

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



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

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

June 2012

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STATE OF MAINE

125TH LEGISLATURE
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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 Second 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.

<i>CARRIED OVER</i>	<i>carried over to a subsequent session of the Legislature</i>
<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; legislation died</i>
<i>DIED BETWEEN HOUSES</i>	<i>House & Senate disagreed; legislation died</i>
<i>DIED IN CONCURRENCE</i>	<i>defeated in each house, but on different motions; legislation died</i>
<i>DIED ON ADJOURNMENT</i>	<i>action incomplete when session ended; legislation died</i>
<i>EMERGENCY</i>	<i>enacted law takes effect sooner than 90 days after session adjournment</i>
<i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i>	<i>emergency failed to receive required 2/3 vote</i>
<i>FAILED, ENACTMENT or FINAL PASSAGE</i>	<i>failed to receive final majority vote</i>
<i>FAILED, MANDATE ENACTMENT</i>	<i>legislation proposing local mandate failed required 2/3 vote</i>
<i>HELD BY GOVERNOR</i>	<i>Governor has not signed; final disposition to be determined at subsequent session</i>
<i>LEAVE TO WITHDRAW</i>	<i>sponsor's request to withdraw legislation granted</i>
<i>NOT PROPERLY BEFORE THE BODY</i>	<i>ruled out of order by the presiding officer; legislation died</i>
<i>INDEF PP</i>	<i>indefinitely postponed; legislation died</i>
<i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ...	<i>ought-not-to-pass report accepted; legislation died</i>
<i>P&S XXX</i>	<i>chapter # of enacted private & 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>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 of the 125th Legislature is Thursday, August 30, 2012. 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

prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. at 490. The Court also stated that "facts that expose a defendant to a punishment greater than otherwise legally prescribed [are] by definition 'elements' of a separate legal offense." Id. at 483 n. 10. Apprendi applies as well to nonjury trials.

13. It amends Title 15, section 2128 to address only the waiver of grounds for relief found in subsections 1, 3 and 4. Subsection 2, which addresses certain errors not waived, was stricken from section 2128 and its provisions are now located in the newly enacted Title 15, section 2128-A. Subsections 5 and 6 were stricken from section 2128. The provisions of subsections 5 and 6 address the wholly different subject matter of filing deadlines and their provisions are now located in the newly enacted Title 15, section 2128-B.

14. It responds to the Law Court's holding in *Chasse v. State*, 2008 ME 28, ¶ 1, 942 A.2d 689 that no filing deadline exists by establishing a one-year filing deadline for post-sentencing proceedings.

15. In order to ensure fairness, it provides a grace period of the same length as the new one-year filing deadline for post-sentencing proceedings.

16. It provides to a noncitizen who, in the context of a plea in which the noncitizen was represented by counsel and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding a jurisdictional avenue independent of that already provided by the Maine Revised Statutes, Title 15, section 2124, subsection 1. This jurisdictional avenue provides a means by which to initiate a post-conviction review proceeding to test the effective-assistance-of-counsel guarantee under the United States Constitution, Amendment VI as reflected in the United States Supreme Court decision of *Padilla v. Kentucky*, 559 U.S. ___, 130 S.Ct. 1473 (2010). To qualify, the plea must also be accepted by a trial court on or after March 31, 2010.

17. Provides a different filing deadline for Title 15, section 2124, subsection 3, paragraph E than that provided for in paragraphs A and D of the same section. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.

18. It adds an application section to provide a grace period of the same length as the new 60-day filing deadline for this indirect impediment.

LD 1867 An Act To Protect Victims of Domestic Violence

PUBLIC 640

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CAIN MASON	OTP-AM	H-907

This bill:

1. Adds additional crimes to the definition of "crime involving domestic violence" in the Maine Bail Code;
2. Provides that bail must be determined by a judge, not a bail commissioner, when a crime involving domestic violence is alleged to have occurred;
3. Makes the violation of a bail condition in cases in which an underlying crime was a crime involving domestic violence a Class C crime;
4. Requires judges to order that a defendant be committed without bail pending a bail revocation hearing, unless certain conditions are met, in certain circumstances;

Joint Standing Committee on Criminal Justice and Public Safety

5. Requires judges to deny bail in certain circumstances;
6. Allows a sentence of or that includes a term of probation to be imposed upon a defendant convicted of a crime involving domestic violence; and
7. Requires law enforcement agencies to include in their mandatory policies regarding domestic violence a process for collecting information about whether the commission of an alleged crime included the use of strangulation.

Committee Amendment "A" (H-907)

This amendment does the following.

1. In certain cases involving domestic violence, it prohibits a bail commissioner from setting preconviction bail for a defendant alleged to have violated a protection from abuse order or alleged to have committed a Class A, B or C crime under the Maine Revised Statutes, Title 17-A, chapter 9, a sexual offense that is a Class A, B or C crime, kidnapping or a Class C crime involving criminal restraint, domestic stalking, domestic threatening, domestic terrorizing or domestic reckless conduct.
2. In addition to information already required under the Maine Bail Code in cases involving domestic violence, it requires the bail commissioner to make a good faith effort to obtain from the arresting officer, the responsible prosecutorial office, a jail employee or other law enforcement officer information about the severity of the alleged offense.
3. It requires a judge to order a defendant in a domestic violence case to be committed without bail pending a bail revocation hearing unless the judge makes certain findings on the record but does not require the findings to be reduced to writing.
4. It directs the judicial branch to study the application of the provisions of this legislation and report its findings to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by January 30, 2013 and authorizes that committee to submit legislation to the First Regular Session of the 126th Legislature that is related to the report.
5. It requires law enforcement agencies to adopt written policies for cases involving domestic violence to collect information about whether the commission of the crime included the use of strangulation.
6. It corrects a number of cross-referencing errors in current domestic violence laws so that the proper section in the Maine Bail Code is identified.

Enacted Law Summary

Public Law 2011, chapter 640 does the following.

1. In certain cases involving domestic violence, it prohibits a bail commissioner from setting preconviction bail for a defendant alleged to have violated a protection from abuse order or alleged to have committed a Class A, B or C crime under the Maine Revised Statutes, Title 17-A, chapter 9, a sexual offense that is a Class A, B or C crime, kidnapping or a Class C crime involving criminal restraint, domestic stalking, domestic threatening, domestic terrorizing or domestic reckless conduct.
2. In addition to information already required under the Maine Bail Code in cases involving domestic violence, it requires the bail commissioner to make a good faith effort to obtain from the arresting officer, the responsible prosecutorial office, a jail employee or other law enforcement officer information about the severity of the alleged offense.

Joint Standing Committee on Criminal Justice and Public Safety

- 3. It requires a judge to order a defendant in a domestic violence case to be committed without bail pending a bail revocation hearing unless the judge makes certain findings on the record but does not require the findings to be reduced to writing.
- 4. It directs the judicial branch to study the application of the provisions of this legislation and report its findings to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by January 30, 2013 and authorizes that committee to submit legislation to the First Regular Session of the 126th Legislature that is related to the report.
- 5. It requires law enforcement agencies to adopt written policies for cases involving domestic violence to collect information about whether the commission of the crime included the use of strangulation.
- 6. It corrects a number of cross-referencing errors in current domestic violence laws so that the proper section in the Maine Bail Code is identified.

LD 1900 An Act To Support Members of the Law Enforcement Community Who Have Suffered a Catastrophic Illness

**PUBLIC 596
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CUSHING FARNHAM	OTP-AM	H-858

This bill is a concept draft pursuant to Joint Rule 208.

This bill is an emergency measure and proposes to amend current law to permit law enforcement officers to solicit funds within the law enforcement community for the support of law enforcement officers or their family members with medical needs or with unusual hardship.

Committee Amendment "A" (H-858)

This amendment replaces the bill. Current law allows a law enforcement agency or association to solicit property from the general public for the benefit of a law enforcement officer, or an immediate family member of a law enforcement officer, suffering from a catastrophic illness. This amendment also allows a law enforcement agency or association to solicit property from a law enforcement officer, a law enforcement agency or a law enforcement association for the benefit of a law enforcement officer, or an immediate family member of a law enforcement officer, suffering from a catastrophic illness.

Enacted Law Summary

Public Law 2011, chapter 596 allows a law enforcement agency or association to solicit property from a law enforcement officer, a law enforcement agency or a law enforcement association for the benefit of a law enforcement officer, or an immediate family member of a law enforcement officer, suffering from a catastrophic illness.

Public Law 2011, chapter 596 was enacted as an emergency measure effective April 5, 2012.