

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: March 25, 2021

LD: 710 An Act Regarding the Maine Criminal Code

Testimony

1. Representative Warren introduced the bill as sponsor and spoke in support. John Pelletier, representing the Criminal Law Advisory Commission, spoke in favor of the bill and presented an amendment, Part G, to address the Maine Supreme Judicial Court opinion in *State v. Weddle*. Tina Nadeau, speaking for the Maine Association of Criminal Defense Lawyers (MACDL), supported Part F and section G-3. District Attorney Todd Collins provided written testimony in favor of Part F but suggested that the culpable state of mind be reduced from “knowingly” to “recklessly.” Arthur Jones, representing the Restorative Justice Project of Maine, submitted testimony in support of the bill.
2. Tina Nadeau, representing the Maine Association of Criminal Defense Lawyers, spoke in opposition to Part A and Part B and sections G-1 and G-2.
3. Michael Kebede, from the ACLU, spoke and provided written testimony. Mr. Kebede opposes Part A and discussed the purpose and effect of Part D.

Summary – This bill does the following:

1. In Part A it enacts a new Class C crime for the reckless violation of a duty of care or protection that results in death or serious bodily injury to the child. It also corrects the grammar in Title 17-A, section 554, sub-§1, ¶C, moving the word “recklessly” on page 1 line 12. This clarifies that the crime is endangering the welfare of the child and the prohibited conduct is recklessly violating a duty of care.

MACDL and ACLU oppose.

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

MACDL opposes. MACDL proposes as an amendment that the actor, on page 1 at lines 22 and 27 must be at least 14 years old to be charged under section 253, subsection 1, paragraph B or C.

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

A question was asked about why throughout Part C the new defined term of "another jurisdiction" is used but on page 2 at line 28 a court order of a "tribe" is not amended. The drafter and the Revisor discussed this and made the choice to leave "tribe" on line 28 as it is a cross-reference to the protection from abuse law under Title 19-A, chapter 101 (Ferdico page 371) which refers to the tribal courts of the Passamaquoddy Tribe and the Penobscot Nation by name and does not use "another jurisdiction."

4. In Part D, in response to *State v. LeBlanc-Simpson*, 2018 ME 109, it clarifies that a judicial officer in issuing a written release order under Title 15, section 1026, subsection 2-A or 3 must inform a defendant of the conditions of release, that the conditions take effect and are fully enforceable immediately and that failure to appear or comply with conditions may result in revocation of bail and additional criminal penalties. The bill provides that a condition of release takes effect and is fully enforceable immediately as of the time the judicial officer sets the condition, unless the bail order expressly excludes a condition of release from immediate applicability, if the defendant is advised of the conditions and that failure to appear or comply with the conditions may subject the defendant to revocation of bail and additional criminal penalties. This bill provides that the notice required in order for a condition of release to take effect immediately may be provided by a judicial officer, a law enforcement officer or an employee of a county or regional jail or a correctional facility having custody of the defendant.

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

6. In Part F it amends the law to respond to the issue identified by the Law Court in *State v. Asaad*, (2020 ME 11), specifically the absence of a culpable state of mind requirement in the Class C crime of gross sexual assault under Title 17-A, section 253, subsection 2, paragraph M. The bill requires the State to prove, as an element of that crime of gross sexual assault, that the defendant engaged in the prohibited conduct knowing that the other person had not expressly or impliedly acquiesced. Part F proposes adding the culpable mental state of mind of "knows" as an element of Class C gross sexual assault, Class C unlawful sexual contact, Class D unlawful sexual contact and Class D unlawful sexual touching.

MACDL supports.

DA Todd Collins proposes reducing the culpable state of mind requirement in Part F from "knowingly" to "recklessly."

See Title 17-A, section 35 (Ferdico page 19) for the culpable states of mind or *mens rea* in the Criminal Code. Culpable state of mind ranges from the highest to the lowest: from intentionally, to knowingly, to recklessly, to criminal negligence.

INFORMATION REQUESTED:

1. Michael Kebede was asked to provide information on violations of conditions of release.

<p style="text-align: center;">Proposed Committee Amendment to LD 710 An Act Regarding the Maine Criminal Code</p> <p style="text-align: center;">Proposed by the Criminal Law Advisory Commission</p>

Amend the bill by adding a new Part G to read:

PART G

Sec. G-1. 29-A MRSA section 2521, subsection 6 is amended to read:

6. Period of suspension. Except as provided in subsection 6-A or when a longer period of suspension is otherwise provided by law, the suspension is for a period of 275 days for the first refusal, 18 months for a 2nd refusal, 4 years for a 3rd refusal and 6 years for a 4th refusal.

Sec. G-2. 29-A MRSA section 2521, subsection 6-A is enacted to read:

6-A. Period of suspension when there was probable cause to believe that death occurred or will occur as a result of an accident. Except when a longer period of suspension is otherwise provided by law, if in addition to the probable cause set forth in sub-section 1, there was also probable cause to believe that death occurred or will occur as a result of an accident, the suspension is for a period of 1 year for a first refusal under this section.

Sec. G-3. 29-A MRSA section 2522 is repealed.

SUMMARY

In Part G, in response to *State v. Weddle*, 2020 Me. 12, the amendment repeals 29-A MRSA section 2522, which was found in the *Weddle* case to be unconstitutional in that it required the driver's blood to be taken without consent and without probable cause to believe that the driver was impaired by alcohol or drugs at the time the driver's blood was taken. The amendment also moves the one-year period of suspension for refusal to take a chemical test when there is probable cause to believe that death occurred or will occur as a result of an accident from Title 29-A, section 2522 to the law on implied consent to a chemical test.