

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**  
123<sup>RD</sup> LEGISLATURE  
SECOND REGULAR AND FIRST SPECIAL SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed  
during the Second Regular or First Special Sessions of the 123<sup>rd</sup> Maine  
Legislature coming from the

**JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE  
AND PUBLIC SAFETY**

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**STATE OF MAINE**  
123<sup>RD</sup> LEGISLATURE  
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**LEGISLATIVE DIGEST OF BILL SUMMARIES AND  
ENACTED LAWS**

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the Second Regular or First Special Sessions of the 123<sup>rd</sup> Maine Legislature.

The *Digest* is arranged alphabetically by committee, and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

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:

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

The effective date for non-emergency legislation enacted in the Second Regular Session (R2) is June 30, 2008. The effective date for non-emergency legislation enacted in the First Special Session (S1) is July 18, 2008.<sup>1</sup> The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills. Any bill summarized in this document having an LD number less than 1932 was a bill carried over from the First Regular Session of the 123<sup>rd</sup> Legislature.

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<sup>1</sup> The session in which each law was enacted or finally passed (R2 or S1) is included in Appendix C.

# Joint Standing Committee on Criminal Justice and Public Safety

This amendment makes technical changes to account for recently enacted law.

## Committee Amendment "B" (S-415)

This amendment is the same as Committee Amendment "A" (S-277).

## Enacted Law Summary

Public Law 2007, chapter 686 requires blended sentencing for a juvenile bound over and convicted as an adult and sentenced to imprisonment if the juvenile has not attained 16 years of age at the time of sentencing and if the offense for which the juvenile was convicted is listed in the Maine Revised Statutes, Title 15, section 3101, subsection 4, paragraph C-2 as one for which the juvenile had the burden of proving a bind over was not appropriate. Blended sentencing affects only the place where imprisonment is served and means that the term of imprisonment, or, in the case of a split sentence, the unsuspended portion, imposed by the court must first be served in a Department of Corrections juvenile facility until the juvenile reaches 18 years of age or is sooner discharged from the facility and any imprisonment time remaining must then be served in a Department of Corrections adult facility.

## **LD 1902** An Act Requiring the State Bureau of Identification To Report Persons Found To Be a Danger to Themselves or to Others to the National Instant Criminal Background Check System

**PUBLIC 670**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
FAIRCLOTH NUTTING J	OTP-AM	H-1007 GERZOFSKY H-941

This bill establishes a procedure to prevent a person from purchasing or possessing a firearm if that person has been found to be a danger to self or to others.

This bill requires a court that commits a person involuntarily to a state mental health facility or a licensed psychologist or psychiatrist who determines a person to be a danger to self or others to report this commitment or determination to the Department of Public Safety, State Bureau of Identification. The bureau is required to forward the information to the Federal Bureau of Investigation, which operates the National Instant Criminal Background Check System.

This bill requires a person purchasing a firearm from a federally licensed firearms dealer to complete an application. The dealer is required to submit the application to the Federal Bureau of Investigation for a background check. Maine law currently only requires a federally licensed firearm dealer to provide a basic firearm safety brochure and other information to the purchaser of a firearm.

The bill provides a process for restoration of the right to possess a firearm (black powder rifle). A person who has been involuntarily committed to a state mental health facility or determined to be a danger to self or others may obtain a black powder rifle only upon application to the Commissioner of Public Safety and must include with the application a certified court order or notarized statement of a licensed psychologist or psychiatrist that the person is no longer a danger to self or others.

## Committee Amendment "A" (H-480)

This amendment replaces the bill and proposes a procedure to prevent possession of a firearm by a person who has been committed involuntarily to a psychiatric hospital after a commitment hearing under the Maine Revised Statutes, Title 34-B, section 3864, subsection 7 because the person was found to present a threat of substantial risk of physical harm to self, was found to present a threat of substantial risk of physical harm to others, was found not criminally responsible by reason of insanity with respect to a criminal charge or was found not competent to stand trial with respect to a criminal charge.

## *Joint Standing Committee on Criminal Justice and Public Safety*

The amendment requires the court to report information about a person adjudicated as being a danger to self or to others to the Department of Public Safety, State Bureau of Identification, which is then required to pass the fact of disqualification on to the Federal Bureau of Investigation for use in the National Instant Criminal Background Check System. The amendment also authorizes a person who has been previously prohibited from possessing a firearm under these new prohibitions to apply to the Commissioner of Public Safety for the restoration of the right to possess a black powder rifle or any other firearm that does not fall within the definition of "firearm" under 18 United States Code, Section 921(3).

### **Committee Amendment "B" (H-941)**

This amendment replaces the bill. Legislative Document 1902 was carried over from the First Regular Session of the 123rd Legislature because the Joint Standing Committee on Criminal Justice and Public Safety learned that the Federal Government was considering legislation that would require states to amend their reporting requirements for persons prohibited from possessing firearms.

Pursuant to Executive Order Number 02 FY 08/09, the Governor created a task force to review and enhance the State's reporting of information to the Federal Bureau of Investigation, National Instant Criminal Background Check System. This amendment includes recommendations of that task force and the committee. Subsequent to the task force report, the federal bill was enacted. Specifically this amendment:

1. Authorizes the development and implementation of a data system to transmit records of involuntary commitment rulings, after a judicial hearing, at which the patient has been represented by counsel;
2. Directs the court both prior to the commencement of a hearing and after a hearing in which a person is committed involuntarily to inform the person that when an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to the Maine Revised Statutes, Title 15, section 393, subsection 1;
3. Creates a relief from disability procedure that allows persons subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective or committed to any psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B, section 3864, after the expiration of 5 years from the final discharge from commitment, to apply to the Commissioner of Public Safety for relief from the disability. This is intended to provide a mechanism for relief for persons who have been committed pursuant to the emergency so-called "blue-paper" process under Title 34-B, section 3863 but not to those persons committed after a judicial hearing;
4. Permits the court to transmit the final ruling of involuntary commitment, without transmitting the record, mental health records or notes or testimony, to the Department of Public Safety, State Bureau of Identification for the sole purpose of transmitting the finding to the Federal Bureau of Investigation, National Instant Criminal Background Check System and to duly authorized law enforcement agencies pursuant to Title 34-B, section 3864;
5. Permits authorized criminal justice agencies to use the data transmitted for law enforcement purposes, including processing of concealed firearms permit applications, enforcement of bail conditions and protection from abuse orders, and for enforcement of state and federal laws concerning the prohibition against possession of firearms by prohibited persons;
6. Provides accurate and timely information to the Federal Bureau of Investigation, National Instant Criminal Background Check System, which will assist federally licensed firearms dealers in Maine and across the country to properly carry out their duties and obligations under federal firearms laws; and
7. Using the Department of Public Safety's current web services, provides interfacing with the Administrative Office

## *Joint Standing Committee on Criminal Justice and Public Safety*

of the Courts to exchange and share mental health adjudication data.

The amendment also adds an appropriations and allocations section.

### **House Amendment "A" (H-1007)**

This amendment provides an effective date of July 31, 2009 for the provisions that provide a mechanism for relief for persons who have been committed pursuant to the emergency so-called "blue-paper" process under the Maine Revised Statutes, Title 34-B, section 3863. It also provides that notwithstanding the Maine Revised Statutes, Title 25, section 1541, subsection 3, paragraph C and Title 34-B, section 3864, subsection 12, a court is not required to transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court and the commanding officer of the State Bureau of Identification is not required to report to the Federal Bureau of Investigation, National Instant Criminal Background Check System any court's finding described in Title 25, section 1541, subsection 3, paragraph C until the judicial branch and the Department of Public Safety receive sufficient funding for the implementation of Title 25, section 1541, subsection 3, paragraph C and Title 34-B, section 3864, subsection 12. This amendment also adds an appropriations and allocations section.

### **Enacted Law Summary**

Public Law 2007, chapter 670 enhances the State's reporting of information to the Federal Bureau of Investigation, National Instant Criminal Background Check System. Pursuant to Executive Order Number 02 FY 08/09, the Governor created a task force to review and enhance the State's reporting of information to the Federal Bureau of Investigation, National Instant Criminal Background Check System. Public Law 2007, chapter 670 includes recommendations of that task force and the Joint Standing Committee on Criminal Justice and Public Safety. Specifically Public Law 2007, chapter 670:

1. Authorizes the development and implementation of a data system to transmit records of involuntary commitment rulings, after a judicial hearing, at which the patient has been represented by counsel;
2. Directs the court both prior to the commencement of a hearing and after a hearing in which a person is committed involuntarily to inform the person that when an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to the Maine Revised Statutes, Title 15, section 393, subsection 1;
3. Creates a relief from disability procedure, effective July 31, 2009, for relief for persons who have been committed pursuant to the emergency so-called "blue-paper" process under the Maine Revised Statutes, Title 34-B, section 3863. A person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective or committed to any psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B, section 3864, after the expiration of 5 years from the final discharge from commitment, may apply to the Commissioner of Public Safety for relief from the disability. This is intended to provide a mechanism for relief for persons who have been committed pursuant to the emergency so-called "blue-paper" process under Title 34-B, section 3863 but not to those persons committed after a judicial hearing;
4. Permits the court to transmit the final ruling of involuntary commitment, without transmitting the record, mental health records or notes or testimony, to the Department of Public Safety, State Bureau of Identification for the sole purpose of transmitting the finding to the Federal Bureau of Investigation, National Instant Criminal Background Check System and to duly authorized law enforcement agencies pursuant to Title 34-B, section 3864; however, notwithstanding the Maine Revised Statutes, Title 25, section 1541, subsection 3, paragraph C and Title 34-B, section 3864, subsection 12, a court is not required to transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court and the commanding officer of the State Bureau of Identification is not required to report to the Federal Bureau of Investigation, National Instant Criminal Background Check System any court's finding described in Title 25, section 1541, subsection 3, paragraph C until the judicial branch and the Department of Public Safety receive sufficient funding for the implementation of

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Title 25, section 1541, subsection 3, paragraph C and Title 34-B, section 3864, subsection 12;

5. Permits authorized criminal justice agencies to use the data transmitted for law enforcement purposes, including processing of concealed firearms permit applications, enforcement of bail conditions and protection from abuse orders, and for enforcement of state and federal laws concerning the prohibition against possession of firearms by prohibited persons;
6. Provides accurate and timely information to the Federal Bureau of Investigation, National Instant Criminal Background Check System, which will assist federally licensed firearms dealers in Maine and across the country to properly carry out their duties and obligations under federal firearms laws; and
7. Using the Department of Public Safety's current web services, provides interfacing with the Administrative Office of the Courts to exchange and share mental health adjudication data.

LD 1938 An Act To Allow Community Service in Lieu of Fines

PUBLIC 517

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CLEARY	OTP-AM	H-736

Current law allows a court to require a defendant who defaults on payment of a fine that was part of a sentence to serve one day in a county jail for each \$5 of the fine, up to a maximum of the unpaid fine or 6 months in jail, whichever is shorter. A court does not have any authority to reduce the amount of the fine even when a defendant petitions the court prior to default. This bill allows the court, in cases when the court finds the default was not excusable, to order:

1. Commitment of the offender to incarceration in a county jail for one day for every \$5 of unpaid fine or 6 months, whichever is shorter;
2. The offender to perform a specified number of hours of community service work; or
3. Submission of the unpaid fine to a collection agency. If the fine is submitted to a collection agency, the court may order an additional amount of no more than 33% of the original fine to be added to the fine. This additional amount may be retained by the collection agency.

If the court finds that the default was excusable, it may provide the defendant with additional time to pay the fine, reduce the amount of each installment or order the defendant to perform community service work. This bill also allows a court, when it reasonably finds that the fine is uncollectible due to the death or disability of the defendant, to reduce or discharge completely the unpaid balance of the fine.

## Committee Amendment "A" (H-736)

This amendment strikes provisions in the bill that allow courts to change sentencing alternatives upon a default of a fine payment. Instead the amendment specifies that if the court finds that a default was unexcused, in addition to the option of committing the offender to the custody of the sheriff until all or a specified part of the fine is paid as provided by current law, the court may instead, if the unexcused default relates to a fine imposed for a Class D or Class E crime, order the offender to perform community service work until all or a specified part of the fine is paid. The number of hours of community service work must be specified in the court's order and may not exceed 8 hours for every \$25 of unpaid fine or one hundred 8-hour days, whichever is shorter. An offender ordered to perform community service work is given credit toward the payment of the fine for each 8-hour day of community service work performed at the rate specified in the court's order. The offender is also given credit toward the payment of the fine for each day that the offender is detained as a result of an arrest warrant issued in connection with a default, at a