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

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

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

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

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

- (1) A crime in this State that is punishable by imprisonment for a term of one year or more;
- (2) A crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year;
- (3) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;
- (4) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, does not come within subparagraph (3) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment for one year or more; or
- (5) A crime under the laws of the United States, this State or any other state or the Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the prosecuting authority was required to plead and prove that the person committed the crime with the use of:

(a) A firearm against a person; or

(b) Any other dangerous weapon;

C. 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:

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

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

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

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

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

E. Has been:

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

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

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

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

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

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

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

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

For the purposes of this subsection, a person is deemed to have been convicted 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.

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

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.

**Sec. 2. 15 MRSA §393, sub-§1-B,** as enacted by PL 2015, c. 287, §5, is 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); 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.

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 with prejudice, the 5-year prohibition 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 the effective date of this subsection.

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

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

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

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

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

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

**4-B. Jail investigative officer.** "Jail investigative officer" means an employee of a jail designated by the jail administrator as having the authority to conduct investigations of crimes relating to the security or orderly management of the jail and engage in any other activity that is related to the administration of criminal justice apprehension or summoning, detention, pretrial release, post-trial

release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders or that is related to the collection, storage and dissemination of criminal history record information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The actor violates paragraph A and has one 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. In determining the sentence for a violation of this paragraph the court shall impose a sentence of imprisonment by using a 2-step process. In the first step the court shall determine a base term of imprisonment of one year. In the 2nd step the court shall determine and impose a term of imprisonment for the defendant the length of which is appropriate for the defendant after consideration of the factors required by section 1252, subsection 5-D and aggravating and mitigating factors, including, but not limited to, the character of the defendant and the defendant's criminal history, the effect of the offense on the victim and the protection of the

public interestsentencing alternative pursuant to section 1152 that includes a term of imprisonment. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least one year.

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

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

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

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

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

## SUMMARY

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

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

2. Amends the law on prohibited possession of firearms as a result of a domestic violence offense to add termination of the 5-year prohibition period if at the conclusion of a 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 with prejudice;

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

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

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

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

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

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

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