

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND EIGHTEEN

—
H.P. 765 - L.D. 1091

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

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation amends the Maine Criminal Code to correct errors in the definitions of "cocaine" and "heroin" in the controlled substances laws, to clarify that the dissemination of certain information pertaining to a person receiving services from the Department of Corrections may be made to any criminal justice agency if necessary to carry out the administration of criminal justice as defined in the Criminal History Record Information Act and the Intelligence and Investigative Record Information Act and to clarify and amend other provisions of the Maine Criminal Code; and

Whereas, the amendments to law are immediately necessary to the administration of justice; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 15 MRSA §393, sub-§1-B, as amended by PL 2015, c. 470, §3, is further amended to read:

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

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

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

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

Violation of this paragraph is a Class C crime; or

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

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

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

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

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

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

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

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

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

B. A Harnish bail proceeding;

- (1) Has not yet taken place;
- (2) Has been waived in open court by the person; or
- (3) Has taken place and the person's conditional right to bail has been extinguished and bail has been denied by the court;

C. The person:

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

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

D. After the notification specified in paragraph C, the person intentionally or knowingly makes direct or indirect contact with the specifically identified family or household member of the alleged victim of the crime for which the person is being detained.

As used in this subsection, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.

2. Penalty. Violation of this section is a Class C crime.

PART B

Sec. B-1. 16 MRSA §703, sub-§2, ¶L, as enacted by PL 2013, c. 267, Pt. A, §2, is amended to read:

L. Information disclosing that a person has petitioned for and been granted a full and free pardon or amnesty.

Sec. B-2. 16 MRSA §708, sub-§7, as enacted by PL 2013, c. 267, Pt. A, §2, is amended to read:

7. Pardons, other than full and free pardons, commutations, reprieves and amnesties. Petitions for and warrants of pardons, commutations, reprieves and amnesties other than warrants of full and free pardons and their respective petitions.

PART C

Sec. C-1. 17-A MRSA §33, as enacted by PL 1981, c. 324, §14, is repealed and the following enacted in its place:

§33. Result as an element; causation

1. Unless otherwise provided, when causing a result is an element of a crime, causation may be found when the result would not have occurred but for the conduct of the defendant, operating either alone or concurrently with another cause.

2. In cases in which concurrent causation is generated as an issue, the defendant's conduct must also have been sufficient by itself to produce the result.

Sec. C-2. 17-A MRSA §505, sub-§2, as repealed and replaced by PL 2015, c. 358, §2, is amended to read:

2. As used in this section, "public way" means a way, including a sidewalk, owned and maintained by the State, a county or a municipality over which the general public has a right to pass by foot or by vehicle, a way upon which the public has access as invitees or licensees or a way under the control of park commissioners or a body having like powers.

PART D

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

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

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

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

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

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

Violation of this paragraph is a Class C crime.

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

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

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

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

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

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

Violation of this paragraph is a Class C crime.

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

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

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

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

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

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

Violation of this paragraph is a Class C crime.

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

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

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

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

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

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

Violation of this paragraph is a Class C crime.

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

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

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

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

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

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

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

Violation of this paragraph is a Class C crime.

PART E

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

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;

PART G

Sec. G-1. Appropriations and allocations. The following appropriations and allocations are made.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Provides funds for indigent legal services due to changes in the list of predicate offenses for certain domestic violence cases.

GENERAL FUND	2017-18	2018-19
All Other	\$0	\$6,000
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$6,000</u>

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