An Act To Implement the Recommendations of the Criminal Law Advisory Commission

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

Sec. 1. 5 MRSA §3360, sub-§3, ¶G, as amended by PL 2007, c. 684, Pt. E, §1 and affected by Pt. H, §1, is further amended to read:

G. Leaving the scene of a motor vehicle accident involving personal injury or death, in violation of Title 29-A, section 2252; or

Sec. 2. 5 MRSA §3360, sub-§3, ¶H, as amended by PL 2007, c. 684, Pt. E, §2 and affected by Pt. H, §1, is further amended to read:

H. Sexual exploitation of a minor as described in Title 17-A, chapter 12~~; or~~.

Sec. 3. 5 MRSA §3360, sub-§3, ¶I, as enacted by PL 2007, c. 684, Pt. E, §3 and affected by Pt. H, §1, is repealed.

Sec. 4. 17-A MRSA §2, sub-§8, as amended by PL 2007, c. 173, §1, is further amended to read:

8. "Deadly force" means physical force that a person uses with the intent of causing, or that a person knows to create a substantial risk of causing, death or serious bodily injury. ~~Intentionally~~Except as provided in section 101, subsection 5, intentionally, knowingly or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

Sec. 5. 17-A MRSA §101, sub-§5, as amended by PL 2001, c. 386, §1, is repealed and the following enacted in its place:

5. For purposes of this chapter, use by a law enforcement officer, a corrections officer or a corrections supervisor of the following is use of nondeadly force:

A. Chemical mace or any similar substance composed of a mixture of gas and chemicals that has or is designed to have a disabling effect upon human beings; or

B. A less-than-lethal munition that has or is designed to have a disabling effect upon human beings. For purposes of this paragraph, "less-than-lethal munition" means a low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy.

Sec. 6. 17-A MRSA §106, sub-§1, as amended by PL 2007, c. 173, §22, is further amended to read:

1. A parent, foster parent, guardian or other similar person responsible for the long term general care and welfare of ~~another person~~a child is justified in using a reasonable degree of force against ~~such other person~~that child when and to the extent that the person reasonably believes it necessary to prevent or

punish ~~such other person's~~the child's misconduct. A person to whom such parent, foster parent, guardian or other responsible person has expressly delegated permission to so prevent or punish misconduct is similarly justified in using a reasonable degree of force. For purposes of this subsection, "child" means a person who has not attained 18 years of age and has not been ordered emancipated by a court pursuant to Title 15, section 3506-A.

Sec. 7. 17-A MRSA §106, sub-§1-A, as enacted by PL 2003, c. 143, §1, is amended to read:

1-A. For purposes of subsection 1, "reasonable degree of force" is an objective standard. To constitute a reasonable degree of force, the physical force applied to the ~~person~~child may result in no more than transient discomfort or minor temporary marks on that ~~person~~child.

Sec. 8. 17-A MRSA §106, sub-§2, as amended by PL 2007, c. 173, §22, is further amended to read:

2. A teacher or other person entrusted with the care or supervision of a person for special and limited purposes is justified in using a reasonable degree of nondeadly force against any such person who creates a disturbance when and to the extent that the teacher or other entrusted person reasonably believes it necessary to control the disturbing behavior or to remove a person from the scene of such disturbance.

Sec. 9. 17-A MRSA §106, sub-§3, as amended by PL 2007, c. 173, §22, is further amended to read:

3. A person responsible for the general care and supervision of a mentally incompetent person is justified in using a reasonable degree of nondeadly force against such person who creates a disturbance when and to the extent that the responsible person reasonably believes it necessary to control the disturbing behavior or to remove such person from the scene of such disturbance.

Sec. 10. 17-A MRSA §106, sub-§4, as amended by PL 2003, c. 143, §2, is further amended to read:

4. The justification extended in subsections 2 and 3 does not apply to the intentional, knowing or reckless use of nondeadly force that creates a substantial risk of ~~death, serious bodily injury or~~ extraordinary pain.

Sec. 11. 17-A MRSA §210-A, sub-§1, ¶C, as amended by PL 2007, c. 685, §1, is further amended to read:

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

Violation of this paragraph is a Class C crime.

For the purposes of this paragraph, "prior conviction" means a conviction for a violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary, emergency, interim or final protective order; an

order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe; or a court-approved consent agreement. Section 9-A governs the use of prior convictions when determining a sentence.

Sec. 12. 17-A MRSA §1004, sub-§4, ¶B, as enacted by PL 2005, c. 264, §1, is amended to read:

B. A person using ~~deadly force~~an electronic weapon when that use is for the purpose of:

(1) Defending that person or a 3rd person as authorized under section 108, subsection 2; or

(2) Defending that person's dwelling place as authorized under section 104, subsections 3 and 4.

Sec. 13. 17-A MRSA §1158-A, sub-§1, as enacted by PL 2003, c. 657, §7, is amended to read:

1. As part of every sentence imposed, except as provided in subsection 2, a court shall order that a firearm must be forfeited to the State if:

A. That firearm constitutes the basis for conviction under:

(1) Title 15, section 393;

(2) Section 1105-A, subsection 1, paragraph C-1;

(3) Section 1105-B, subsection 1, paragraph C;

(4) Section 1105-C, subsection 1, paragraph C-1; or

(5) Section 1105-D, subsection 1, paragraph B-1; ~~or~~

B. The State pleads and proves that the firearm is used by the defendant or an accomplice during the commission of any murder or Class A, Class B or Class C crime or any Class D crime defined in chapter 9, 11 or 13~~.~~; or

C. The defendant, with the approval of the State, consents to the forfeiture of the firearm.

Sec. 14. 17-A MRSA §1202, sub-§3-A is enacted to read:

3-A. A motion and hearing pursuant to subsection 2, 2-A or 3 need not be before the justice or judge who originally imposed probation. Any justice or judge may initiate and hear a motion and any justice or judge may hear a motion brought by the probation officer or by the person on probation.

Sec. 15. 17-A MRSA §1348, as amended by PL 2005, c. 527, §21, is further amended to read:

§ 1348.Eligibility for deferred disposition

A person who has pled guilty or nolo contendere to a Class B, Class C, Class D or Class E crime and who consents to a deferred disposition in writing is eligible for a deferred disposition.

Sec. 16. 17-A MRSA §1348-A, as amended by PL 2005, c. 288, §1, is further amended to read:

§ 1348-A.Deferred disposition

1. Following the acceptance of a plea of guilty or nolo contendere for a crime for which a person is eligible for a deferred disposition under section 1348, the court may order sentencing deferred to a date certain or determinable and impose requirements upon the person, to be in effect during the period of deferment, considered by the court to be reasonable and appropriate to assist the person to lead a law-abiding life. The court-imposed deferment requirements must include a requirement that the person refrain from criminal conduct and may include a requirement that the person pay to the appropriate county an administrative supervision fee of not more than $50 per month, as determined by the court, for the term of the deferment. In determining the amount of the fee, the court shall take into account the financial resources of the person and the nature of the burden its payment imposes. In exchange for the deferred sentencing, the person shall abide by the court-imposed deferment requirements. Unless the court orders otherwise, the requirements are immediately in effect.

2. During the period of deferment and upon application of the person granted deferred disposition pursuant to subsection 1 or of the attorney for the State or upon the court's own motion, the court may, after a hearing upon notice to the attorney for the State and the person, modify the requirements imposed by the court, add further requirements or relieve the person of any requirement imposed by the court that, in the court's opinion, imposes an unreasonable burden on the person.

3. During the period of deferment, if the person cannot meet a deferment requirement imposed by the court, the person shall bring a motion pursuant to subsection 2.

4. For purposes of a deferred disposition, a person is deemed to have been convicted when the court imposes the sentence.

Sec. 17. 17-A MRSA §1348-B, as amended by PL 2005, c. 683, Pt. A, §20, is further amended to read:

§ 1348-B.Court hearing as to final disposition

1. Unless a court hearing is sooner held under subsection 2, and except as provided in subsection 1-A, at the conclusion of the period of deferment, after notice, a person who was granted deferred disposition pursuant to section 1348-A shall return to court for a hearing on final disposition. If the person demonstrates by a preponderance of the evidence that the person has complied with the court-imposed deferment requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty and consented to in writing at the time sentencing was deferred or as amended by

agreement of the parties in writing prior to sentencing, unless the attorney for the State, prior to sentence imposition, moves the court to allow the person to withdraw the plea of guilty. Except over the objection of the defendant, the court shall grant the State's motion. Following the granting of the State's motion, the attorney for the State shall dismiss the pending charging instrument with prejudice. If the court finds that the person has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty.

1-A. Notwithstanding subsection 1, if at the conclusion of the period of deferment and prior to sentence imposition the attorney for the State in writing moves the court to allow the person to withdraw the plea of guilty or nolo contendere and the defendant in writing agrees to such withdrawal, the court may, without a hearing on final disposition and in the absence of the person, grant the attorney for the State's motion and allow the person to withdraw the plea. Following such court action, the attorney for the State shall dismiss the pending charging instrument with prejudice.

2. If during the period of deferment the attorney for the State has probable cause to believe that a person who was granted deferred disposition pursuant to section 1348-A has violated a court-imposed deferment requirement, the attorney for the State may move the court to terminate the remainder of the period of deferment and impose sentence. Following notice and hearing, if the attorney for the State proves by a preponderance of the evidence that the person has inexcusably failed to comply with a court-imposed deferment requirement, the court may continue the running of the period of deferment with the requirements unchanged, modify the requirements, add further requirements or terminate the running of the period of deferment and impose a sentencing alternative authorized for the crime to which the person pled guilty. When a person fails to pay the administrative supervision fee as required under section 1348-A, subsection 1, the court may terminate the running of the period of deferment and impose sentence unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. If the court finds that the person has not inexcusably failed to comply with a court-imposed deferment requirement, the court may order that the running of the period of deferment continue or, after notice and hearing, take any other action permitted under this chapter.

3. A hearing under this section or section 1348-A must be held in the court that ordered the deferred disposition. The hearing need not be conducted by the justice or judge who originally ordered the deferred disposition.

4. The person at a hearing under this section or section 1348-A must be afforded the opportunity to confront and cross-examine witnesses against the person, to present evidence on that person's own behalf and to be represented by counsel. If the person who was granted deferred disposition pursuant to section 1348-A can not afford counsel, the court shall appoint counsel for the person. Assignment of counsel and withdrawal of counsel must be in accordance with the Maine Rules of Criminal Procedure.

5. A summons may be used to order a person who was granted deferred disposition pursuant to section 1348-A to appear for a hearing under this section. If the person fails to appear after having been served with a summons, the court may issue a warrant for the arrest of the person.

7. If during the period of deferment the attorney for the State has probable cause to believe that a person who was granted deferred disposition pursuant to section 1348-A has violated a court-imposed deferment requirement, the attorney for the State may apply for a warrant for the arrest of the person or request that a warrantless arrest be made of the person pursuant to section 15, subsection 1, paragraph A, subparagraph (17).

Sec. 18. 17-A MRSA §1349-D, sub-§4, as amended by PL 2007, c. 344, §9, is further amended to read:

4. If during the period of administrative release the attorney for the State has probable cause to believe that the person placed on administrative release has violated a requirement of administrative release, the attorney for the State may apply for a warrant for the arrest of the person or request that a warrantless arrest be made of the person pursuant to section 15, subsection 1, paragraph A, subparagraph (15). Unless sooner released, the court shall provide the person with an initial appearance on the revocation of administrative release within 5 days after arrest. A copy of the motion must be furnished to the person prior to or at the initial appearance. The initial appearance is as provided in section 1205-C, subsection 4. Bail is as provided in section 1205-C, subsections 5 and 6.

Sec. 19. 25 MRSA §2803-B, as amended by PL 2005, c. 397, Pt. C, §17, is further amended to read:

§ 2803-B.Requirements of law enforcement agencies

1. Law enforcement policies. All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

A. Use of physical force, including the use of electronic weapons and less-than-lethal munitions;

B. Barricaded persons and hostage situations;

C. Persons exhibiting deviant behavior;

D. Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made; and

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours notice to each party prior to the retrieval;

E. Hate or bias crimes;

F. Police pursuits;

G. Citizen complaints of police misconduct;

H. Criminal conduct engaged in by law enforcement officers;

I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations;

J. Public notification regarding persons in the community required to register under Title 34-A, chapter 15; and

K. Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases.

The chief administrative officer of each agency shall certify to the board that attempts were made to obtain public comment during the formulation of policies.

2. Minimum policy standards. The board shall establish minimum standards for each law enforcement policy no later than June 1, 1995, except that policies for expanded requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be established no later than January 1, 2003; policies for death investigations under subsection 1, paragraph I must be established no later than January 1, 2004; policies for public notification regarding persons in the community required to register under Title 34-A, chapter 15 under subsection 1, paragraph J must be established no later than January 1, 2006; ~~and~~ policies for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be established no later than January 1, 2005; and policies for the expanded use of physical force, including the use of electronic weapons and less-than-lethal munitions under subsection 1, paragraph A, must be established no later than October 1, 2009.

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1, 1996 that the agency has adopted written policies consistent with the minimum standards established by the board pursuant to subsection 2, except that certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the board no later than June 1, 2003; certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004; certification to the board for adoption of a public notification policy under subsection 1, paragraph J must be made to the board no later than June 1, 2006; ~~and~~ certification to the board for adoption of a policy for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than June 1, 2005; and certification to the board for adoption of an expanded use of physical force policy under subsection 1, paragraph A must be made to the board no later than April 1, 2010. The certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that

certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3) must be made to the board no later than January 1, 2004; certification for orientation and training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; ~~and~~ certification for orientation and training with respect to policies regarding the recording and preservation of interview of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006; and certification for orientation and training with respect to policies regarding expanded use of physical force under subsection 1, paragraph A must be made to the board no later than October 1, 2010.

5. Annual standards review. The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

6. Freedom of access. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually beginning on January 1, 2004 that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to Title 1, chapter 13.

7. Certification by record custodian. Notwithstanding any other law or rule of evidence, a certificate by the custodian of the records of the board, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate or in any documents attached to the certificate.

SUMMARY

This bill makes technical and substantive changes as proposed by the Criminal Law Advisory Commission, pursuant to the Maine Revised Statutes, Title 17-A, chapter 55. The bill proposes to do the following.

1. It repeals Title 5, section 3360, subsection 3, paragraph I because it is redundant; the forms of kidnapping and criminal restraint that constitute a "human trafficking offense" as defined in Title 5, section 4701, subsection 1, paragraph C are already included within section 3360, subsection 3, paragraph C.

2. It amends Title 17-A, section 106, subsections 1 and 1-A to make clear that the parent or surrogate parent's right to use physical force to prevent or punish misconduct applies to children and only so long as the child is a minor who has not been ordered emancipated by a court. Subsections 1 and 1-A have no application once the child reaches adulthood. The bill also makes technical changes to subsections 2, 3 and 4 of Title 17-A, section 106 to enhance clarity and adds the mental state of "knowing" to subsection 4.

3. It eliminates a current inconsistency between the meaning of "another jurisdiction" and "prior conviction" in the crime of stalking. The latter includes a qualifying conviction from any Indian tribe and

not simply a conviction of the Passamaquoddy Tribe or the Penobscot Nation. Non-Maine tribes do not constitute "another jurisdiction" under the general definitions of the Maine Criminal Code.

4. It amends Title 17-A, section 1004, subsection 4, paragraph B by deleting that portion characterizing a person's use of an electronic weapon as "using deadly force." A person's lawful use of an electronic weapon is limited to certain specific circumstances in which the law allows the person to use deadly force pursuant to Title 17-A, section 104, subsections 3 and 4 and section 108, subsection 1, paragraph A, subparagraph (1).

5. It adds a new paragraph C to subsection 1 of Title 17-A, section 1158-A providing that, in addition to a court-ordered forfeiture to the State, a court must also order the firearm forfeited to the State if, with the approval of the State, the defendant consents to such forfeiture. This change is important in the circumstance in which a defendant seeks to avoid the elevation of a Class D to a Class C crime, pursuant to Title 17-A, section 1252, subsection 4, if the State pleads and proves that the firearm is used by the defendant during the commission of any Class D crime defined in chapter 9, 11 or 13.

6. It clarifies that any justice or judge, in addition to the justice or judge who originally imposed probation, may initiate and hear a motion to modify or discharge probation and may hear any motion brought by the probation officer or by the person on probation to modify or discharge probation.

7. It amends deferred disposition in 4 ways. First, it broadens eligibility for a deferred disposition both by adding Class B crimes and by including a person who has pled nolo contendere to a qualifying class crime. Second, it allows a court to make a final disposition at the conclusion of the period of deferment and prior to sentence imposition without the necessity of a hearing or the personal appearance of the person in cases where the attorney for the State moves the court in writing to allow the person to withdraw the plea and the person in writing agrees to such withdrawal. Third, it clarifies that until the person is actually sentenced by the court, the person is not deemed to have been convicted. Fourth, it makes reference to the fact that if the attorney for the State has probable cause to believe that a person who was granted a deferred disposition has violated a court-imposed deferment requirement, in addition to the option of applying for an arrest warrant, the attorney for the State may request a warrantless arrest of the person by a law enforcement officer.

8. It amends the administrative release provision to make reference to the fact that if the attorney for the State has probable cause to believe that the person placed on administrative release has violated an administrative release requirement, in addition to the option of applying for an arrest warrant, the attorney for the State may request a warrantless arrest of the person by a law enforcement officer.

9. It addresses the use of less-than-lethal munitions discharged from a firearm by law enforcement officers, corrections officers and corrections supervisors by amending 3 separate statutory provisions. First, it amends Title 17-A, section 101, subsection 5 to provide that the use of a less-than-lethal munition by those state agents constitutes, as a matter of law, the use of nondeadly force and defines "less-than-lethal munition" as "a low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy." Second, the bill amends the definition of "deadly force" in Title 17-A, section 2, subsection 8 to exclude the intentional, knowing or reckless discharge of a firearm in the direction of another person using a less-than-lethal munition and adds the mental state of "knowingly." Third, it amends Title 25, section 2803-B to require that all law enforcement agencies adopt a written policy on the use of physical force, including the use of an electronic

weapon and less-than-lethal munitions and certify the same to the board by April 1, 2010; that the board establish policies for the expanded use of physical force by October 1, 2009; and all law enforcement agencies certify to the board that they have provided orientation and training for its members with respect to policies regarding expanded use of physical force by October 1, 2010.

10. It also specifies that, notwithstanding any other law or rule of evidence, a certificate by the custodian of the records of the Board of Trustees of the Maine Criminal Justice Academy, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate or in any documents attached to the certificate.