

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

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

July 2011

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LEGISLATIVE DIGEST OF BILL SUMMARIES AND
ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD 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 LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public Law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 125th Legislature is September 28, 2011. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Criminal Justice and Public Safety

Enacted Law Summary

Public Law 2011, chapter 341 amends the Maine Bail Code in the following ways.

1. It adds a new definition of "crime involving domestic violence," which means a crime of domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct, as defined in the Title 17-A, as well as a violation of a protective order under Title 19-A, section 4011 in which the alleged victim is a family or household member as defined in Title 19-A, section 4002, subsection 4.
2. It replaces "district attorney" with "responsible prosecutorial office" to broaden the application to include the Attorney General's Office as well as any district attorney.
3. It adds a new provision addressing the preconviction limitations on a bail commissioner's authority as provided in Title 15, section 1092, subsection 4. It also clarifies that if a bail commissioner does not have sufficient information to determine whether the bail commissioner is authorized to set bail on a violation of a condition of release, the bail commissioner may not set bail.
4. It adds a provision requiring that in the preconviction context a bail commissioner specify a court date within 8 weeks of the date of the bail order when that bail order uses one or more release conditions not automatically included in every bail order for pretrial release.
5. It adds a provision that requires that the court and not a bail commissioner set preconviction bail for a crime if: the condition of release alleged to be violated relates to new criminal conduct for a Class C or above crime or a Class D or Class E crime that involves domestic violence, sexual assault or sexual exploitation of minors; the underlying crime for which preconviction bail was granted is classified as Class C or above; or the underlying crime for which preconviction bail was granted involves domestic violence, sexual assault or sexual exploitation of minors.
6. It clarifies that a law enforcement officer may make a warrantless arrest in the context of an anticipated motion to revoke bail by the attorney for the State. It expressly authorizes an arrest under these circumstances when the attorney for the State requests that the defendant be arrested for purposes of instituting a revocation of bail. It does not address an arrest for a violation of the crime of violation of a condition of release pursuant to Title 15, section 1092.
7. It adds to the list of circumstances in which a law enforcement officer may make a warrantless arrest the following: a violation of preconviction or post-conviction bail pursuant to Title 15, section 1095, subsection 2 or section 1098, subsection 2 upon request of the attorney for the State; failure to appear in violation of Title 15, section 1091, subsection 1, paragraph A; and a Class D or Class E crime committed while released on preconviction or post-conviction bail.

LD 1404

An Act To Enhance Public Safety Response to High-risk Events

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PILON GERZOFSKY	ONTP	

This bill requires the establishment of the Committee on Tactical Force Administration to review and make recommendations on tactical law enforcement incidents. The bill requires the Board of Trustees of the Maine Criminal Justice Academy to adopt certification standards and training programs for crisis negotiators and tactical

Joint Standing Committee on Criminal Justice and Public Safety

teams.

LD 1413 An Act To Amend the Maine Juvenile Code To Address the Issue of Competency

**PUBLIC 282
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-412

This bill repeals provisions regarding suspension of juvenile proceedings for mentally ill or incapacitated juveniles and enacts provisions establishing criteria to determine whether a juvenile is competent to proceed in a juvenile proceeding. The bill specifies that a juvenile is competent to proceed in a juvenile proceeding if the juvenile has a rational as well as a factual understanding of the proceedings against the juvenile and a sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding. The issue as to a juvenile's competency to proceed may be raised by the juvenile, by the State or by the Juvenile Court at any point in the juvenile proceeding after a finding of probable cause and prior to the imposition of a final order of disposition. A competency determination is necessary only when the Juvenile Court has a reasonable doubt as to a juvenile's competency to proceed.

The bill provides that if the Juvenile Court determines that a competency determination is necessary, it shall order that a juvenile be examined by the State Forensic Service to evaluate the juvenile's competency to proceed. The examination must take place within 21 days of the court's order. Pending a competency examination, the Juvenile Court shall suspend the proceeding on the petition. The suspension remains in effect pending the outcome of a competency determination hearing. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile.

The bill requires that the State Forensic Service examiner evaluate whether the juvenile appreciates the allegations of the petition, the nature of the adversarial process and the range of possible dispositions that may be imposed in the proceedings against the juvenile, whether the juvenile can disclose to counsel facts pertinent to the proceedings and display logical and autonomous decision making and appropriate courtroom behavior and whether the juvenile can testify relevantly at proceedings.

The bill provides that in assessing the juvenile's competency, the State Forensic Service examiner shall compare the juvenile being examined to juvenile norms that are broadly defined as those skills typically possessed by the average juvenile defendant adjudicated in the juvenile justice system. The State Forensic Service examiner shall determine and report if the juvenile suffers from mental illness, mental retardation or chronological immaturity and the severity of the impairment and its potential effect on the juvenile's competency to proceed. If the State Forensic Service examiner determines that the juvenile suffers from chronological immaturity, the examiner shall compare the juvenile to the average juvenile defendant. If the State Forensic Service examiner determines that the juvenile suffers from a mental illness, the examiner must provide the prognosis of the mental illness. The State Forensic Service examiner's report must also state an opinion whether there exists a substantial probability that the deficiencies related to competence identified in the report, if any, can be ameliorated in the foreseeable future.

If the Juvenile Court finds that the juvenile is competent to proceed, the Juvenile Court shall set a time for the resumption of the proceedings. The burden of proof is on the State if the juvenile is less than 14 years of age at the time the issue of competence is raised. If the juvenile is at least 14 years of age at the time the issue of competence is raised, the burden of proof is on the juvenile. In the event the State has the burden of proof, it must show by a preponderance of the evidence that the juvenile is competent to proceed. In the event the juvenile has the burden of proof, the juvenile must show by a preponderance of the evidence that the juvenile is not competent to proceed. Statements made by the juvenile in the course of an examination may not be admitted as evidence in the adjudicatory