

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

**Sec. 1. 25 MRSA §2803-B, sub-§1, ¶H**, as amended by PL 2003, c. 370, §1, is further amended to read:

H. Criminal conduct engaged in by law enforcement officers; ~~and~~

**Sec. 2. 25 MRSA §2803-B, sub-§1, ¶I**, as enacted by PL 2003, c. 370, §2, is amended to read:

I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations; ~~and~~

**Sec. 3. 25 MRSA §2803-B, sub-§1, ¶J** is enacted to read:

J. Public notification regarding persons in the community required to register under Title 34-A, chapter 15.

**Sec. 4. 25 MRSA §2803-B, sub-§§2 and 3**, as amended by PL 2003, c. 370, §3, are further amended to read:

**2. Minimum policy standards.** The board shall establish minimum standards for each law enforcement policy no later than June 1, 1995, except that policies for expanded requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be established no later than January 1, 2003 ~~and~~ policies for death investigations under subsection 1, paragraph I must be established no later than January 1, 2004 and policies for public notification regarding persons in the community required to register under Title 34-A, chapter 15 must be established no later than January 1, 2005.

**3. Agency compliance.** The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1, 1996 that the agency has adopted written policies consistent with the minimum standards established by the board pursuant to subsection 2, except that certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the board no later than June 1, 2003 ~~and~~ certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004 and certification to the board for adoption of a public notification policy under

subsection 1, paragraph J must be made to the board no later than June 1, 2005. This certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D must be made to the board no later than January 1, 2004 ~~and~~ certification for orientation and training with respect to policies regarding death investigations must be made to the board no later than January 1, 2005 and certification for orientation and training with respect to policies regarding public notification must be made to the board no later than January 1, 2006.

See title page for effective date.

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## CHAPTER 657

H.P. 1370 - L.D. 1844

### An Act To Amend the Maine Criminal Code and Motor Vehicle Laws as Recommended by the Criminal Law Advisory Commission

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

**Sec. 1. 15 MRSA §3314, sub-§6**, as corrected by RR 2001, c. 2, Pt. A, §24 and affected by §25, is amended to read:

**6. Forfeiture of firearms.** As part of every disposition in every proceeding under this code, every firearm that constitutes the basis for an adjudication for a juvenile crime that, if committed by an adult, would constitute a violation of section 393; Title 17-A, section 1105-A, subsection 1, paragraph C-1; Title 17-A, section 1105-B, subsection 1, paragraph C; Title 17-A, section 1105-C, subsection 1, paragraph C-1; or Title 17-A, section 1105-D, subsection 1, paragraph B-1 and every firearm used by the juvenile or any accomplice during the course of conduct for which the juvenile has been adjudicated to have committed a juvenile crime that would have been forfeited pursuant to Title 17-A, section ~~4458~~ 1158-A if the criminal conduct had been committed by an adult must be forfeited to the State and the juvenile court shall so order unless another person satisfies the court prior to the dispositional hearing and by a preponderance of the evidence that the other person had a right to possess the firearm, to the exclusion of the juvenile, at the time of the conduct that constitutes the juvenile crime. Rules adopted by the Attorney General that govern the disposition of firearms forfeited pursuant to

Title 17-A, section ~~4458~~ 1158-A govern forfeitures under this subsection.

**Sec. 2. 17-A MRSA §15-A, sub-§§1, 2 and 3**, as amended by PL 1991, c. 459, §4, are further amended to read:

1. A law enforcement officer who has probable cause to believe a crime has been or is being committed by a person may issue or have delivered a written summons to that person directing that person to appear in the District Court to answer the allegation that the person has committed the crime. The summons must include the signature of the officer, a brief description of the alleged crime, the time and place of the alleged crime and the time, place and date the person is to appear in court. The form used must be the Uniform Summons and Complaint, ~~except that, if the agency by whom the officer is employed has on May 1, 1991 current stocks of forms that the agency is authorized to use, the agency may permit officers to use those forms until those stocks are depleted.~~ A person to whom a summons is issued or delivered must give a written promise to appear. If the person refuses to sign the summons after having been ordered to do so by a law enforcement officer, the person commits a Class E crime. As soon as practicable after service of the summons, the officer shall cause a copy of the summons to be filed with the court.

2. Any person who a law enforcement officer has probable cause to believe has committed or is committing a crime other than one listed under section 15, subsection 1, paragraph A, and to whom a law enforcement officer is authorized to deliver a summons pursuant to subsection 1, who intentionally fails or refuses to provide to that officer reasonably credible evidence of that person's correct name ~~and~~, address or date of birth commits a Class E crime, ~~provided that if the person persists in the failure or refusal after having been informed by the officer of the provisions of this subsection. If that person furnishes the officer evidence of the person's correct name and, address and date of birth and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period the verification is being attempted, the officer may require the person to remain in the officer's presence for a period not to exceed 2 hours. During this period, if the officer reasonably believes that the officer's safety or the safety of others present requires, the officer may search for any dangerous weapon by an external patting of that person's outer clothing. If in the course of the search the officer feels an object that the officer reasonably believes to be a dangerous weapon, the officer may take such action as is necessary to examine the object, but may take permanent possession of the object only if it is subject to forfeiture. The requirement that the person remain in the presence of the officer does not constitute an~~

arrest. After informing that person of the provisions of this subsection, the officer may arrest the person either if the person intentionally refuses to furnish any evidence of that person's correct name, ~~and~~ address or date of birth or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the person has intentionally failed to provide reasonably credible evidence of the person's correct name ~~and~~, address or date of birth.

3. If, at any time subsequent to an arrest made pursuant to subsection 2, it appears that the evidence of the person's correct name ~~and~~, address and date of birth was accurate, the person must be released from custody and any record of that custody must show that the person was released for that reason. If, upon trial for violating subsection 2, a person is acquitted on the ground that the evidence of the person's correct name ~~and~~, address and date of birth was accurate, the record of acquittal must show that that was the ground.

**Sec. 3. 17-A MRSA §17, sub-§1**, as amended by PL 1995, c. 65, Pt. A, §56 and affected by §153 and Pt. C, §15, is further amended to read:

1. A law enforcement officer who has probable cause to believe that a civil violation has been committed by a person must issue or have delivered a written summons to that person directing the person to appear in the District Court to answer the allegation that the person has committed the violation. The summons must include the signature of the officer, a brief description of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. The form used must be the Violation Summons and Complaint, as prescribed in Title 29-A, section 2601, for traffic infractions and the Uniform Summons and Complaint for other civil violations, ~~except that, if the agency by whom the officer is employed has on May 1, 1991 current stocks of forms that the agency is authorized to use, the agency may permit officers to use those forms in place of the Uniform Summons and Complaint until those stocks are depleted.~~ A person to whom a summons is issued or delivered must give a written promise to appear. If the person refuses to sign the summons after having been ordered to do so by a law enforcement officer, the person commits a Class E crime. The law enforcement officer may not order a person to sign the summons for a civil violation unless the civil violation is an offense defined in Title 12; Title 23, section 1980; Title 28-A, section 2052; or Title 29-A.

Every law enforcement officer issuing a Violation Summons and Complaint charging the commission of a traffic infraction shall file the original of the Violation Summons and Complaint with the violations bureau within 5 days of the issuance of that Violation

Summons and Complaint. Every law enforcement officer issuing a Uniform Summons and Complaint that charges the commission of an offense shall file the original of the Uniform Summons and Complaint with the District Court having jurisdiction over the offense or in such other location as instructed by the Chief Judge of the District Court without undue delay and, in any event, within 5 days after the issuance of the Uniform Summons and Complaint.

**Sec. 4. 17-A MRSA §17, sub-§§2 and 3**, as amended by PL 1991, c. 459, §5, are further amended to read:

2. Any person to whom a law enforcement officer is authorized to issue or deliver a summons pursuant to subsection 1 who intentionally fails or refuses to provide the officer reasonably credible evidence of the person's correct name ~~and~~ address or date of birth commits a Class E crime, ~~provided that if~~ the person persists in that failure or refusal after having been informed by the officer of the provisions of this subsection. If the person furnishes the officer evidence of that person's correct name ~~and~~ address and date of birth and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period that verification is being attempted, the officer may require the person to remain in the officer's presence for a period not to exceed 2 hours. During this period, if the officer reasonably believes that the officer's safety or the safety of others present requires, the officer may search for any dangerous weapon by an external patting of the person's outer clothing. If in the course of the search the officer feels an object that the officer reasonably believes to be a dangerous weapon, the officer may take such action as is necessary to examine the object, but may take permanent possession of the object only if it is subject to forfeiture. The requirement that the person remain in the presence of the officer does not constitute an arrest.

After informing the person of the provisions of this subsection, the officer may arrest the person either if the person intentionally refuses to furnish any evidence of that person's correct name ~~and~~ address or date of birth or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the person has intentionally failed to provide reasonably credible evidence of the person's correct name ~~and~~ address or date of birth.

3. If, at any time subsequent to an arrest made pursuant to subsection 2, it appears that the evidence of the person's correct name ~~and~~ address and date of birth was accurate, the person must be released from custody and any record of that custody must show that the person was released for that reason. If, upon trial

for violating subsection 2, a person is acquitted on the ground that the evidence of the person's correct name ~~and~~ address and date of birth was accurate, the record of acquittal must show that that was the ground.

**Sec. 5. 17-A MRSA §751, sub-§1**, as amended by PL 1997, c. 351, §2, is further amended to read:

1. A person is guilty of obstructing government administration if the person ~~uses~~ intentionally interferes by force, violence or intimidation or ~~engages in any criminal act with the intent to interfere by any physical act~~ with a public servant performing or purporting to perform an official function.

**Sec. 6. 17-A MRSA §1158**, as amended by PL 2003, c. 143, §7, is repealed.

**Sec. 7. 17-A MRSA §1158-A** is enacted to read:

**§1158-A. Forfeiture of firearms**

1. As part of every sentence imposed, except as provided in subsection 2, a court shall order that a firearm must be forfeited to the State if:

A. That firearm constitutes the basis for conviction under:

- (1) Title 15, section 393;
- (2) Section 1105-A, subsection 1, paragraph C-1;
- (3) Section 1105-B, subsection 1, paragraph C;
- (4) Section 1105-C, subsection 1, paragraph C-1; or
- (5) Section 1105-D, subsection 1, paragraph B-1; or

B. The State pleads and proves that the firearm is used by the defendant or an accomplice during the commission of any murder or Class A, Class B or Class C crime or any Class D crime defined in chapter 9, 11 or 13.

2. Except as provided in subsection 3, a court may not order the forfeiture of a firearm otherwise qualifying for forfeiture under subsection 1 if another person can satisfy the court by a preponderance of the evidence and prior to the imposition of the defendant's sentence that:

A. Other than in the context of either subsection 1, paragraph A, subparagraph (1) or subsection 1, paragraph B relative to murder or any other unlawful homicide crime in which the firearm

used is a handgun, the other person, at the time of the commission of the crime, had a right to possess the firearm to the exclusion of the defendant;

B. In the context of subsection 1, paragraph A, subparagraph (1), the other person, at the time of the commission of the crime, had a right to possess the firearm to the exclusion of the defendant; or

C. In the context of subsection 1, paragraph B relating to murder or any other unlawful homicide crime in which the firearm used is a handgun, the other person, at the time of the commission of the crime, was the rightful owner from whom the handgun had been stolen and the other person was not a principal or accomplice in the commission of the crime.

3. If another person satisfies subsection 2, paragraph B, a court shall nonetheless order the forfeiture of a firearm otherwise qualifying for forfeiture under subsection 1, paragraph A, subparagraph (1) if the State can satisfy the court by a preponderance of the evidence both that the other person knew or should have known that the defendant was a prohibited person under Title 15, section 393 and that the other person intentionally, knowingly or recklessly allowed the defendant to possess or have under the defendant's control the firearm.

4. The Attorney General shall adopt rules governing the disposition to state, county and municipal agencies of firearms forfeited under this section. A handgun not excepted under subsection 2, paragraph C must be destroyed by the State.

5. As used in this section, "handgun" means a firearm, including a pistol or revolver, that has a short stock and is designed to be held and fired by the use of a single hand.

**Sec. 8. 17-A MRSA §1202, sub-§1-B**, as amended by PL 2003, c. 154, §1, is repealed and the following enacted in its place:

**1-B.** Notwithstanding subsection 1, if the State pleads and proves that the enumerated Class D or Class E crime was committed by the person against a family or household member, and if the court orders the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014, the person may be placed on probation for a period not to exceed 2 years, except that the term of probation must be terminated by the court when the probationer has served at least one year of probation, has completed the certified batterers' intervention program and has met all other conditions of probation.

A. As used in this subsection, the following definitions apply.

(1) "Enumerated Class D or Class E crime" means any Class D crime in chapter 9, any Class D or Class E crime in chapter 11, the Class D crimes described in sections 302 and 506-B and the Class D crimes described in sections 554, 555 and 758.

(2) "Family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.

B. Termination under this subsection requires a judicial finding that the probationer has served at least one year of probation, has successfully completed a certified batterers' intervention program and has met all other conditions of probation.

**Sec. 9. 17-A MRSA §1205-C, sub-§6**, as enacted by PL 1999, c. 246, §3, is amended to read:

**6.** Failure to comply with the time limits set forth in this section is not grounds for dismissal of a motion for probation revocation but ~~is~~ may be grounds for the probationer's release on personal recognizance pending further proceedings.

**Sec. 10. 17-A MRSA §1252, sub-§2, ¶A**, as amended by PL 1995, c. 473, §1, is further amended to read:

~~A. In the case of a Class A crime, the court shall set a definite period not to exceed 40 30 years. The court may consider a serious criminal history of the defendant and impose a maximum period of incarceration in excess of 20 years based on either the nature and seriousness of the crime alone or on the nature and seriousness of the crime coupled with the serious criminal history of the defendant;~~

**Sec. 11. 25 MRSA §3503-A**, as amended by PL 1999, c. 47, §1, is further amended to read:

#### **§3503-A. Disposal of firearms and ammunition**

Notwithstanding any other provision of this chapter, a police department or other law enforcement agency retaining firearms and ammunition covered by this chapter, Title 15, section 3314 or chapter 517, or Title 17-A, section ~~4158~~ 1158-A may auction the firearms to federally licensed firearms dealers or the public, use the firearms and ammunition for training purposes or destroy the firearms and ammunition.

**Sec. 12. 29-A MRSA §105, sub-§4**, as amended by PL 1997, c. 653, §5, is further amended to read:

**4. Violation.** A person is guilty of a Class E crime if a law enforcement officer has probable cause to believe the person violated or is violating this Title and the person intentionally fails or refuses upon request to give the person's correct name, address or date of birth to a law enforcement officer.

See title page for effective date.

## CHAPTER 658

H.P. 1410 - L.D. 1906

### An Act To Amend the Protection from Harassment Laws

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

**Sec. 1. 5 MRSA §4652**, as amended by PL 1995, c. 650, §2, is further amended to read:

#### **§4652. Filing of complaint; jurisdiction**

Proceedings under this chapter must be filed, heard and determined in the District Court of the division in which either the plaintiff or the defendant resides. If the plaintiff has left the plaintiff's residence to avoid harassment, the plaintiff may bring an action in the division of the plaintiff's previous residence or new residence.

The District Court has jurisdiction over protection from harassment ~~petitions~~ complaints. If a District Court judge is not available in the division in which a complaint requesting a temporary order is to be filed, the complaint may be presented to any other District Court judge or to any Superior Court justice who has the same authority as a District Court judge to grant or deny the temporary order.

A juvenile may be a party to an action under this chapter only when the juvenile has a representative through whom the action is brought or defended pursuant to the Maine Rules of Civil Procedure, Rule 17(b). The Department of Human Services may act as a representative of the juvenile. If any notice or service is required by this chapter, the notice or service must be provided to both the juvenile and the juvenile's representative.

**Sec. 2. 5 MRSA §4653, sub-§1**, as amended by PL 1995, c. 560, §3, is further amended to read:

**1. Filing; police report.** ~~Any~~ A person who has been a victim of harassment, including a business, may seek relief by filing a sworn ~~petition~~ complaint in an appropriate court alleging that harassment.

**Sec. 3. 5 MRSA §4653, sub-§2**, as enacted by PL 1987, c. 515, §1, is amended to read:

**2. Assistance.** The court shall provide separate forms with a summons and clerical assistance to assist either party to proceed under this chapter in completing and filing a ~~petition~~ complaint or other necessary documents. This assistance ~~shall~~ may not include legal advice or assistance in drafting legal documents.

**Sec. 4. 5 MRSA §4654, sub-§1**, as enacted by PL 1987, c. 515, §1, is amended to read:

**1. Full hearing; alternative dispute resolution.** ~~Within 21 days of the filing of a petition, a~~ A hearing ~~shall~~ must be held at which the plaintiff shall prove the allegation of harassment by a preponderance of the evidence.

**Sec. 5. 5 MRSA §4654, sub-§2**, as amended by PL 1995, c. 650, §4, is further amended to read:

**2. Temporary orders.** The court may enter any temporary orders, authorized under subsection 4, without written or oral notice to the defendant or the defendant's attorney if:

A. It appears clearly from a verified ~~petition~~ complaint or an affidavit accompanying the ~~petition~~ complaint that:

(1) Before the defendant or the defendant's attorney can be heard, the plaintiff or the plaintiff's employees may be in immediate and present danger of physical abuse from the defendant or in immediate and present danger of suffering extreme emotional distress as a result of the defendant's conduct, or the plaintiff's business property is in immediate and present danger of suffering substantial damage as a result of the defendant's actions;

(2) Either the plaintiff has or has not contacted any law enforcement officials concerning the alleged harassment; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment;

B. When reasonable, the plaintiff or the court has made reasonable efforts to give written or oral notice to the defendant or the defendant's attorney that the plaintiff is seeking a temporary order; and

C. The court provides written reasons for entering a temporary order.

**Sec. 6. 5 MRSA §4654, sub-§3**, as amended by PL 1991, c. 760, §3, is further amended to read: