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Legislative Document

No. 1603

H.P. 1094

House of Representatives, February 23, 2016

**An Act To Implement the Recommendations of the Criminal Law
Advisory Commission Relative to the Maine Criminal Code and
Related Statutes**

Reported by Representative FOWLE of Vassalboro for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 15 MRSA §393, sub-§1**, as amended by PL 2015, c. 287, §§1 to 3, is
3 further amended to read:

4 **1. Possession prohibited.** A person may not own, possess or have under that
5 person's control a firearm, unless that person has obtained a permit under this section, if
6 that person:

7 A-1. Has been convicted of committing or found not criminally responsible by
8 reason of insanity of committing:

9 (1) A crime in this State that is punishable by imprisonment for a term of one
10 year or more;

11 (2) A crime under the laws of the United States that is punishable by
12 imprisonment for a term exceeding one year;

13 (3) A crime under the laws of any other state that, in accordance with the laws of
14 that jurisdiction, is punishable by a term of imprisonment exceeding one year.
15 This subparagraph does not include a crime under the laws of another state that is
16 classified by the laws of that state as a misdemeanor and is punishable by a term
17 of imprisonment of 2 years or less;

18 (4) A crime under the laws of any other state that, in accordance with the laws of
19 that jurisdiction, does not come within subparagraph (3) but is elementally
20 substantially similar to a crime in this State that is punishable by a term of
21 imprisonment for one year or more; or

22 (5) A crime under the laws of the United States, this State or any other state or
23 the Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the
24 prosecuting authority was required to plead and prove that the person committed
25 the crime with the use of:

26 (a) A firearm against a person; or

27 (b) Any other dangerous weapon;

28 C. Has been adjudicated in this State or under the laws of the United States or any
29 other state to have engaged in conduct as a juvenile that, if committed by an adult,
30 would have been a disqualifying conviction:

31 (1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another
32 person was threatened or resulted; or

33 (3) Under paragraph A-1, subparagraph (5);

34 D. Is subject to an order of a court of the United States or a state, territory,
35 commonwealth or tribe that restrains that person from harassing, stalking or
36 threatening an intimate partner, as defined in 18 United States Code, Section 921(a),
37 of that person or a child of the intimate partner of that person, or from engaging in
38 other conduct that would place the intimate partner in reasonable fear of bodily injury
39 to the intimate partner or the child, except that this paragraph applies only to a court

1 order that was issued after a hearing for which that person received actual notice and
2 at which that person had the opportunity to participate and that:

3 (1) Includes a finding that the person represents a credible threat to the physical
4 safety of an intimate partner or a child; or

5 (2) By its terms, explicitly prohibits the use, attempted use or threatened use of
6 physical force against an intimate partner or a child that would reasonably be
7 expected to cause bodily injury;

8 E. Has been:

9 (1) Committed involuntarily to a hospital pursuant to an order of the District
10 Court under Title 34-B, section 3864 because the person was found to present a
11 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
12 4-A, paragraphs A to C;

13 (2) Found not criminally responsible by reason of insanity with respect to a
14 criminal charge; or

15 (3) Found not competent to stand trial with respect to a criminal charge;

16 F. Is a fugitive from justice. For the purposes of this paragraph, "fugitive from
17 justice" has the same meaning as in section 201, subsection 4;

18 G. Is an unlawful user of or is addicted to any controlled substance and as a result is
19 prohibited from possession of a firearm under 18 United States Code, Section
20 922(g)(3);

21 H. Is an alien who is illegally or unlawfully in the United States or who was admitted
22 under a nonimmigrant visa and who is prohibited from possession of a firearm under
23 18 United States Code, Section 922(g)(5);

24 I. Has been discharged from the United States Armed Forces under dishonorable
25 conditions; or

26 J. Has, having been a citizen of the United States, renounced that person's
27 citizenship.

28 For the purposes of this subsection, a person is deemed to have been convicted upon the
29 acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of
30 the equivalent in a juvenile case, by a court of competent jurisdiction.

31 In the case of a deferred disposition, ~~unless the person is alleged to have committed one~~
32 ~~or more of the offenses listed in section 1023, subsection 4, paragraph B-1,~~ a person is
33 deemed to have been convicted when the court imposes the sentence. ~~In, except that in~~
34 the case of a deferred disposition for a person alleged to have committed one or more of
35 the offenses listed in section 1023, subsection 4, paragraph B-1, that person may not
36 possess a firearm beginning at the start of the deferred disposition period.

37 For the purposes of this subsection, a person is deemed to have been found not criminally
38 responsible by reason of insanity upon the acceptance of a plea of not criminally
39 responsible by reason of insanity or a verdict or finding of not criminally responsible by
40 reason of insanity, or of the equivalent in a juvenile case, by a court of competent
41 jurisdiction.

1 **Sec. 2. 15 MRSA §393, sub-§1-B**, as enacted by PL 2015, c. 287, §5, is amended
2 to read:

3 **1-B. Prohibition for domestic violence offenses.** A person may not own, possess
4 or have under that person's control a firearm if that person:

5 A. Has been convicted of committing or found not criminally responsible by reason
6 of insanity of committing:

7 (1) A Class D crime in this State in violation of Title 17-A, section 207-A,
8 209-A, 210-B, 210-C or 211-A; or

9 (2) A crime under the laws of the United States or any other state that in
10 accordance with the laws of that jurisdiction is elementally substantially similar
11 to a crime in subparagraph (1); or

12 B. Has been adjudicated in this State or under the laws of the United States or any
13 other state to have engaged in conduct as a juvenile that, if committed by an adult,
14 would have been a disqualifying conviction under this subsection.

15 Except as provided in subsection 1-A, the prohibition created by this subsection for a
16 conviction or adjudication of an offense listed in paragraph A or B expires 5 years from
17 the date the person is finally discharged from the sentence imposed as a result of the
18 conviction or adjudication if that person has no subsequent criminal convictions during
19 that 5-year period. If a person is convicted of a subsequent crime within the 5-year
20 period, the 5-year period starts anew from the date of the subsequent conviction. In the
21 case of a deferred disposition, the 5-year period begins at the start of the deferred
22 disposition period. If, at the conclusion of the deferred disposition period, the court
23 grants the State's motion to allow a person to withdraw the plea and the State dismisses
24 the pending charging instrument with prejudice, the 5-year prohibition period terminates.

25 For the purposes of this subsection, a person is deemed to have been convicted or
26 adjudicated upon the acceptance of a plea of guilty or nolo contendere or a verdict or
27 finding of guilty, or of the equivalent in a juvenile case, by a court of competent
28 jurisdiction.

29 For the purposes of this subsection, a person is deemed to have been found not criminally
30 responsible by reason of insanity upon the acceptance of a plea of not criminally
31 responsible by reason of insanity or a verdict or finding of not criminally responsible by
32 reason of insanity, or of the equivalent in a juvenile case, by a court of competent
33 jurisdiction.

34 The provisions of this subsection apply only to a person convicted, adjudicated or placed
35 on deferred disposition on or after the effective date of this subsection.

36 **Sec. 3. 15 MRSA §393, sub-§8**, as amended by PL 2007, c. 670, §12, is further
37 amended to read:

38 **8. Penalty.** A violation of subsection 1, paragraph A-1 or C is a Class C crime. A
39 violation of subsection 1, paragraph D ~~or~~ E, F, G, H, I or J is a Class D crime. A
40 violation of subsection 1-A or 1-B by a person at least 18 years of age is a Class C crime.

1 **Sec. 4. 15 MRSA §709, sub-§1-A**, as amended by PL 2013, c. 267, Pt. B, §5, is
2 repealed.

3 **Sec. 5. 15 MRSA §709, sub-§1-C** is enacted to read:

4 **1-C. Administration of juvenile justice.** "Administration of juvenile justice" has
5 the same meaning as in section 3308-A, subsection 1, paragraph A.

6 **Sec. 6. 15 MRSA §709, sub-§4-B**, as amended by PL 2011, c. 507, §3, is further
7 amended to read:

8 **4-B. Jail investigative officer.** "Jail investigative officer" means an employee of a
9 jail designated by the jail administrator as having the authority to conduct investigations
10 of crimes relating to the security or orderly management of the jail and engage in any
11 other activity that is related to the ~~administration of criminal justice~~ apprehension or
12 summonsing, detention, pretrial release, post-trial release, prosecution, adjudication,
13 sentencing, correctional custody and supervision or rehabilitation of accused persons or
14 convicted criminal offenders or that is related to the collection, storage and dissemination
15 of criminal history record information.

16 **Sec. 7. 15 MRSA §712, sub-§2**, as amended by PL 2013, c. 80, §4, is further
17 amended to read:

18 **2. Investigative officers.** It is not a violation of this chapter for an investigative
19 officer, or for another employee of the Department of Corrections authorized to exercise
20 law enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or
21 use that communication in the normal course of employment while engaged in any
22 activity that is related to the administration of criminal justice ~~or as defined in Title 16,~~
23 section 703, subsection 1 for the purposes of the Criminal History Record Information
24 Act; while engaged in any activity that is related to the administration of criminal justice
25 as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and
26 Investigative Record Information Act; while engaged in any activity that is related to the
27 administration of juvenile justice for the purposes of this chapter; or while engaged in any
28 activity that is related to the administration of juvenile criminal justice as defined in
29 section 3308, subsection 7, paragraph A, subparagraph (2), for the purposes of this
30 chapter if:

31 A. Either the sender or receiver of that communication is a person residing in an
32 adult or juvenile correctional facility administered by the Department of Corrections;
33 and

34 B. Notice of the possibility of interception is provided in a way sufficient to make
35 the parties to the communication aware of the possibility of interception, which
36 includes:

37 (1) Providing the resident with a written notification statement;

38 (2) Posting written notification next to every telephone at the facility that is
39 subject to monitoring; and

1 (3) Informing the recipient of a telephone call from the resident by playing a
2 recorded warning before the recipient accepts the call.

3 This subsection does not authorize any interference with the attorney-client privilege.

4 **Sec. 8. 15 MRSA §712, sub-§3**, as amended by PL 2011, c. 507, §5, is further
5 amended to read:

6 **3. Jail investigative officer.** It is not a violation of this chapter for a jail
7 investigative officer, as defined in this chapter, or for a jail employee acting at the
8 direction of a jail investigative officer to intercept, disclose or use that communication in
9 the normal course of employment while engaged in any activity that is related to the
10 administration of criminal justice as defined in Title 16, section 703, subsection 1 for the
11 purposes of the Criminal History Record Information Act or while engaged in any
12 activity that is related to the administration of criminal justice as defined in Title 16,
13 section 803, subsection 2 for the purposes of the Intelligence and Investigative Record
14 Information Act if:

15 A. Either the sender or the receiver of that communication is a person residing in an
16 adult section of the jail; and

17 B. Notice of the possibility of interception is provided in a way sufficient to make
18 the parties to the communication aware of the possibility of interception, which
19 includes:

20 (1) Providing the resident with a written notification statement;

21 (2) Posting written notification next to every telephone at the jail that is subject
22 to monitoring; and

23 (3) Informing the recipient of a telephone call from the resident by playing a
24 recorded warning before the recipient accepts the call.

25 This subsection does not authorize any interference with the attorney-client privilege.

26 **Sec. 9. 15 MRSA §713, sub-§2**, as enacted by PL 2011, c. 507, §7, is amended to
27 read:

28 **2. Contents obtained under this chapter.** The contents of an interception of any
29 oral communication or wire communication that has been legally obtained pursuant to
30 section 712, subsection 2 or 3 are admissible in the courts of this State, subject to the
31 Maine Rules of Evidence, if related to the administration of criminal justice ~~or~~ as defined
32 in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record
33 Information Act; the administration of criminal justice as defined in Title 16, section 803,
34 subsection 2 for the purposes of the Intelligence and Investigative Record Information
35 Act; the administration of juvenile justice for the purposes of this chapter; the
36 administration of juvenile criminal justice for the purposes of this chapter; or the statutory
37 functions of a state agency.

38 **Sec. 10. 17-A MRSA §210-A, sub-§1, ¶C**, as amended by PL 2015, c. 357, §2,
39 is further amended to read:

1 C. The actor violates paragraph A and has one or more prior convictions in this State
2 or another jurisdiction. Notwithstanding section 2, subsection 3-B, as used in this
3 paragraph, "another jurisdiction" also includes any Indian tribe.

4 Violation of this paragraph is a Class C crime. In determining the sentence for a
5 violation of this paragraph the court shall impose a ~~sentence of imprisonment by~~
6 ~~using a 2-step process. In the first step the court shall determine a base term of~~
7 ~~imprisonment of one year. In the 2nd step the court shall determine and impose a~~
8 ~~term of imprisonment for the defendant the length of which is appropriate for the~~
9 ~~defendant after consideration of the factors required by section 1252, subsection 5-D~~
10 ~~and aggravating and mitigating factors, including, but not limited to, the character of~~
11 ~~the defendant and the defendant's criminal history, the effect of the offense on the~~
12 ~~victim and the protection of the public interest~~ sentencing alternative pursuant to
13 section 1152 that includes a term of imprisonment. In determining the basic term of
14 imprisonment as the first step in the sentencing process, the court shall select a term
15 of at least one year.

16 For the purposes of this paragraph, "prior conviction" means a conviction for a
17 violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19,
18 section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary,
19 emergency, interim or final protective order; an order of a tribal court of the
20 Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court
21 of the United States or of any other state, territory, commonwealth or tribe; or a
22 court-approved consent agreement. Section 9-A governs the use of prior convictions
23 when determining a sentence;

24 **Sec. 11. 17-A MRSA §210-A, sub-§1, ¶E**, as enacted by PL 2015, c. 357, §3, is
25 amended to read:

26 E. The actor violates paragraph C and at least one prior conviction was for a
27 violation of paragraph D.

28 Violation of this paragraph is a Class B crime. In determining the sentence for a
29 violation of this paragraph the court shall impose a ~~sentence of imprisonment by~~
30 ~~using a 2-step process. In the first step the court shall determine a base term of~~
31 ~~imprisonment of 2 years. In the 2nd step the court shall determine and impose a term~~
32 ~~of imprisonment for the defendant the length of which is appropriate for the~~
33 ~~defendant after consideration of the factors required by section 1252, subsection 5-D~~
34 ~~and aggravating and mitigating factors, including, but not limited to, the character of~~
35 ~~the defendant and the defendant's criminal history, the effect of the offense on the~~
36 ~~victim and the protection of the public interest~~ sentencing alternative pursuant to
37 section 1152 that includes a term of imprisonment. In determining the basic term of
38 imprisonment as the first step in the sentencing process, the court shall select a term
39 of at least 2 years.

40 **Sec. 12. 17-A MRSA §1252, sub-§4-A**, as amended by PL 2007, c. 476, §45, is
41 further amended to read:

42 **4-A.** If the State pleads and proves that, at the time any crime, excluding murder,
43 under chapter 9, 11, 13 or 27; section 402-A, subsection 1, paragraph A; or section 752-A

1 or 752-C was committed, or an attempt of any such crime was committed, the defendant
2 had 2 or more prior convictions under chapter 9, 11, 13 or 27; section 402-A, subsection
3 1, paragraph A; or section 752-A or 752-C, or an attempt of any such crime was
4 committed, or for engaging in substantially similar conduct in another jurisdiction, the
5 sentencing class for the crime is one class higher than it would otherwise be. In the case
6 of a Class A crime, the sentencing class is not increased, but the prior record must be
7 given serious consideration by the court when imposing a sentence. Section 9-A governs
8 the use of prior convictions when determining a sentence, except that, for the purposes of
9 this subsection, for violations under chapter 11, the dates of prior convictions may have
10 occurred at any time. This subsection does not apply to section 210-A if the prior
11 convictions have already served to enhance the sentencing class under section 210-A,
12 subsection 1, paragraph C or any other offense in which prior convictions have already
13 served to enhance the sentencing class.

14 SUMMARY

15 This bill implements the recommendations of the Criminal Law Advisory
16 Commission to make amendments to the Maine Criminal Code and related statutes.
17 Specifically, the bill:

18 1. Amends the law on prohibited possession of firearms to remove a redundant
19 reference in the case of a deferred disposition;

20 2. Amends the law on prohibited possession of firearms as a result of a domestic
21 violence offense to add termination of the 5-year prohibition period if at the conclusion of
22 a deferred disposition period the court grants the State's motion to allow a person to
23 withdraw the plea and the State dismisses the pending charging instrument with
24 prejudice;

25 3. Adds penalties for possession of a firearm by a person designated as prohibited
26 pursuant to the Maine Revised Statutes, Title 15, section 393, subsection 1, paragraphs F
27 to J and subsection 1-B. These prohibition provisions were added by Public Law 2015,
28 chapter 287, sections 3 and 5, but penalties for violations of them were not enacted. This
29 bill makes a violation of paragraphs F to J a Class D crime. It makes a violation of
30 subsection 1-B by a person at least 18 years of age a Class C crime;

31 4. Enacts a definition of "administration of juvenile justice" in Title 15, chapter 102
32 regarding the interception of wire and oral communications that is consistent with the
33 Maine Juvenile Code;

34 5. Amends the definition of "administration of criminal justice" as used in certain
35 laws regarding the interception of wire and oral communications by including under
36 administration of criminal justice activities under the Intelligence and Investigative
37 Record Information Act;

38 6. Amends the Class C sentencing provision for a person convicted of stalking who
39 has one or more prior convictions to clarify that although the court continues to have
40 discretion to impose any other authorized sentencing alternative, the court is required to
41 impose a sentencing alternative that includes a term of imprisonment of at least one year;

1 7. Amends the Class B sentencing provision for a person convicted of stalking who
2 has one or more prior convictions, at least one of which was for stalking 2 or more
3 specific persons that are members of an identifiable group, to require the court in
4 determining the basic term of imprisonment as the first step in the sentencing process to
5 select a term of at least 2 years; and

6 8. Strikes redundant provisions requiring the court, in imposing a sentencing
7 alternative for the crime of stalking, to consider whether the victim was being stalked by
8 the person being sentenced.

9 Current law provides that for the purpose of imposing a sentence for certain crimes, if
10 the defendant has 2 or more convictions for those crimes, the sentencing class for the
11 crime is one class higher. This bill provides that an attempt to commit such crimes also
12 results in a higher sentencing class.