State Of Maine
121st Legislature

Second Regular Session and
Second Special Session

Bill Summaries

Joint Standing Committee
on
Criminal Justice and Public Safety

May 2004

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Sen. Pamela Henderson Hatch
Sen. David L. Carpenter

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Maine State Legislature

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Summary Of Legislation Before The Joint Standing Committees

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing and joint select committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills considered by the committees. It is arranged alphabetically by committee name and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla/billsumm.htm).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CON RES XXX	*Chapter # of Constitutional Resolution passed by both Houses*
CONF CMTE UNABLE TO AGREE	*Committee of Conference unable to agree; bill died*
DIED BETWEEN BODIES	*House & Senate disagree; bill died*
DIED IN CONCURRENCE	*One body accepts ONTP report; the other indefinitely postpones the bill*
DIED ON ADJOURNMENT	*Action incomplete when session ended; bill died*
EMERGENCY	*Enacted law takes effect sooner than 90 days*
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE	*Emergency bill failed to get 2/3 vote*
FAILED ENACTMENT/FINAL PASSAGE	*Bill failed to get majority vote*
FAILED MANDATE ENACTMENT	*Bill imposing local mandate failed to get 2/3 vote*
NOT PROPERLY BEFORE THE BODY	*Ruled out of order by the presiding officers; bill died*
INDEF PP	*Bill Indefinitely Postponed*
ONTP	*Ought Not To Pass report accepted*
OTP-ND	*Committee report Ought To Pass In New Draft*
P&S XXX	*Chapter # of enacted Private & Special Law*
PASSED	*Joint Order passed in both bodies*
PUBLIC XXX	*Chapter # of enacted Public Law*
RESOLVE XXX	*Chapter # of finally passed Resolve*
UNSIGNED	*Bill held by Governor*
VETO SUSTAINED	*Legislature failed to override Governor's Veto*

Please note that the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is April 30, 2004; and non-emergency legislation enacted in the Second Special Session is July 30, 2004. Four bills (LD's 1572, 1629, 1636 and 1637) that were considered at the First Special Session in August 2003 are also included in these summaries.

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Offices located in Room 215 of the Cross Office Building

Enacted Law Summary

Public Law 2003, chapter 560 removes language that repeals the current law regarding unlawful solicitation to benefit law enforcement officers and agencies. Public Law 2003, chapter 560 continues to allow a person to solicit as long as property solicited in no way tangibly benefits the solicitor.

Public Law 2003, chapter 560 was enacted as an emergency measure effective March 17, 2004.

LD 1835 **An Act To Increase Penalities for Certain Violent Crimes Committed against Senior Citizens** **ONTP**

Sponsor(s)	Committee Report	Amendments Adopted
BRYANT COLWELL	ONTP	

LD 1835 proposed to require a court, when imposing a sentencing alternative involving a term of imprisonment, to assign special weight to the objective fact of the age of the victim in crimes of attempted murder, manslaughter, elevated aggravated assault or assault when the victim was at least 65 years of age at the time of the crime. Current law requires that the age of the victim be assigned special weight if the victim was less than 6 years of age at the time of the crime.

LD 1844 **An Act To Amend the Maine Criminal Code and Motor Vehicle Laws as Recommended by the Criminal Law Advisory Commission** **PUBLIC 657**

Sponsor(s)	Committee Report	Amendments Adopted
	OTP-AM MAJ OTP-AM MIN	H-853

LD 1844 proposed to do the following:

1. Add “date of birth” to the information that must be provided to a law enforcement officer upon request by the person to whom a summons is issued or delivered under either the Maine Revised Statutes, Title 17-A, section 15-A or 17. Currently, the information required of the person is limited to name and address. Date of birth is an important aid in properly identifying the person being summonsed and is currently required in Title 29-A, section 105, subsection 4. The bill also proposed to add the word “correct” relative to the information to be supplied by the person and to strike an exception relative to use of nonconforming forms that no longer is relevant;

2. Address a defect in the statute prohibiting obstruction of government administration revealed by the recent case of State v. Matson, 2003 ME 34, 818 A.2d 213. In Matson, the defendant had been convicted under the statute for physically interfering with the arrest of another person. Because the physical interference, intentionally standing in the way and refusing to move, was held to constitute something less than "force, violence or intimidation," the conviction was reversed. The focus of the crime is intentional physical interference with an

official function, not "intimidation" of an officer. Harassing speech alone is not sufficient, but when it is accompanied by a physical act that actually interferes with an official function, the further requirement of "intimidation" is unnecessary;

3. Repeal Title 17-A, section 1158 and replace it with section 1158-A, which proposed to do the following:

   A. Make technical drafting changes;

   B. Clarify that forfeiture of a firearm under certain circumstances is conditioned on the State's both alleging that the firearm was used by the defendant or an accomplice during the commission of the crime in the indictment or information and proving that allegation to the fact finder beyond a reasonable doubt; and

   C. Clarify when a court may not order as part of the sentence the forfeiture of a firearm otherwise qualifying for forfeiture. Access to the exception is available only to a person other than the defendant. The exception must be established by the other person at a point in time prior to the actual imposition of the defendant's sentence, and the burden imposed on the other person is to satisfy the court of the exception by a preponderance of the evidence.

   The bill also proposed to address forfeiture of firearms other than in the context of a conviction under possession of a firearm by a prohibited person or in the context of a handgun used by the defendant or an accomplice during the commission of murder or any other unlawful homicide crime. The other person's burden would be satisfied by proof by a preponderance of the evidence that at the time of the commission of the crime, the other person had a right to possess the firearm to the exclusion of the defendant. This burden is the same as under Title 17-A, section 1158.

   The bill also proposed to address forfeiture of firearms in the context of the conviction under Title 15, section 393. The other person's burden would be satisfied by proof by a preponderance of the evidence that, at the time of the commission of the crime, the person had a right to possess the firearm to the exclusion of the defendant and the person either did not know or should not have known that the defendant was a prohibited person under Title 15, section 393 or, even if the other person did know or should have known, nonetheless did not intentionally, knowingly or recklessly allow the defendant to possess or have under the defendant's control the firearm. This burden imposed upon the other person is greater than under Title 17-A, section 1158.

   The bill further proposed to address forfeiture of a handgun used by the defendant or an accomplice during the commission of murder or any other unlawful homicide crime. The other person's burden would be satisfied by proof by a preponderance of the evidence that, at the time of the commission of the crime, the other person was the rightful owner from whom the handgun had been stolen and the other person was not a principal or an accomplice in the commission of the crime. It also proposed to define "handgun" for purposes of Title 17-A, section 1158-A;

4. Replace Title 17-A, section 1202, subsection 1-B in order to address the constitutional defect of 2-year probation periods for persons convicted of Class D or Class E crimes involving domestic violence, which was revealed in the recent case of State v. Hodgkins, 2003 ME 57, 822 A.2d 1187. The bill also proposed to eliminate the necessity of the State's pleading and the jury's having to find that the Class D or Class E crime involved "domestic violence" by specifically enumerating the Class D or Class E crimes that automatically qualify and by having the State plead and the jury find that the qualifying crime was committed by the person "against a family or household member," as defined in Title 19-A, section 4002, subsection 4. The bill also proposed to make clear that imposition of the extended period of probation is further conditioned upon the

court's ordering the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014. This precondition is necessary because only one program currently exists for female defendants, and a program may not be reasonably available for certain male defendants. The bill also proposed to clarify that termination of the extended probation period requires a judicial finding that the probationer has served at least one year of probation, has successfully completed a certified batterers' program and has met all other conditions of probation;

5. Clarify that in the event there is a failure by the State to comply with the time limits set forth in Title 17-A, section 1205-C, a court may, but is not required to, issue an order that, pending initial appearance, the probationer be released on personal recognizance;

6. Eliminate the constitutional question raised by Maine's 2-tier system for terms of imprisonment for Class A crimes by replacing that system with a single 0 - to 30-year range. This change anticipates that the Law Court, through the case-by-case sentence review process, will develop and apply criteria that will avoid the imposition of excessively harsh sentences within the single range.

   In 1988 the Legislature doubled the maximum sentence of imprisonment for all Class A crimes from 20 years to 40 years. In 1991 the Law Court examined the legislative history of the relevant act and determined that the legislative intent was to "make available two discrete ranges of sentences for Class A crimes." See State v. Lewis, 590 A.2d 149, 151 (Me. 1991). Most Class A crime sentences were intended to remain in the original 0- to 20-year range, while the "expanded range" of 20- to 40-year sentences was reserved "only for the most heinous and violent crimes committed against a person." The sentencing court was to apply this "heinousness" standard "in its discretion" as a sentencing factor, subject to appellate review.

   This 2-tier system has been placed under a constitutional cloud by the decision of the United States Supreme Court in Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that sentencing factors increasing punishment beyond the maximum authorized must be treated as elements of crimes to be pleaded and proved beyond a reasonable doubt rather than as sentencing factors. Since the "heinousness" standard can be interpreted as increasing maximum punishment of up to 20 years to the "expanded range" of 20 to 40 years, it is potentially unconstitutional absent legislative correction; and

7. Add the culpable mental state of "intentionally" to Title 29-A, section 105, subsection 4, regarding the enforcement of the motor vehicle laws, to conform it to Title 17-A, sections 15-A and 17.

Committee Amendment "A" (H-853) was the majority report of the Joint Standing Committee on Criminal Justice and Public Safety and proposed to clarify the burden of proof in cases regarding forfeiture of firearms and to add the Class D crime of criminal restraint to crimes involving domestic violence for purposes of 2-year sentences of probation. The amendment also proposed to add a fiscal note.

Committee Amendment "B" (H-854) was the minority report of the Joint Standing Committee on Criminal Justice and Public Safety and proposed to clarify the burden of proof in cases regarding forfeiture of firearms, add the Class D crime of criminal restraint to crimes involving domestic violence for purposes of 2-year sentences of probation and eliminate the 2-tier sentencing system for Class A crimes. Unlike Committee Amendment "A," this amendment proposed to eliminate the constitutional doubts raised by our 2-tier system for Class A crimes by enumerating certain Class A crimes or certain forms of Class A crimes for which a 40-year ceiling is authorized. All other Class A crimes, or forms of Class A crimes, would be subject to a 20-year sentencing ceiling. The Class A crimes and forms of Class A crimes to which the 40-year ceiling would have application are of a similar nature and constitute the most serious antisocial and violent Class A crimes. Given the nature of those included, even in the absence of serious criminal history or other aggravating circumstances of the offender, a period of incarceration

in excess of 20 years might properly be merited based upon the particular circumstances of the crime as committed by the offender when compared against all possible means of committing that crime. The amendment also proposed to add a fiscal note. This amendment was not adopted.

Enacted Law Summary

Public Law 2003, chapter 657 does the following.

1. It adds "date of birth" to the information that must be provided to a law enforcement officer upon request by the person to whom a summons is issued or delivered, adds the word "correct" relative to the information to be supplied by the person and strikes an exception relative to use of nonconforming forms that no longer is relevant.

2. It addresses a defect in the statute prohibiting obstruction of government administration.

3. It repeals Title 17-A, section 1158 and replaces it with section 1158-A, which clarifies statutes dealing with forfeiture of firearms.

4. It replaces Title 17-A, section 1202, subsection 1-B in order to address the constitutional defect of 2-year probation periods for persons convicted of Class D or Class E crimes involving domestic violence and eliminates the necessity of the State's pleading and the jury's having to find that the Class D or Class E crime involved "domestic violence" by specifically enumerating the Class D or Class E crimes that automatically qualify and by having the State plead and the jury find that the qualifying crime was committed by the person "against a family or household member," as defined in Title 19-A, section 4002, subsection 4. It also makes clear that imposition of the extended period of probation is further conditioned upon the court's ordering the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014 and that termination of the extended probation period requires a judicial finding that the probationer has served at least one year of probation, has successfully completed a certified batterers' program and has met all other conditions of probation.

5. It clarifies that, in the event there is a failure by the State to comply with the time limits set forth in Title 17-A, section 1205-C for initial proceedings on a probation violations, a court may, but is not required to, issue an order that, pending initial appearance, the probationer be released on personal recognizance.

6. It eliminates the constitutional question raised by Maine’s 2-tier system for terms of imprisonment for Class A crimes by replacing that system with a single 0 - to 30-year range. This change anticipates that the Law Court, through the case-by-case sentence review process, will develop and apply criteria that will avoid the imposition of excessively harsh sentences within the single range.

7. It adds the culpable mental state of "intentionally" to Title 29-A, section 105, subsection 4 regarding the enforcement of the motor vehicle laws in order to conform it to Title 17-A, sections 15-A regarding issuance of summons for a criminal offense and 17 regarding enforcement of civil actions.