

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2085

S.P. 878

In Senate, January 3, 2024

An Act to Update Maine's Domestic Violence and Stalking Laws

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CARNEY of Cumberland.
Cosponsored by Representative CLOUTIER of Lewiston and
Senators: DAUGHTRY of Cumberland, LIBBY of Cumberland, RAFFERTY of York,
Representatives: ARATA of New Gloucester, HENDERSON of Rumford, KUHN of
Falmouth, LEE of Auburn, SHEEHAN of Biddeford.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas**, on June 27, 2023, the United States Supreme Court issued a decision in
4 *Counterman v. Colorado*, which has raised questions as to the constitutionality of several
5 of Maine's statutes; and

6 **Whereas**, the statutes implicated include critical components of the State's public
7 safety response, specifically including its response to domestic violence and stalking; and

8 **Whereas**, citizens of the State rely on the Legislature to ensure a constitutionally
9 sound criminal and civil justice system and failure to timely align the statutes with the new
10 federal standard may result in unnecessary litigation in the State's already overburdened
11 state court system; and

12 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
13 the meaning of the Constitution of Maine and require the following legislation as
14 immediately necessary for the preservation of the public peace, health and safety; now,
15 therefore,

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

17 **Sec. 1. 17-A MRSA §210, sub-§1**, as amended by PL 2003, c. 143, §4, is further
18 amended to read:

19 **1.** A person is guilty of terrorizing if that person ~~in fact~~ intentionally, knowingly or
20 recklessly communicates to any person a threat to commit or to cause to be committed a
21 crime of violence dangerous to human life, against the person to whom the communication
22 is made or another, ~~and~~ consciously disregarding a risk that the natural and probable
23 consequence of such a threat, whether or not such consequence in fact occurs, is:

24 A. To place the person to whom the threat is communicated or the person threatened
25 in reasonable fear that the crime will be committed. Violation of this paragraph is a
26 Class D crime; or

27 B. To cause evacuation of a building, place of assembly or facility of public transport
28 or to cause the occupants of a building to be moved to or required to remain in a
29 designated secured area. Violation of this paragraph is a Class C crime.

30 **Sec. 2. 17-A MRSA §210-A, sub-§2, ¶A**, as amended by PL 2007, c. 685, §1, is
31 repealed and the following enacted in its place:

32 A. "Course of conduct" means 2 or more acts, including but not limited to acts in which
33 the actor, by any action, method, device or means, directly or indirectly:

34 (1) Follows, monitors, tracks, observes, surveils or harasses a person;

35 (2) Interferes with a person's property;

36 (3) Threatens a person, consciously disregarding a risk that the actor's conduct
37 would cause a reasonable person to experience any of the effects identified in
38 subsection 1, paragraph A; or

39 (4) Communicates to or about a person, consciously disregarding a risk that the
40 actor's conduct would cause a reasonable person to experience any of the effects
41 identified in subsection 1, paragraph A.

1 "Course of conduct" also includes, but is not limited to, threats implied by conduct and
2 gaining unauthorized access to personal, medical, financial or other identifying or
3 confidential information.

4 **Sec. 3. 17-A MRSA §506, sub-§1, ¶A**, as amended by PL 2017, c. 397, §1, is
5 repealed and the following enacted in its place:

6 A. By means of telephone or electronic communication device the person
7 intentionally, knowingly or recklessly makes any comment, request, suggestion or
8 proposal without the consent of the person called or contacted:

9 (1) That is, in fact, obscene; or

10 (2) With conscious disregard of a risk that a reasonable person would find the
11 comment, request, suggestion or proposal offensively coarse.

12 Violation of this paragraph is a Class E crime:

13 **Sec. 4. 19-A MRSA §4102, sub-§1, ¶B**, as enacted by PL 2021, c. 647, Pt. A, §3
14 and affected by Pt. B, §65, is amended to read:

15 B. Attempting to place or placing another in fear of bodily injury, ~~regardless of intent,~~
16 through any course of conduct, including, but not limited to, threatening, harassing or
17 tormenting behavior. When the course of conduct violates this paragraph based on the
18 content of the actor's speech, the actor must have consciously disregarded a risk that
19 the speech would place a reasonable person in fear of bodily injury;

20 **Sec. 5. 19-A MRSA §4102, sub-§1, ¶E**, as enacted by PL 2021, c. 647, Pt. A, §3
21 and affected by Pt. B, §65, is amended to read:

22 E. Communicating to a person a threat to commit, or to cause to be committed, a crime
23 of violence dangerous to human life against the person to whom the communication is
24 made or another, ~~and~~ with conscious disregard of a risk that the natural and probable
25 consequence of the threat, whether or not that consequence in fact occurs, is to place
26 the person to whom the threat is communicated, or the person against whom the threat
27 is made, in reasonable fear that the crime will be committed;

28 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
29 takes effect when approved.

30 SUMMARY

31 This bill aligns the laws of this State with the new federal standard set by *Counterman*
32 *v. Colorado*, 600 U.S. 66 (2023). It amends relevant sections of the Maine Criminal Code
33 and the protection from abuse laws to provide that, with respect to a violation of the abuse
34 laws or the crime of terrorizing, stalking or harassment by telephone based on the content
35 of the actor's speech, the actor must have consciously disregarded a risk that the actor's
36 speech would place a reasonable person in fear of bodily injury.