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Legislative Document

No. 710

H.P. 523

House of Representatives, March 5, 2021

An Act Regarding the Maine Criminal Code

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

Received by the Clerk of the House on March 3, 2021. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed.

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

ROBERT B. HUNT
Clerk

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

2 **PART A**

3 **Sec. A-1. 17-A MRSA §554, sub-§1, ¶B-3**, as amended by PL 2015, c. 358, §3,
4 is further amended to read:

5 B-3. Being the parent, foster parent, guardian or other person having the care and
6 custody of a child, knowingly deprives the child of necessary health care, with a result
7 that the child is placed in danger of serious harm. Violation of this paragraph is a Class
8 D crime; or

9 **Sec. A-2. 17-A MRSA §554, sub-§1, ¶C**, as amended by PL 2015, c. 358, §3, is
10 further amended to read:

11 C. ~~Otherwise recklessly endangers~~ Endangers the health, safety or welfare of the child
12 by ~~recklessly~~ violating a duty of care or protection. Violation of this paragraph is a
13 Class D crime; ~~or~~

14 **Sec. A-3. 17-A MRSA §554, sub-§1, ¶D** is enacted to read:

15 D. Endangers the health, safety or welfare of a child by recklessly violating a duty of
16 care or protection resulting in death or serious bodily injury to the child. Violation of
17 this paragraph is a Class C crime.

18 **PART B**

19 **Sec. B-1. 17-A MRSA §253, sub-§1, ¶B**, as amended by PL 2003, c. 711, Pt. B,
20 §2, is further amended to read:

21 B. The other person, not the actor's spouse, has not in fact attained the age of 14 years
22 and the actor is at least 3 years older than the other person. Violation of this paragraph
23 is a Class A crime; or

24 **Sec. B-2. 17-A MRSA §253, sub-§1, ¶C**, as enacted by PL 2003, c. 711, Pt. B,
25 §2, is amended to read:

26 C. The other person, not the actor's spouse, has not in fact attained 12 years of age and
27 the actor is at least 3 years older than the other person. Violation of this paragraph is
28 a Class A crime.

29 **PART C**

30 **Sec. C-1. 15 MRSA §393, sub-§1, ¶A-1**, as amended by PL 2015, c. 470, §1, is
31 further amended to read:

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

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

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

38 (3) A crime under the laws of ~~any other state~~ another jurisdiction that, in
39 accordance with the laws of that jurisdiction, is punishable by a term of

1 imprisonment exceeding one year. This subparagraph does not include a crime
2 under the laws of another state jurisdiction that is classified by the laws of that state
3 jurisdiction as a misdemeanor and is punishable by a term of imprisonment of 2
4 years or less;

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

9 (5) A crime under the laws of ~~the United States, this State or any other state or the~~
10 ~~Passamaquoddy Tribe or Penobscot Nation~~ another jurisdiction in a proceeding in
11 which the prosecuting authority was required to plead and prove that the person
12 committed the crime with the use of:

- 13 (a) A firearm against a person; or
- 14 (b) Any other dangerous weapon.

15 Violation of this paragraph is a Class C crime;

16 **Sec. C-2. 15 MRSA §393, sub-§1, ¶C**, as amended by PL 2015, c. 470, §1, is
17 further amended to read:

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

- 21 (1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another
22 person was threatened or resulted; or
- 23 (3) Under paragraph A-1, subparagraph (5).

24 Violation of this paragraph is a Class C crime;

25 **Sec. C-3. 15 MRSA §393, sub-§1, ¶D**, as amended by PL 2015, c. 470, §1, is
26 further amended to read:

27 D. Is subject to an order of a court of ~~the United States or a state, territory,~~
28 ~~commonwealth~~ another jurisdiction or a tribe that restrains that person from harassing,
29 stalking or threatening an intimate partner, as defined in 18 United States Code, Section
30 921(a), of that person or a child of the intimate partner of that person, or from engaging
31 in other conduct that would place the intimate partner in reasonable fear of bodily
32 injury to the intimate partner or the child, except that this paragraph applies only to a
33 court order that was issued after a hearing for which that person received actual notice
34 and at which that person had the opportunity to participate and that:

- 35 (1) Includes a finding that the person represents a credible threat to the physical
36 safety of an intimate partner or a child; or
- 37 (2) By its terms, explicitly prohibits the use, attempted use or threatened use of
38 physical force against an intimate partner or a child that would reasonably be
39 expected to cause bodily injury.

40 Violation of this paragraph is a Class D crime;

1 (2) ~~The penalties for and consequences of violating a condition of release,~~
2 ~~including the immediate issuance of a warrant for the defendant's arrest~~ That failure
3 to appear or comply with a condition or conditions may subject the defendant to
4 revocation of bail and additional criminal penalties.

5 **Sec. D-2. 15 MRSA §1026, sub-§7**, as enacted by PL 1995, c. 356, §5, is repealed.

6 **Sec. D-3. 15 MRSA §1026, sub-§8** is enacted to read:

7 **8. Applicability of conditions of release.** A condition of release takes effect and is
8 fully enforceable immediately as of the time the judicial officer sets the condition, unless
9 the release order expressly excludes a condition of release from immediate applicability, if
10 the defendant is advised by a judicial officer, a law enforcement officer or an employee of
11 a county or regional jail or a correctional facility having custody of the defendant:

12 A. Of the conditions; and

13 B. That failure to appear or comply with the conditions may subject the defendant to
14 revocation of bail and additional criminal penalties.

15 **PART E**

16 **Sec. E-1. 17-A MRSA §1805, sub-§1**, as enacted by PL 2019, c. 113, Pt. A, §2, is
17 amended to read:

18 **1. Determination of date probation begins; revocation; place of imprisonment.**

19 Unless prohibited pursuant to section 1802, subsection 1, paragraphs A to F, the court may
20 impose a split sentence by sentencing an individual to a term of imprisonment not to exceed
21 the maximum term authorized for the crime, an initial portion of which is to be served and
22 the remainder of which is to be suspended, and accompany the suspension with a period of
23 probation not to exceed the maximum period authorized for the crime. The period of
24 probation commences on the date the individual is released from the unsuspended portion
25 of the term of imprisonment, unless the court orders it to commence on an earlier date. If
26 the period of probation commences on the date the person is released from the initial
27 unsuspended portion of the term of imprisonment, that day is counted as the first full day
28 of the period of probation.

29 A. If the period of probation commences upon release of the individual from an
30 unsuspended portion of the term of imprisonment, the court may revoke probation for
31 any criminal conduct committed during that unsuspended portion of the term of
32 imprisonment.

33 B. If execution of the sentence is stayed, the court may revoke probation for criminal
34 conduct committed during the period of stay or for failure to report as ordered.

35 C. The court may revoke probation if, during any unsuspended portion of the term of
36 imprisonment, an individual sentenced as a repeat sexual assault offender, pursuant to
37 section 1804, subsection 4, refuses to actively participate in a sex offender treatment
38 program in accordance with the expectations and judgment of the treatment providers,
39 when requested to do so by the Department of Corrections.

40 D. The court may revoke probation if, during an unsuspended portion of the term of
41 imprisonment:

- 1 (1) The individual has contact with a victim with whom the individual has been
2 ordered not to have contact as a condition of probation;
- 3 (2) In the case of an individual who has been committed to the Department of
4 Corrections, the individual has contact with any victim with whom the individual
5 has been prohibited to have contact by the Department of Corrections; or
- 6 (3) In the case of an individual who has been committed to a county or regional
7 jail, the individual has contact with any victim with whom the individual has been
8 prohibited to have contact by the county or regional jail.

9 E. As to both the suspended and unsuspended portions of the sentence, the place of
10 imprisonment must be as follows.

- 11 (1) For a Class D or Class E crime, the court must specify a county jail as the place
12 of imprisonment.
- 13 (2) For a Class A, Class B or Class C crime, the court must:
 - 14 (a) Specify a county jail as the place of imprisonment for any portion of the
15 sentence that is 9 months or less; and
 - 16 (b) Commit the individual to the Department of Corrections for any portion of
17 the sentence that is more than 9 months.

18 **Sec. E-2. 17-A MRSA §1806**, as enacted by PL 2019, c. 113, Pt. A, §2, is amended
19 to read:

20 **§1806. Wholly suspended term of imprisonment with probation**

21 Unless prohibited pursuant to section 1802, subsection 1, paragraphs A to F, the court
22 may sentence an individual to a term of imprisonment not to exceed the maximum term
23 authorized for the crime, suspend the entire term of imprisonment and accompany the
24 suspension with a period of probation not to exceed the maximum period authorized for
25 the crime, to commence on the date the individual goes into actual execution of the
26 sentence. That day is counted as the first full day of the period of probation.

27 **Sec. E-3. 17-A MRSA §1812, sub-§7**, as enacted by PL 2019, c. 113, Pt. A, §2, is
28 amended to read:

29 **7. Tolling of period of probation; conditions of probation continue in effect.** The
30 running of the period of probation is tolled upon either the delivery of the summons, the
31 filing of the written notice with the court that the person cannot be located or the arrest of
32 the person. If the court finds a violation of probation, the day upon which the tolling occurs
33 does not count toward the period of probation. If the motion is dismissed or withdrawn, or
34 if the court finds no violation of probation, the running of the period of probation is deemed
35 not to have been tolled. The conditions of probation continue in effect during the tolling
36 of the running of the period of probation, and any violation of a condition subjects the
37 person to a revocation of probation pursuant to the provisions of this subchapter.

38 **Sec. E-4. 17-A MRSA §1815** is enacted to read:

39 **§1815. Completion of period of probation**

40 A period of probation is completed when the last day of the period, excluding any days
41 during which the running of the period of probation is tolled, ends.

1 **PART F**

2 **Sec. F-1. 17-A MRSA §253, sub-§2, ¶M**, as amended by PL 2019, c. 438, §2, is
3 further amended to read:

4 M. The other person has not expressly or impliedly acquiesced to the sexual act and
5 the actor knows that the other person has not acquiesced. Violation of this paragraph
6 is a Class C crime; or

7 **Sec. F-2. 17-A MRSA §255-A, sub-§1, ¶A**, as enacted by PL 2001, c. 383, §23
8 and affected by §156, is amended to read:

9 A. The other person has not expressly or impliedly acquiesced in the sexual contact
10 and the actor knows that the other person has not acquiesced. Violation of this
11 paragraph is a Class D crime;

12 **Sec. F-3. 17-A MRSA §255-A, sub-§1, ¶B**, as enacted by PL 2001, c. 383, §23
13 and affected by §156, is amended to read:

14 B. The other person has not expressly or impliedly acquiesced in the sexual contact,
15 the actor knows that the other person has not acquiesced and the sexual contact includes
16 penetration. Violation of this paragraph is a Class C crime;

17 **Sec. F-4. 17-A MRSA §260, sub-§1, ¶A**, as enacted by PL 2003, c. 138, §5, is
18 amended to read:

19 A. The other person has not expressly or impliedly acquiesced in the sexual touching
20 and the actor knows that the other person has not acquiesced. Violation of this
21 paragraph is a Class D crime;

22 **SUMMARY**

23 This bill contains the following provisions.

24 1. In Part A it amends the crime of endangering the welfare of a child by enacting in
25 the Maine Revised Statutes, Title 17-A, section 554, subsection 1, paragraph D a new Class
26 C crime for the reckless violation of a duty of care or protection that results in death or
27 serious bodily injury to the child. It amends the crime of endangering the welfare of a child
28 under Title 17-A, section 554, subsection 1, paragraph C to cover recklessly violating a
29 duty of care or protection.

30 2. In Part B it amends the crime of gross sexual assault against a person under 12 years
31 of age or a person under 14 years of age, both of which are Class A crimes, by requiring
32 that the actor be at least 3 years older than the other person.

33 3. In Part C it amends Title 15, section 393 to recognize that convictions in the tribal
34 courts of the Passamaquoddy Tribe and the Penobscot Nation are disqualifying domestic
35 violence convictions for the purposes of the prohibition against firearms created by Title
36 15, section 393, subsection 1-B. It makes Title 15, section 393 more consistent with the
37 Maine Criminal Code by using the phrase "another jurisdiction" to reference the courts
38 defined by that term.

39 4. In Part D, in response to State v. LeBlanc-Simpson, 2018 ME 109, it clarifies that a
40 judicial officer in issuing a written release order under Title 15, section 1026, subsection
41 2-A or 3 must inform a defendant of the conditions of release, that the conditions take effect

1 and are fully enforceable immediately and that failure to appear or comply with conditions
2 may result in revocation of bail and additional criminal penalties. The bill provides that a
3 condition of release takes effect and is fully enforceable immediately as of the time the
4 judicial officer sets the condition, unless the release order expressly excludes a condition
5 of release from immediate applicability, if the defendant is advised of the conditions and
6 that failure to appear or comply with the conditions may subject the defendant to revocation
7 of bail and additional criminal penalties. This bill provides that the notice required in order
8 for a condition of release to take effect immediately may be provided by a judicial officer,
9 a law enforcement officer or an employee of a county or regional jail or a correctional
10 facility having custody of the defendant.

11 5. In Part E it amends the laws governing probation to reflect the current practice of
12 the Department of Corrections with respect to calculating the period of probation. A
13 probationer receives credit for a full day of probation on the day probation commences,
14 regardless of the time of day, and receives no credit for a day on which probation is tolled.
15 The period of probation ends when the final day of the probation period ends.

16 6. In Part F it amends the law to respond to the issue identified by the Law Court in
17 State v. Asaad, (2020 ME 11), specifically the absence of a mens rea requirement in the
18 Class C crime of gross sexual assault under Title 17-A, section 253, subsection 2, paragraph
19 M. The bill requires the State to prove, as an element of that crime of gross sexual assault,
20 that the defendant engaged in the prohibited conduct knowing that the other person had not
21 expressly or impliedly acquiesced. The same "knowing" culpable mental state element is
22 proposed for one of the Class C crimes of unlawful sexual contact, one of the Class D
23 crimes of unlawful sexual contact and one of the Class D crimes of unlawful sexual
24 touching.