



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1091

H.P. 765

House of Representatives, March 21, 2017

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

(EMERGENCY)

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. 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 period, the 5-year period starts anew from the date of the subsequent conviction. In the
2 case of a deferred disposition, the 5-year period begins at the start of the deferred
3 disposition period. If, at the conclusion of the deferred disposition period, the court
4 grants the State's motion to allow a person to withdraw the plea and the State dismisses
5 the ~~pending charging instrument~~ charge that gave rise to the prohibition with prejudice,
6 the 5-year period terminates.

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

11 For the purposes of this subsection, a person is deemed to have been found not criminally
12 responsible by reason of insanity upon the acceptance of a plea of not criminally
13 responsible by reason of insanity or a verdict or finding of not criminally responsible by
14 reason of insanity, or of the equivalent in a juvenile case, by a court of competent
15 jurisdiction.

16 The provisions of this subsection apply only to a person convicted, adjudicated or placed
17 on deferred disposition on or after October 15, 2015.

18 **Sec. A-2. 15 MRSA §1094-C** is enacted to read:

19 **§1094-C. Improper contact with alleged murder victim's family or household**
20 **member**

21 **1. Improper contact.** A person is guilty of improper contact with an alleged murder
22 victim's family or household member if:

23 A. The person is being detained as a result of the person's arrest for the intentional or
24 knowing murder of the alleged victim;

25 B. A Harnish bail proceeding:

26 (1) Has not yet taken place;

27 (2) Has been waived in open court by the person; or

28 (3) Has taken place and the person's conditional right to bail has been
29 extinguished and bail has been denied by the court;

30 C. The person:

31 (1) In the circumstance specified in paragraph B, subparagraph (1) is notified, in
32 writing or otherwise, by the detaining county jail, correctional facility or mental
33 health institute staff not to make direct or indirect contact with any specifically
34 identified family or household member of the alleged victim of the crime for
35 which the person is being detained; or

36 (2) In the circumstance specified in paragraph B, subparagraph (2) or (3) is
37 notified on the record or in writing by the court not to make direct or indirect
38 contact with any specifically identified family or household member of the
39 alleged victim of the crime for which the person is being detained; and

1 **PART D**

2 **Sec. D-1. 17-A MRSA §207-A, sub-§1, ¶B**, as amended by PL 2011, c. 640, Pt.
3 B, §1, is further amended to read:

4 B. The person violates paragraph A and at the time of the offense:

5 (1) Has one or more prior convictions for violating paragraph A or for violating
6 section 209-A, 210-B, 210-C or 211-A or one or more prior convictions for
7 engaging in conduct substantially similar to that contained in paragraph A or in
8 section 209-A, 210-B, 210-C or 211-A in another jurisdiction;

9 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
10 subsection 1 or one or more prior convictions for engaging in conduct
11 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
12 another jurisdiction; ~~or~~

13 (3) Has one or more prior convictions for violating Title 15, section 1092,
14 subsection 1, paragraph B when the condition of release violated is specified in
15 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when
16 the alleged victim in the case for which the defendant was on bail was a family or
17 household member as defined in Title 19-A, section 4002, subsection 4; or

18 (4) Has one or more prior convictions for violating section 208, 208-B or 208-C,
19 and the State had pled and proved that the victim of the applicable prior
20 conviction was a family or household member, as defined in Title 19-A, section
21 4002, subsection 4, or has one or more prior convictions in another jurisdiction
22 for engaging in conduct substantially similar to that contained in section 208,
23 208-B or 208-C and it had been pled and proved that the victim was a family or
24 household member.

25 Violation of this paragraph is a Class C crime.

26 **Sec. D-2. 17-A MRSA §209-A, sub-§1, ¶B**, as amended by PL 2011, c. 640, Pt.
27 B, §3, is further amended to read:

28 B. The person violates paragraph A and at the time of the offense:

29 (1) Has one or more prior convictions for violating paragraph A or for violating
30 section 207-A, 210-B, 210-C or 211-A or one or more prior convictions for
31 engaging in conduct substantially similar to that contained in paragraph A or in
32 section 207-A, 210-B, 210-C or 211-A in another jurisdiction;

33 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
34 subsection 1 or one or more prior convictions for engaging in conduct
35 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
36 another jurisdiction; ~~or~~

37 (3) Has one or more prior convictions for violating Title 15, section 1092,
38 subsection 1, paragraph B when the condition of release violated is specified in
39 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when
40 the alleged victim in the case for which the defendant was on bail was a family or
41 household member as defined in Title 19-A, section 4002, subsection 4; or

1 (4) Has one or more prior convictions for violating section 208, 208-B or 208-C,
2 and the State had pled and proved that the victim of the applicable prior
3 conviction was a family or household member, as defined in Title 19-A, section
4 4002, subsection 4, or has one or more prior convictions in another jurisdiction
5 for engaging in conduct substantially similar to that contained in section 208,
6 208-B or 208-C and it had been pled and proved that the victim was a family or
7 household member.

8 Violation of this paragraph is a Class C crime.

9 **Sec. D-3. 17-A MRSA §210-B, sub-§1, ¶B,** as amended by PL 2011, c. 640, Pt.
10 B, §4, is further amended to read:

11 B. The person violates paragraph A and at the time of the offense:

12 (1) Has one or more prior convictions for violating paragraph A or for violating
13 section 207-A, 209-A, 210-C or 211-A or one or more prior convictions for
14 engaging in conduct substantially similar to that contained in paragraph A or in
15 section 207-A, 209-A, 210-C or 211-A in another jurisdiction;

16 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
17 subsection 1 or one or more prior convictions for engaging in conduct
18 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
19 another jurisdiction; ~~or~~

20 (3) Has one or more prior convictions for violating Title 15, section 1092,
21 subsection 1, paragraph B when the condition of release violated is specified in
22 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when
23 the alleged victim in the case for which the defendant was on bail was a family or
24 household member as defined in Title 19-A, section 4002, subsection 4; ~~or~~

25 (4) Has one or more prior convictions for violating section 208, 208-B or 208-C,
26 and the State had pled and proved that the victim of the applicable prior
27 conviction was a family or household member, as defined in Title 19-A, section
28 4002, subsection 4, or has one or more prior convictions in another jurisdiction
29 for engaging in conduct substantially similar to that contained in section 208,
30 208-B or 208-C and it had been pled and proved that the victim was a family or
31 household member.

32 Violation of this paragraph is a Class C crime.

33 **Sec. D-4. 17-A MRSA §210-C, sub-§1, ¶B,** as amended by PL 2011, c. 640, Pt.
34 B, §5, is further amended to read:

35 B. The person violates paragraph A and at the time of the offense:

36 (1) Has one or more prior convictions for violating paragraph A or for violating
37 section 207-A, 209-A, 210-B or 211-A or one or more prior convictions for
38 engaging in conduct substantially similar to that contained in paragraph A or in
39 section 207-A, 209-A, 210-B or 211-A in another jurisdiction;

40 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
41 subsection 1 or one or more prior convictions for engaging in conduct

1 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
2 another jurisdiction; ~~or~~

3 (3) Has one or more prior convictions for violating Title 15, section 1092,
4 subsection 1, paragraph B when the condition of release violated is specified in
5 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when
6 the alleged victim in the case for which the defendant was on bail was a family or
7 household member as defined in Title 19-A, section 4002, subsection 4; ~~or~~

8 (4) Has one or more prior convictions for violating section 208, 208-B or 208-C,
9 and the State had pled and proved that the victim of the applicable prior
10 conviction was a family or household member, as defined in Title 19-A, section
11 4002, subsection 4, or has one or more prior convictions in another jurisdiction
12 for engaging in conduct substantially similar to that contained in section 208,
13 208-B or 208-C and it had been pled and proved that the victim was a family or
14 household member.

15 Violation of this paragraph is a Class C crime.

16 **Sec. D-5. 17-A MRSA §211-A, sub-§1, ¶B,** as amended by PL 2011, c. 640, Pt.
17 B, §6, is further amended to read:

18 B. The person violates paragraph A and at the time of the offense:

19 (1) Has one or more prior convictions for violating paragraph A or for violating
20 section 207-A, 209-A, 210-B or 210-C or one or more prior convictions for
21 engaging in conduct substantially similar to that contained in paragraph A or in
22 section 207-A, 209-A, 210-B or 210-C in another jurisdiction;

23 (2) Has one or more prior convictions for violating Title 19-A, section 4011,
24 subsection 1 or one or more prior convictions for engaging in conduct
25 substantially similar to that contained in Title 19-A, section 4011, subsection 1 in
26 another jurisdiction; ~~or~~

27 (3) Has one or more prior convictions for violating Title 15, section 1092,
28 subsection 1, paragraph B when the condition of release violated is specified in
29 Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when
30 the alleged victim in the case for which the defendant was on bail was a family or
31 household member as defined in Title 19-A, section 4002, subsection 4; ~~or~~

32 (4) Has one or more prior convictions for violating section 208, 208-B or 208-C,
33 and the State had pled and proved that the victim of the applicable prior
34 conviction was a family or household member, as defined in Title 19-A, section
35 4002, subsection 4, or has one or more prior convictions in another jurisdiction
36 for engaging in conduct substantially similar to that contained in section 208,
37 208-B or 208-C and it had been pled and proved that the victim was a family or
38 household member.

39 Violation of this paragraph is a Class C crime.

40 PART E

41 **Sec. E-1. 17-A MRSA §1101, sub-§§25 and 26** are enacted to read:

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25. Cocaine. "Cocaine" means:

A. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine and their salts have been removed; or

B. A mixture or preparation that contains any quantity of any of the following substances:

- (1) Cocaine, its salts, optical and geometric isomers and salts of isomers;
- (2) Ecgonine, its derivatives, their salts, isomers and salts of isomers; or
- (3) Cocaine base, which is the alkaloid form of cocaine.

26. Heroin. "Heroin" means any compound, mixture or preparation containing heroin (diacetylmorphine) in any quantity.

Sec. E-2. 17-A MRSA §1102, sub-§1, ¶F, as repealed and replaced by PL 1995, c. 635, §1, is repealed and the following enacted in its place:

F. Cocaine;

PART F

Sec. F-1. 30-A MRSA §3821, sub-§3, as amended by PL 2005, c. 397, Pt. A, §30, is further amended to read:

3. Availability for inspection. Both the register and the record must be kept for 2 years and be available at all reasonable times to the inspection of any lawful agent of the licensing authority ~~or any full-time law enforcement officer as defined in Title 25, section 2801-A, subsection 4.~~ The guest register may be "kept," within the meaning of this section, when reproduced on any photographic, microfilm or other process that reproduces the original record.

Sec. F-2. 34-A MRSA §1216, sub-§1, ¶D, as amended by PL 2015, c. 470, §18, is further amended to read:

D. To any criminal justice agency if necessary to carry out the administration of criminal justice as defined in Title 16, section 703, subsection 1 ~~or, the administration of criminal justice as defined in Title 16, section 803, subsection 2,~~ the administration of juvenile criminal justice as defined in Title 15, section 3308, subsection 7, paragraph A, subparagraph (2), the administration of juvenile justice as defined in Title 15, section 3308-A, subsection 1, paragraph A or for criminal justice agency employment;

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill makes changes to the laws recommended by the Criminal Law Advisory Commission.

1 Part A does the following:

2 1. Amends the Maine Revised Statutes, Title 15, section 393, subsection 1-B by
3 replacing the words "pending charging instrument" with the words "the charge that gave
4 rise to the prohibition" to eliminate a potential ambiguity; and

5 2. Enacts as Title 15, section 1094-C a provision that makes it a Class C crime for a
6 person arrested for an alleged murder and who is detained because a Harnish bail
7 proceeding has not yet taken place, the proceeding has been waived in open court by the
8 person, or the proceeding has taken place and the person's conditional right to bail has
9 been extinguished and bail has been denied by the court and who has been properly
10 notified not to make direct or indirect contact with any specifically identified family or
11 household member of the alleged victim of the murder for which the person is being
12 detained to intentionally or knowingly make direct or indirect contact with any
13 specifically identified family or household member of the alleged victim.

14 Part B clarifies provisions of the Criminal History Record Information Act as they
15 apply to granted petitions for full and free pardons.

16 Part C does the following:

17 1. Rearranges into 2 subsections the content of Title 17-A, section 33. Subsection 1
18 contains the content of the current section 33, except that it deletes the words "unless the
19 concurrent cause was clearly sufficient to produce the result and the conduct of the
20 defendant was clearly insufficient." Subsection 2 contains a simplified test to be applied
21 in the event concurrent causation is generated as an issue. It provides that, when a
22 defendant's conduct may have operated concurrently with another cause, in addition to
23 satisfying the "but for" test the defendant's conduct must have been sufficient by itself to
24 produce the result; and

25 2. Amends Title 17-A, section 505, subsection 2 by adding to the definition of
26 "public way" the words "a way upon which the public has access as invitees or licensees."

27 Part D allows the use of prior convictions for aggravated assault, elevated aggravated
28 assault and elevated aggravated assault on a pregnant person, and like crimes in other
29 jurisdictions, to be used to elevate the class of subsequent domestic violence crimes from
30 Class D to Class C. The prior conviction may be used to enhance the current charge only
31 if the State or other jurisdiction proved, in the prior case, that the defendant and victim
32 were family or household members.

33 Part E does the following:

34 1. Amends Title 17-A, section 1101 by enacting definitions of "cocaine" and
35 "heroin." The definition of "cocaine" mirrors that currently found in Title 17-A, section
36 1102, subsection 1, paragraph F. The definition of "heroin" as "any compound, mixture
37 or preparation containing heroin (diacetylmorphine) in any quantity" is in response to
38 State v. Pinkham, Sr., 2016 ME 59, 137 A. 3d 203; and

39 2. Repeals the definition of "cocaine" in Title 17-A, section 1102, subsection 1,
40 paragraph F, because its content is moved to section 1101.

1 Part F of the bill does the following:

2 1. Amends Title 30-A, section 3821, subsection 3 to clarify that hotel and lodging
3 house registers must be kept for 2 years and must be available for inspection by an agent
4 of the authority that licenses the hotel or lodging house; and

5 2. Amends Title 34-A, section 1216, subsection 1, paragraph D to clarify that
6 dissemination of certain information pertaining to a person receiving services from the
7 Department of Corrections may be made to any criminal justice agency if necessary to
8 carry out the "administration of criminal justice" as separately defined pursuant to the
9 Criminal History Record Information Act and the Intelligence and Investigative Record
10 Information Act, and to carry out the "administration of juvenile criminal justice" and the
11 "administration of juvenile justice" as separately defined pursuant to the Maine Juvenile
12 Code.