

Committee: JUD

LA: MJR

LR # and item number: 0979(xx)

New Title?: no

Add Emergency?: no

Date: 4/28/21

File Name: G:\COMMITTEES\JUD\BILL AMENDMTS\LD 1303 Proposed Committee Amendment - Rep. C Warren.docx
(4/29/2021 05:29:00 PM)

COMMITTEE AMENDMENT "." to LD 1303 An Act to ensure Judicial Discretion in Sentencing

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

Sec. 1. 17-A MRSA §210-A is amended to read:

§210-A. Stalking

1. A person is guilty of stalking if:

A. The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person:

- (1) To suffer serious inconvenience or emotional distress;
- (2) To fear bodily injury or to fear bodily injury to a close relation;
- (3) To fear death or to fear the death of a close relation;
- (4) To fear damage or destruction to or tampering with property; or
- (5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.

Violation of this paragraph is a Class D crime;

B.

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 sentencing alternative pursuant to section 1502, subsection 2 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;

D. The actor violates paragraph A and the course of conduct is directed at or concerning 2 or more specific persons that are members of an identifiable group. Violation of this paragraph is a Class C crime; or

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 sentencing alternative pursuant to section 1502, subsection 2 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.~~

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Course of conduct" means 2 or more acts, including but not limited to acts in which the actor, by any action, method, device or means, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. "Course of conduct" also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information.

B. "Close relation" means a current or former spouse or domestic partner, parent, child, sibling, stepchild, stepparent, grandparent, any person who regularly resides in the household or who within the prior 6 months regularly resided in the household or any person with a significant personal or professional relationship.

C.

D. "Emotional distress" means mental or emotional suffering of the person being stalked as evidenced by anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of emotional distress or a mental health diagnosis.

E. "Serious inconvenience" means that a person significantly modifies that person's actions or routines in an attempt to avoid the actor or because of the actor's course of conduct. "Serious inconvenience" includes, but is not limited to, changing a phone number, changing an electronic mail address, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule or losing time from work or a job.

Sec. 2. 17-A MRSA §253-A is amended to read:

§253-A. Special sentencing provisions for gross sexual assault

1. Any term of years; nonmandatory sentence alternative. If the State pleads and proves that the defendant is a repeat sexual assault offender, the court may impose a definite term of imprisonment for any term of years. The court also may impose as part of the sentence either a period of probation of any term of years pursuant to section 1804, subsection 4 or a period of supervised release of any term of years pursuant to section 1881, subsection 2, paragraph A.

As used in this subsection, "repeat sexual assault offender" means a person who commits a new gross sexual assault after having been convicted previously and sentenced for any of the following:

- A. Gross sexual assault, formerly denominated as gross sexual misconduct;
- B. Rape;
- C. Attempted murder accompanied by sexual assault;
- D. Murder accompanied by sexual assault; or
- E. Conduct substantially similar to a crime listed in paragraphs A to D that is a crime under the laws of another jurisdiction.

For purposes of determining whether a defendant is a repeat sexual assault offender, the date of sentencing is the date of the oral pronouncement of the sentence by the trial court, even if an appeal is taken.

"Accompanied by sexual assault" as used with respect to attempted murder, murder and crimes involving substantially similar conduct in another jurisdiction is satisfied if it was definitionally an element of the crime or was pleaded and proved.

2. Any term of years; ~~mandatory sentence alternative.~~ If the State pleads and proves that a crime under section 253 was committed against an individual who had not yet attained 12 years of age, the court ~~shall~~ may impose a definite term of imprisonment for any term of years. ~~In determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A, the court shall select a definite term of at least 20 years. The court shall also impose as part of the sentence a period of supervised release to immediately follow that definite term of imprisonment as mandated by section 1881, subsection 1.~~

3. Aggravating sentencing factors. The court shall treat the following as an aggravating sentencing factor.

A. If the State pleads and proves that a Class A crime of gross sexual assault was committed by an individual who had previously been convicted and sentenced for a Class B or Class C crime of unlawful sexual contact, or an essentially similar crime in another jurisdiction, the court, in determining the appropriate sentence, shall treat as an aggravating sentencing factor that prior conviction.

B. If the State pleads and proves that a violation of section 253, subsection 1 or 2 was committed in a safe children zone, the court, in determining the appropriate sentence, shall treat this as an aggravating sentencing factor.

C. In using a sentencing alternative involving a term of imprisonment for an individual convicted of violating section 253, a court, in determining the maximum period of incarceration as the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B, shall treat each prior Maine conviction for a violation of section 253 as an aggravating sentencing factor.

(1) When the sentencing class for a prior conviction under section 253 is Class A, the court shall enhance the basic period of incarceration by a minimum of 4 years of imprisonment.

(2) When the sentencing class for a prior conviction under section 253 is Class B, the court shall enhance the basic period of incarceration by a minimum of 2 years of imprisonment.

(3) When the sentencing class for a prior conviction under section 253 is Class C, the court shall enhance the basic period of incarceration by a minimum of one year of imprisonment.

~~D. In arriving at the final sentence as the 3rd step in the sentencing process specified in section 1602, subsection 1, paragraph C, the court may not suspend that portion of the maximum term of incarceration based on a prior conviction.~~

Sec. 3. 17-A §1125 is amended to read:

~~§1125. Mandatory minimum term of imprisonment for certain drug offenses~~

~~1. Minimum term of imprisonment.~~ Except as otherwise provided in subsections 2 and 3, for a person convicted of violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A the minimum term of imprisonment, which may not be suspended, is as follows:

~~A. When the sentencing class is Class A, the minimum term of imprisonment is 4 years;~~

~~B. When the sentencing class is Class B, the minimum term of imprisonment is 2 years; and~~

~~C. With the exception of a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the sentencing class is Class C, the minimum term of imprisonment is one year.~~

~~2. Finding by court necessary to impose other than mandatory minimum term of imprisonment.~~ The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in subsection 1 if:

~~A. The court finds by substantial evidence that:~~

~~(1) Imposition of a minimum unsuspended term of imprisonment under subsection 1 will result in substantial injustice to the individual. In making this determination, the court shall consider, among other considerations, whether the individual did not know and reasonably should not have known that the victim was less than 18 years of age;~~

~~(2) Failure to impose a minimum unsuspended term of imprisonment under subsection 1 will not have an adverse effect on public safety; and~~

~~(3) Failure to impose a minimum unsuspended term of imprisonment under subsection 1 will not appreciably impair the effect of subsection 1 in deterring others from violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A; and~~

~~B. The court finds that the individual's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under subsection 1 would frustrate the general purposes of sentencing set forth in section 1501.~~

~~If the court imposes a sentence under this subsection, the court shall state in writing or on the record its reasons for its findings and for imposing a sentence under this subsection rather than under subsection 1.~~

~~**3. Reduced mandatory minimum term of imprisonment.** If the court imposes a sentence under subsection 2, the minimum term of imprisonment, which may not be suspended, is as follows:~~

~~A. When the sentencing class is Class A, the minimum term of imprisonment is 9 months;~~

~~B. When the sentencing class is Class B, the minimum term of imprisonment is 6 months; and~~

~~C. With the exception of trafficking or furnishing marijuana under section 1105-A or 1105-C, when the sentencing class is Class C, the minimum term of imprisonment is 3 months.~~

Sec. 4. 17-A MRS §1604 is amended to read:

§1604. Imprisonment for crimes other than murder

1. Maximum terms of imprisonment dependent on crime class. Unless a different maximum term of imprisonment is specified by statute, the maximum term of imprisonment is as follows:

A. In the case of a Class A crime, 30 years;

B. In the case of a Class B crime, 10 years;

C. In the case of a Class C crime, 5 years;

D. In the case of a Class D crime, less than one year; or

E. In the case of a Class E crime, 6 months.

2. Exceptions to maximum term of imprisonment based on crime class.
Notwithstanding subsection 1:

A. In the case of the Class A crime of aggravated attempted murder, the court shall set a term of imprisonment under section 152-A, subsection 2 of life or a definite period of any term of years;

B. If the State pleads and proves that the defendant is a repeat sexual assault offender, the court may set a definite term of imprisonment under section 253-A, subsection 1 for any term of years; and

C. In the case of the Class A crime of gross sexual assault against an individual who had not yet attained 12 years of age, the court shall set a definite term of imprisonment under section 253-A, subsection 2 for any term of years.

~~**3. Mandatory minimum term of imprisonment for crime with use of firearm against an individual.** If the State pleads and proves that a Class A, B or C crime was committed with the use of a firearm against an individual, the minimum sentence of imprisonment, which may not be suspended, is as follows:~~

~~A. In the case of a Class A crime, 4 years;~~

~~B. In the case of a Class B crime, 2 years; and~~

~~C. In the case of a Class C crime, one year.~~

~~For purposes of this subsection, the applicable sentencing class is determined in accordance with subsection 5, paragraph A.~~

~~This subsection does not apply if the State pleads and proves criminal threatening or attempted criminal threatening, as defined in section 209, or terrorizing or attempted terrorizing, as defined in section 210, subsection 1, paragraph A.~~

~~**4. Mandatory minimum sentence of imprisonment for certain drug crimes.** For an individual convicted of violating section 1105-A, 1105-B, 1105-C, 1105-D or 1118-A, except as otherwise provided in section 1125, subsections 2 and 3, the court shall impose a minimum sentence of imprisonment, which may not be suspended, as provided in section 1125, subsection 1.~~

5. Circumstances elevating class of crime. The following circumstances elevate the class of a crime.

A. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon, then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use must be assigned special weight by the court in exercising its sentencing discretion. This paragraph does not apply to a violation or an attempted violation of section 208, to any other

offenses to which use of a dangerous weapon serves as an element or to any offense for which the sentencing class is otherwise elevated because the actor or an accomplice to that actor's or accomplice's knowledge was armed with a firearm or other dangerous weapon.

B. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 12, 13, 27 or 35, excluding section 853-A; 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 individual had 2 or more prior convictions under chapter 9, 11, 12, 13, 27 or 35, excluding section 853-A; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C, or for an attempt of any such crime, 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.

(1) In the case of a Class A crime, the sentencing class is not elevated, but the prior record must be assigned special weight by the court when imposing a sentence.

(2) Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, for violations under chapter 11, the dates of prior convictions may have occurred at any time.

This paragraph does not apply to section 210-A if the prior convictions have already served to elevate the sentencing class under section 210-A, subsection 1, paragraph C or E or any other offense in which prior convictions have already served to elevate the sentencing class.

C. The sentencing class for a crime that is pled and proved and is subject to elevation pursuant to both paragraphs A and B may be elevated successively pursuant to both of those paragraphs if the crime that is pled and proved contains different class elevation factors.

6. Special weight required for certain aggravating sentencing factors pleaded and proved. In exercising its sentencing discretion, a court shall assign special weight to the following aggravating sentencing factors pleaded and proved by the State:

A. In the case of Class A gross sexual assault, the aggravating sentencing factor specified in section 253-A, subsection 3, paragraph A;

B. In the case of gross sexual assault in violation of section 253, subsection 1 or section 253, subsection 2, the aggravating sentencing factor specified in section 253-A, subsection 3, paragraph B; and

C. In the case of sexual exploitation of a minor, the aggravating sentencing factor specified in section 282, subsection 3.

7. Special weight required for certain aggravating sentencing factors found present by court. In exercising its sentencing discretion, the court shall assign special weight to the following aggravating sentencing factors if found by the court.

A. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of aggravated attempted murder, attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a child who had not in fact attained 6 years of age at the time the crime was committed, the court shall assign special weight to this objective fact in determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd and final step in the sentencing process specified in section 1602, subsection 1, paragraph C. This paragraph may not be construed to restrict a court in setting a sentence from considering the age of the victim in other circumstances when relevant.

B. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of aggravated attempted murder, attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a woman who the convicted individual knew or had reasonable cause to believe to be in fact pregnant at the time the crime was committed, the court shall assign special weight to this fact in determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd and final step in the sentencing process specified in section 1602, subsection 1, paragraph C. This paragraph may not be construed to restrict a court in setting a sentence from considering the fact that the victim was pregnant in other circumstances when relevant.

C. In imposing a sentencing alternative involving a term of imprisonment for an individual convicted of a Class C or higher crime, the victim of which was at the time of the commission of the crime in fact being stalked by that individual, the court shall assign special weight to this objective fact in determining the basic sentence in the first step of the sentencing process specified in section 1602,

subsection 1, paragraph A. The court shall assign special weight to any subjective victim impact caused by the stalking in determining the maximum term of incarceration in the 2nd step in the sentencing process specified in section 1602, subsection 1, paragraph B.

Sec. 5. Revisor report and legislation. The Revisor of Statutes shall review the Maine Revised Statutes and compile all provisions that require the court in sentencing a person for a violation of law to impose a mandatory term of imprisonment. For the purposes of this section, the term "mandatory term of imprisonment" includes a required minimum term of imprisonment, as well as a term in which some or all of the term of imprisonment may not be suspended. The Revisor of Statutes shall submit a report by January 15, 2022 to the Joint Standing Committee on Criminal Justice and Public Safety listing all provisions of all Titles that require the court to impose a mandatory term of imprisonment. After receiving and reviewing the report of the Revisor of Statutes, the Joint Standing Committee on Criminal Justice and Public Safety may introduce legislation to the Second Regular Session of the 130th Legislature.

SUMMARY

This amendment replaces the bill.

The amendment repeals the mandatory minimum sentences of imprisonment for certain categories of stalking, gross sexual assault, crimes in which a firearm is used against an individual and drug crimes.

The amendment directs the Revisor of Statutes to compile a list of statutes that contain mandatory minimum terms of imprisonment and provide the list in a report to the Criminal Justice and Public Safety Committee. That committee may introduce legislation to the Second Regular Session of the 130th Legislature.