisonment, an individual sentenced as a repeat sexual assault offender, pursuant to
11 section 1804, subsection 4, refuses to actively participate in a sex offender treatment
12 program in accordance with the expectations and judgment of the treatment providers,
13 when requested to do so by the Department of Corrections.

14 D. The court may revoke probation if, during an unsuspended portion of the term of
15 imprisonment:

16 (1) The individual has contact with a victim with whom the individual has been
17 ordered not to have contact as a condition of probation;

18 (2) In the case of an individual who has been committed to the Department of
19 Corrections, the individual has contact with any victim with whom the individual
20 has been prohibited to have contact by the Department of Corrections; or

21 (3) In the case of an individual who has been committed to a county or regional
22 jail, the individual has contact with any victim with whom the individual has been
23 prohibited to have contact by the county or regional jail.

24 E. As to both the suspended and unsuspended portions of the sentence, the place of
25 imprisonment must be as follows.

26 (1) For a Class D or Class E crime, the court must specify a county jail as the place
27 of imprisonment.

28 (2) For a Class A, Class B or Class C crime, the court must:

29 (a) Specify a county jail as the place of imprisonment for any portion of the
30 sentence that is 9 months or less; and

31 (b) Commit the individual to the Department of Corrections for any portion of
32 the sentence that is more than 9 months.

33 **Sec. D-2. 17-A MRSA §1806**, as enacted by PL 2019, c. 113, Pt. A, §2, is amended
34 to read:

35 **§1806. Wholly suspended term of imprisonment with probation**

36 Unless prohibited pursuant to section 1802, subsection 1, paragraphs A to F, the court
37 may sentence an individual to a term of imprisonment not to exceed the maximum term
38 authorized for the crime, suspend the entire term of imprisonment and accompany the
39 suspension with a period of probation not to exceed the maximum period authorized for
40 the crime, to commence on the date the individual goes into actual execution of the
41 sentence. The day the individual goes into actual execution of the sentence is counted as
42 the first full day of the period of probation.

1 it required the driver's blood to be taken without consent and without probable cause to
2 believe that the driver was impaired by alcohol or drugs at the time the driver's blood was
3 taken. The bill also moves the statutory allocation of the one-year period of suspension for
4 refusal to take a chemical test when there is probable cause to believe that death occurred
5 or will occur as a result of an accident to the law on implied consent to a chemical test and
6 makes the language consistent with existing law.

7 2. In Part B, the bill amends Title 15, section 393 to recognize that convictions in the
8 tribal courts of federally recognized Indian tribes are disqualifying convictions for the
9 purposes of the prohibition against firearms created by Title 15, section 393. It makes Title
10 15, section 393 more consistent with the Maine Criminal Code by using the phrase "another
11 jurisdiction" to reference the courts identified by that term.

12 3. In Part C, in response to State v. LeBlanc-Simpson, 2018 ME 109, the bill clarifies
13 that a judicial officer in issuing a written release order under Title 15, section 1026,
14 subsection 2-A or 3 must inform a defendant of the conditions of release, that the conditions
15 take effect and are fully enforceable immediately and that failure to appear or comply with
16 conditions may result in revocation of bail and additional criminal penalties. The bill
17 provides that a condition of release takes effect and is fully enforceable immediately as of
18 the time the judicial officer sets the condition, unless the release order expressly excludes
19 a condition of release from immediate applicability, if the defendant is advised of the
20 conditions and that failure to appear or comply with the conditions may subject the
21 defendant to revocation of bail and additional criminal penalties. This bill provides that
22 the notice required in order for a condition of release to take effect immediately may be
23 provided by a judicial officer, a law enforcement officer or an employee of a county or
24 regional jail or a correctional facility having custody of the defendant.

25 4. In Part D, the bill amends the laws governing probation to reflect the current practice
26 of the Department of Corrections with respect to calculating the period of probation. A
27 probationer receives credit for a full day of probation on the day probation commences,
28 regardless of the time of day, and receives no credit for a day on which probation is tolled.
29 The period of probation ends when the final day of the probation period ends.

30 5. In Part E, the bill amends the law to respond to the issue identified by the Law Court
31 in State v. Asaad, 2020 ME 11, specifically the absence of a mens rea requirement in the
32 Class C crime of gross sexual assault under Title 17-A, section 253, subsection 2, paragraph
33 M. The bill requires the State to prove, as an element of that crime of gross sexual assault,
34 that the defendant engaged in the prohibited conduct knowing that the other person had not
35 expressly or impliedly acquiesced. Because the same issue exists in the crimes of unlawful
36 sexual contact and unlawful sexual touching, the same "knowing" culpable mental state
37 element is proposed for the corresponding Class C and Class D crimes of unlawful sexual
38 contact and the corresponding Class D crime of unlawful sexual touching. This current
39 proposal reflects the original proposal of the Criminal Law Advisory Commission in L.D.
40 710 and differs from the committee amendment to that bill. The committee amendment to
41 L.D. 710 proposed a culpable mental state element of recklessness with respect to the
42 attendant circumstances element of the other person's acquiescence.