



127th Legislature Second Regular Session 2016 Legislation in Review

MECASA worked on a wide range of bills this session, many of which we supported and are now law. Summaries of the new public laws and the complete public laws can be found in the following pages. A few highlights include the passage of:

- **LD 622** which requires all child abuse mandated reporters to complete mandated reporting training at least once every four years. (Sponsor: Sen. Bill Diamond)
- **LD 1114** which updates sections of Maine's Criminal Code to distinguish between consensual sexting between teens close in age and the creation, possession or dissemination of child pornography. It also allows individuals under 18 to access protections under the "revenge porn" law. (Sponsor: Sen. Bill Diamond)
- **LD 1477** which reduces the burden of proof required to terminate the parental rights of a person who committed a sexual assault which resulted in the birth of a child. (Senator Bill Diamond)
- **LD 1487** which allows access to protection from harassment and protection from abuse orders for victims of "revenge porn". (Sponsor: Rep. Lori Fowle)
- **LD 1531** allows any individuals who are victims of sex trafficking, aggravated sex trafficking, and some forms of immigration document tampering may access Protection Orders. Additionally, it enables probation to become part of the sentence for individuals convicted of sex trafficking and aggravated sex trafficking. (Sponsor: Senator Amy Volk)
- **LD 1540** which acknowledges that the same power differential exists between school officials and high school students who are 18 and older as with those who are under 18 years of age. (Sponsor: Senator Scott Cyrway)

We are grateful to the sponsors of these bills and to our statewide partners for their work to help pass them. In particular, we want to thank: the Maine Coalition to End Domestic Violence, the Department of Public Safety, Pine Tree Legal Assistance and the Maine Women's Lobby for their work on some of this session's more complex bills.

If you have questions about any of the bills featured in this report please feel free to contact us at info@mecasa.org or 207.626.0034.

2016 Bills Passed

LD 1497: An Act To Align the Child and Family Services and Child Protection Act with the Federal Preventing Sex Trafficking and Strengthening Families Act

Public Law 381

Sponsor: Representative Deborah Sanderson

Enacted Law Summary

Public Law 2015, chapter 381 amends the Child and Family Services and Child Protection Act to comply with the federal Preventing Sex Trafficking and Strengthening Families Act. It requires the Department of Health and Human Services to disclose certain information on missing or abducted children or youth to the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children and to provide notification of the removal of a child from the custody of a parent or custodian to all parents of a sibling of the child who have legal custody of the sibling. It also requires that permanency plans for children who are 14 years of age and older must determine the services needed to assist the children to make the transition from foster care to independent living. Public Law 2015, chapter 381 was enacted as an emergency measure effective March 1, 2016.

LD 1114: An Act To Protect Maine's Children from Sexual Abuse and Exploitation

Public Law 394

Sponsors: Senator Bill Diamond

Enacted Law Summary

Public Law 2015, chapter 394 does the following:

1. It amends the law on sexual exploitation of a minor by changing the applicable age of protected minors from under 18 years of age to under 16 years of age, except in cases of compulsion. It also provides that the law does not apply with respect to a minor who is 14 or 15 years old who is employed, solicited, enticed, persuaded or used to engage in sexually explicit conduct by a person who is less than 5 years older than the minor, unless the person is the minor's parent or legal guardian or has care or custody of the minor.
2. It amends the law on dissemination of sexually explicit material by changing the applicable age of protected persons from under 18 years of age to under 16 years of age. It also provides that the law does not apply with respect to a person depicted in such material if the person is 14 or 15 years old and the person disseminating the material is less than 5 years older than the depicted person.
3. It amends the law on possession of sexually explicit material to exempt from the law possession of material in which the depicted person is 14 or 15 years of age and the actor is less than 5 years older than the depicted person.
4. It amends the law on unauthorized dissemination of certain private images to remove the requirement that the depicted person be 18 years of age or older for the law to apply.

LD 622: An Act To Require Training of Mandated Reporters under the Child Abuse Laws
Sponsor: Senator Bill Diamond

Public Law 407

Enacted Law Summary

Public Law 2015, chapter 407 requires all mandated reporters of suspected child abuse or neglect to complete training approved by the Department of Health and Human Services at least once every four years.

LD 1487: An Act To Amend the Laws on Protection from Abuse and Unauthorized Dissemination of Certain Private Images

Public Law 410

Sponsor: Representative Lori Fowle

Enacted Law Summary

Public Law 2015, chapter 410 does the following:

1. In Part A it amends the laws concerning unauthorized dissemination of certain private images by providing that access to and dissemination of certain private images and any written information describing and directly pertaining to the images contained in court records are governed by rule or administrative order of the Supreme Judicial Court.
2. In Part B it amends the laws on protection from abuse by including in the definition of abuse the unauthorized dissemination of certain private images. It allows a court in ordering interim relief to enjoin a defendant from engaging in the unauthorized dissemination of certain private images. It allows a court in ordering relief to order the defendant to remove, destroy or return or to direct the removal, destruction or return of the private images or to cease dissemination, and to prohibit the defendant from disseminating the private images. It allows the court to enter any other orders determined necessary or appropriate in the discretion of the court, including but not limited to ordering the defendant to pay costs associated with removal, destruction or return of private images. It also provides that access to and dissemination of certain private images and any written information describing and directly pertaining to the images contained in court records are governed by rule or administrative order of the Supreme Judicial Court.
3. In Part C it amends the laws on protection from harassment by including in the definition of harassment the unauthorized dissemination of certain private images. It allows a court in ordering interim relief to enjoin a defendant from engaging in the unauthorized dissemination of certain private images. It allows a court in ordering relief to order the defendant to remove, destroy or return or to direct the removal, destruction or return of the private images or to cease dissemination, and to prohibit the defendant from disseminating the private images. It allows the court to enter any other orders determined necessary or appropriate in the discretion of the court, including but not limited to ordering the defendant to pay costs associated with removal, destruction or return of private images. It also provides that access to and dissemination of certain private images and any written information describing and directly pertaining to the images contained in court records are governed by rule or

The non-consensual dissemination of private sexual images and/or videos is now illegal.

**LD 1526: An Act To Expand the Definition of “Advocate”
for Purposes of Disclosure of Information
by a Criminal Justice Agency
Sponsor: Senator David Burns**

Public Law 411

Enacted Law Summary

Public Law 2015, chapter 411 amends the law on disclosure of intelligence and investigative record information to a sexual assault counselor or an advocate for victims of domestic or family violence. Current law requires for disclosure that a specific agreement exist between the counselor or advocate and the agency and that the agreement contains terms provided in the statute. Public Law 2015, chapter 411 repeals these provisions and instead places into law a list of requirements that must be met by a sexual assault counselor or an advocate in order to receive intelligence and investigative record information from a criminal justice agency.

**LD 1477: An Act To Protect Victims of Sexual Assault
Sponsor: Senator Bill Diamond**

Public Law 427

Enacted Law Summary

Public Law 2015, chapter 427 allows a court to terminate the parental rights of a person if the court finds by clear and convincing evidence that the child was conceived as a result of an act of sexual assault by that person. It applies the same standard in the child protection laws.

If the court finds by clear and convincing evidence that a child was conceived as a result of an act of sexual assault, it can terminate the parental rights of that person.

**LD 1639: An Act To Implement the Recommendations
of the Intergovernmental Pretrial Justice
Reform Task Force
Sponsor: Senator David Burns**

Public Law 436

Enacted Law Summary

Public Law 2015, chapter 436 implements the following recommendations of the Intergovernmental Pretrial Justice Reform Task Force:

1. It specifies that a bail commissioner may not set pre-conviction bail for crimes involving domestic violence without specifying a court date within five weeks of the date of the bail order.
2. It specifies that, notwithstanding the Maine Revised Statutes, Title 15, section 1026, subsection 3, paragraph A, subparagraph (9-A), a bail commissioner may not impose as a condition of pre-conviction bail that a defendant submit to random search with respect to a prohibition on the possession, use or excessive use of alcohol or illegal drugs.
3. It amends standards for release on pre-conviction bail to include language in the conditions that

specifies that a defendant refrain from the possession of alcohol and illegal drugs, in addition to the current condition that prohibits use or excessive use of alcohol or any drugs. The bill also specifies that this condition be imposed only if specific facts are provided to the judicial officer to support the imposition of the condition.

4. It adds to the standards for release on pre-conviction bail language that a defendant be required to submit to a random search for possession or use of alcohol or illegal drugs.
5. It amends post-conviction bail to specify standards for bail with respect to a motion to revoke probation. A judge or justice may deny or grant bail and, in determining whether to admit the defendant to bail, the judge or justice shall consider the nature of the circumstances of the crime for which the defendant was sentenced to probation and the nature of the alleged violation of and any records of prior violations of probation.
6. It repeals Title 15, section 1073-A, which provides that if a defendant violated a condition of bail then the person who posted the bail or the surety must have the bond released or all of the money returned, unless the person previously acted as surety for the same defendant and the defendant previously failed to comply with conditions.
7. It requires that in an initial proceeding on a probation violation for which a person is committed without bail pending hearing, the date of the hearing must be set no later than 45 days from the date of the initial appearance unless otherwise ordered by the court.
8. It allows the court to suspend all or part of the minimum mandatory fine for assault, certain drug crimes and operating a motor vehicle while a person's license is suspended or revoked, and it lists criteria that a court may consider in making the decision to suspend the fine.
9. It amends the amount of payment for community service that may be credited against the unpaid fine for offenders who have been sentenced to pay a fine and who have defaulted from no less than \$25 for every 8 hours to a rate equal to the current hourly minimum wage. It expands the opportunity for community service work for credit against unpaid fines to include Class C crime convictions. Current law allows public service work for credit against unpaid fines only for Class D and Class E crimes.
10. It requires counties to use at least a portion of the community corrections funds they currently receive under the Maine Revised Statutes, Title 34-A, section 1210-D to provide pretrial and conditional release programs when imposed as a condition of pretrial bail. The programs may be conducted by the counties or under a contract with one or more organizations that provide such supervision. The Supreme Judicial Court may adopt rules or orders that establish the requirements of the programs to ensure that defendants have substantially equal access to pretrial and conditional release across the State.

LD 1531: An Act To Protect Victims of Human Trafficking
Sponsor: Senator Amy Volk

Public Law 443

Enacted Law Summary

Public Law 2015, chapter 443 provides that victims of aggravated sex trafficking and sex trafficking are eligible to file for protection from abuse orders and protection from harassment orders. Public Law 2015, chapter 443 captures all provisions of the protection from harassment and protection from abuse laws to include protections for victims of both aggravated sex trafficking and sex trafficking. It amends the definition of "harassment" to include a single act or course of conduct that includes a violation of the

Victims of aggravated sex trafficking and sex trafficking can now file for protection from abuse and protection from harassment orders.

Maine Revised Statutes, Title 17-A, section 852, aggravated sex trafficking, or section 853, sex trafficking. The definition is important because it determines who can request a protection from harassment order.

It amends the protection from harassment laws to include as prohibited conduct that an interim protection from harassment order issued ex parte may prohibit a defendant's destroying, transferring or tampering with a plaintiff's passport or other immigration document that is in the defendant's possession. It amends the protection from harassment laws to include as prohibited conduct that, after the opportunity for a hearing, a final protection from harassment order may prohibit a defendant's destroying, transferring or tampering with a plaintiff's passport or other immigration document that is in the defendant's possession.

It provides that violation of the final protection order provision prohibiting a defendant's destroying, transferring or tampering with a plaintiff's passport or other immigration document is treated as a violation of a court order, which may be pursued as contempt.

Public Law 2015, chapter 443 amends the Maine Criminal Code to provide that sex trafficking is a crime for which probation may be included as part of a sentence. Public Law 2015, chapter 443 amends the protection from abuse laws to amend the definition of "abuse" to include the actions of engaging in aggravated sex trafficking and sex trafficking. It amends the protection from abuse laws to clarify that a victim of aggravated sex trafficking or sex trafficking may file a complaint seeking a protection from abuse order. It amends the protection from abuse laws governing the type of relief that may be included in an interim protection from abuse order to cover a defendant's destroying, transferring or tampering with the plaintiff's passport or other immigration document. It amends the protection from abuse laws to provide that, with regard to conduct described as aggravated sex trafficking or sex trafficking, the court may order the defendant to pay economic damages related to the return or restoration of the plaintiff's passport or other immigration document and any debts of the plaintiff arising from the trafficking relationship. It also provides that a defendant who violates this provision may be punished for contempt.

LD 1518: An Act To Ensure Children in the Care of Caretaker Relatives Can Access Fundamental Services

Public Law 444

Sponsor: Representative John Picchiotti

Enacted Law Summary

Public Law 2015, chapter 444 makes changes to the laws governing minors' authority to consent to health care by identifying situations in which adults who voluntarily and without specific legal authority through a power of attorney or appointment as a legal guardian provide care that a parent normally would. When parents are temporarily absent from a minor's life, certain adults with whom a minor resides may assume a surrogate role. A surrogate may not be a parent, legal guardian or an adult to whom a parent has given a power of attorney authorizing health care treatment for the minor. Surrogates may include an adult related to a minor by blood, marriage or adoption and from whom the minor receives the ongoing care and support expected of a parent. If no such relatives exist, an adult with whom the minor resides and who has provided the minor with the ongoing care and support expected of a parent may act as a surrogate. The existence

of a surrogate does not remove the ability of a minor to give consent under any other existing law. If a minor needs health care, a surrogate must make a good faith attempt to notify the minor's parents or legal guardian of their right to make those decisions unless parental notification is not required by other provisions of law. Absent a response, the surrogate may make most health care decisions on behalf of the minor without parental consent. A surrogate may not make decisions withholding or withdrawing life-sustaining treatments or denying consent for treatments that are life-saving and medically necessary. A surrogate giving consent on behalf of the minor must attempt to make a good faith effort to notify the absent parents or legal guardian of any health care received by the minor unless parental notification is not required by other provisions of law.

Health care practitioners and providers may rely on the consent given by the surrogate. If they do so, they are immune from liability for providing treatment without receiving informed consent from the parents or legal guardian. Health care practitioners and providers must inform the surrogate of the surrogate's obligation to notify the minor's parents or legal guardian about the minor's treatment.

A surrogate may use the means of communication the surrogate believes is the most effective way to ensure actual notification of the parents or legal guardian. The means of communication may be regular mail, e-mail, texting, personal website posting or other written means of communication to the last known address or contacting by telephone using the last known telephone number of the absent parents or legal guardian. A surrogate who makes health care decisions for the minor knowing that those specific decisions may not be made by the surrogate or without attempting to contact the parents or legal guardian about the need for the health care or the health care received commits a Class E crime. A person who makes health care decisions for a minor when not qualified as a surrogate is guilty of a Class E crime.

As long as the health care practitioner or provider acts with good faith reliance on the consent of the surrogate, there is no liability against the health care practitioner or provider on the grounds that the health care treatment was rendered without informed consent. A minor may consent to health services associated with a sexual assault forensic examination to collect evidence after an alleged sexual assault regardless of whether a surrogate exists.

**LD 1603: An Act To Implement the Recommendations
of the Criminal Law Advisory Commission Relative
to the Maine Criminal Code and Related Statutes
Sponsor: Representative Lori Fowle**

Public Law 470

Enacted Law Summary

Public Law 2015, chapter 470 amends the Maine Criminal Code as follows:

1. The law designates the classes of crime in the subsections or paragraphs of the Maine Revised Statutes, Title 15, section 393 on prohibited possession of firearms to conform to the Maine Criminal Code drafting standards.
2. The law terminates the five-year period of prohibited possession of firearms when charges of violating the prohibition for domestic violence offenses are dismissed at the end of a period of deferred disposition.
3. The law defines or standardizes the use of certain terms and references to those terms in the laws governing interception of wire and oral communications to reference actions taken under the Criminal History Record Information Act and the Intelligence and Investigative Record Information Act.
4. The law makes these changes in the laws governing the Department of Corrections.
5. The law 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.

6. The law 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 two 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 two years.
7. The law 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.
8. The law raises the class of certain “attempt” crimes to a higher class in a manner that is consistent with the increase in class for second and subsequent convictions of those crimes.

**LD 1689: An Act To Protect Children in the State
from Possible Sexual, Physical and Emotional
Abuse by Persons Who Have Been Convicted of Crimes**

Public Law 497

Sponsor: Representative Joyce Maker

Enacted Law Summary

Public Law 2015, chapter 497 directs the Department of Health and Human Services to adopt rules to require criminal background checks for all family child care providers and staff members of child care facilities and family child care providers, to be effective September 1, 2017. The required criminal background checks must meet the requirements of 42 United States Code, Section 9858f (b) for all family child care providers, all child care staff members whose activities involve the care or supervision of children for a child care facility or a family child care provider and all adults who have unsupervised access to children who are cared for or supervised by a child care facility or family child care provider. The rules are major substantive rules and must be provisionally adopted and submitted for legislative review by the joint standing committee of the 128th Legislature having jurisdiction over judiciary matters by January 12, 2017. The joint standing committee of the Legislature having jurisdiction over judiciary matters may submit to the 128th Legislature a bill necessary to implement the criminal background check requirements. See also H.P. 1167, Joint Study Order To Establish a Working Group To Study Background Checks for Child Care Facilities and Providers. Public Law 2015, chapter 497 was enacted as an emergency measure effective April 29, 2016.

**LD 1540: An Act To Protect All Students in
Elementary or Secondary Schools from
Sexual Assault by School Officials**

Public Law 509

Sponsor: Senator Scott Cyrway

Enacted Law Summary

Public Law 2015, chapter 509 removes the age limit on the victim of the crime of unlawful sexual contact, unlawful sexual touching or gross sexual assault when the victim is a student at an elementary, secondary or special education school and the actor is a person at the school who has authority over the student. Public Law 2015, chapter 509 also specifies that a parent convicted of the crime of unlawful sexual contact, unlawful sexual touching or gross sexual assault is subject to stricter scrutiny by the court when it determines residence for and contact with a child of the parent when the victim was a student at an elementary, secondary or special education school and the parent was a person at the school who had authority over the student.



**Appendix:
Public Laws**

mecasa
**MAINE COALITION AGAINST
SEXUAL ASSAULT**

mecasa.org 207.626.0034

APPROVED

MARCH 1, 2016

BY GOVERNOR

CHAPTER

381

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

H.P. 1020 - L.D. 1497

An Act To Align the Child and Family Services and Child Protection Act with the Federal Preventing Sex Trafficking and Strengthening Families Act

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

Whereas, federal law requires Maine to enact changes to state law in compliance with the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183; and

Whereas, Maine's Child and Family Services and Child Protection Act is out of compliance with Public Law 113-183; and

Whereas, it is necessary for Maine to have authority to provide child welfare services for the protection of children and families prior to the expiration of the 90-day period; 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:

Sec. 1. 22 MRSA §4008, sub-§3, ¶K, as amended by PL 2013, c. 293, §2, is further amended to read:

K. A relative or other person whom the department is investigating for possible custody or placement of the child; and

Sec. 2. 22 MRSA §4008, sub-§3, ¶L, as enacted by PL 2013, c. 293, §3, is amended to read:

L. To a licensing board of a mandated reporter, in the case of a mandated reporter under section 4011-A, subsection 1 who appears from the record or relevant

circumstances to have failed to make a required report. Any information disclosed by the department personally identifying a licensee's client or patient remains confidential and may be used only in a proceeding as provided by Title 5, section 9057, subsection 6; and

Sec. 3. 22 MRSA §4008, sub-§3, ¶M is enacted to read:

M. Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children operated pursuant to 42 United States Code, Section 5773(b). Information disclosed pursuant to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 United States Code, Section 671(a)(35)(B).

Sec. 4. 22 MRSA §4036-B, sub-§3-A, as enacted by PL 2011, c. 402, §4, is amended to read:

3-A. Notification to relatives. Except as required by family or domestic violence safety precautions, the department shall exercise due diligence to identify and provide notice ~~to all known grandparents and other adult relatives~~, within 30 days after the removal of a child from the custody of a parent or custodian, to the following relatives: all grandparents; all parents of a sibling of the child who have legal custody of the sibling; and other adult relatives of the child, including any other adult relatives suggested by the parents. For the purposes of this subsection, "sibling" includes an individual who would have been considered a sibling of the child but for a termination or other disruption of parental rights, such as the death of a parent. Failure to comply with this provision does not affect service on a parent or custodian.

Sec. 5. 22 MRSA §4038-B, sub-§4, ¶C, as enacted by PL 2005, c. 372, §6, is amended to read:

C. In the case of a child who is ~~16~~ 14 years of age or older, the permanency plan must determine the services needed to assist the child to make the transition from foster care to independent living.

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

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

S.P. 386 - L.D. 1114

An Act Regarding Sexual Exploitation of Children

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

Sec. 1. 17-A MRS §282, sub-§1, as amended by PL 2007, c. 476, §§4 and 5, is further amended to read:

1. A person is guilty of sexual exploitation of a minor if:

A. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly employs, solicits, entices, persuades, or uses or ~~compels~~ another person, not that person's spouse, who ~~is in fact a minor~~ has not in fact attained 16 years of age, to engage in sexually explicit conduct, ~~except that it is not a violation of this paragraph if the other person is 14 or 15 years of age and the person is less than 5 years older than the other person.~~ Violation of this paragraph is a Class B crime;

A-1. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly compels or induces by any threat another person, not that person's spouse, who is in fact a minor, to engage in sexually explicit conduct. Violation of this paragraph is a Class B crime;

B. The person violates paragraph A or A-1 and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime;

C. The person violates paragraph A or A-1 and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime;

D. Being a parent, legal guardian or other person having care or custody of another person who ~~is in fact a minor~~ has not in fact attained 16 years of age, that person knowingly or intentionally permits that ~~minor person who has not in fact attained 16 years of age~~ to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed. Violation of this paragraph is a Class B crime;

E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime; or

F. The person violates paragraph D and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.

Sec. 2. 17-A MRSA §282, sub-§2, ¶A, as enacted by PL 2003, c. 711, Pt. B, §12, is amended to read:

A. A court shall impose upon a person convicted under subsection 1, paragraph A, A-1 or D a sentencing alternative involving a term of imprisonment of at least 5 years.

Sec. 3. 17-A MRSA §283, sub-§1, ¶A, as enacted by PL 2003, c. 711, Pt. B, §12, is amended to read:

A. The person intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any ~~minor~~ person who has not in fact attained 16 years of age who the person knows or has reason to know is a ~~minor~~ person under 16 years of age engaging in sexually explicit conduct, except that it is not a violation of this paragraph if the person depicted is 14 or 15 years of age and the person is less than 5 years older than the person depicted. Violation of this paragraph is a Class C crime;

Sec. 4. 17-A MRSA §284, sub-§1, ¶A, as amended by PL 2011, c. 50, §1, is further amended to read:

A. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

(1) The other person has not in fact attained 16 years of age; or

(2) The person knows or has reason to know that the other person has not attained 16 years of age.

It is not a violation of this paragraph if the person depicted is 14 or 15 years of age and the person is less than 5 years older than the person depicted.

Violation of this paragraph is a Class D crime;

Sec. 5. 17-A MRSA §511-A, sub-§1, ¶A, as enacted by PL 2015, c. 339, §1, is repealed.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
S.P. 215 - L.D. 622

**An Act To Require Training of Mandated Reporters under the Child Abuse
Laws**

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

Sec. 1. 22 MRSA §4011-A, sub-§9 is enacted to read:

9. Training requirement. A person required to make a report under subsection 1 shall complete at least once every 4 years mandated reporter training approved by the department.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1010 - L.D. 1487

An Act To Amend the Laws on Protection from Abuse, Protection from Harassment and Unauthorized Dissemination of Certain Private Images

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

Whereas, Public Law 2015, chapter 339 enacted laws regarding the new crime of unauthorized dissemination of certain private images, to address activity known informally as revenge pornography, effective October 15, 2015; and

Whereas, Public Law 2015, chapter 339 included coordination with some but not all related sections of the laws on protection from abuse; and

Whereas, Public Law 2015, chapter 339 did not include provisions to seal in court records unauthorized private images and written information describing and directly pertaining to the images; and

Whereas, full coordination with the related sections of the protection from abuse laws and enactment of provisions to seal certain images and information in court records are immediately necessary for the effective implementation of Public Law 2015, chapter 339;

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. 17-A MRSA §511-A, sub-§5 is enacted to read:

5. Access to and dissemination of certain private images as described in subsection 1 and any written information describing and directly pertaining to the images contained in

court records are governed by rule or administrative order adopted by the Supreme Judicial Court.

PART B

Sec. B-1. 19-A MRSA §4002, sub-§1, ¶¶E and F, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

E. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed; ~~or~~

F. Repeatedly and without reasonable cause:

- (1) Following the plaintiff; or
- (2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; or

Sec. B-2. 19-A MRSA §4002, sub-§1, ¶G is enacted to read:

G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A.

Sec. B-3. 19-A MRSA §4006, sub-§5, ¶¶E and F, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

E. Taking, converting or damaging property in which the plaintiff may have a legal interest; ~~or~~

F. Having any direct or indirect contact with the plaintiff; or

Sec. B-4. 19-A MRSA §4006, sub-§5, ¶G is enacted to read:

G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A.

Sec. B-5. 19-A MRSA §4007, sub-§1, ¶M, as amended by PL 2005, c. 510, §11, is further amended to read:

M. Entering any other orders determined necessary or appropriate in the discretion of the court; ~~or~~

Sec. B-6. 19-A MRSA §4007, sub-§1, ¶N, as enacted by PL 2005, c. 510, §12, is amended to read:

N. Directing the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household; ~~;~~

Sec. B-7. 19-A MRSA §4007, sub-§1, ¶¶O and P are enacted to read:

O. With respect to unauthorized dissemination of certain private images as described in Title 17-A, section 511-A, ordering the defendant to remove, destroy or return or to direct the removal, destruction or return of the private images, ordering the defendant to cease the dissemination of the private images and prohibiting the defendant from disseminating the private images; or

P. With respect to unauthorized dissemination of certain private images as described in Title 17-A, section 511-A, entering any orders determined necessary or appropriate in the discretion of the court, including but not limited to ordering the defendant to pay costs associated with removal, destruction or return of the private images.

Sec. B-8. 19-A MRSA §4008-A is enacted to read:

§4008-A. Access to certain private images and written information

Access to and dissemination of certain private images as described in Title 17-A, section 511-A and any written information describing and directly pertaining to the images contained in court records are governed by rule or administrative order adopted by the Supreme Judicial Court.

PART C

Sec. C-1. 5 MRSA §4651, sub-§2, ¶C, as amended by PL 2001, c. 134, §1, is further amended to read:

C. A single act or course of conduct constituting a violation of section 4681; Title 17, section 2931; or Title 17-A, sections 201, 202, 203, 204, 207, 208, 209, 210, 210-A, 211, 253, 301, 302, 303, 506-A, 511, 511-A, 556, 802, 805 or 806.

Sec. C-2. 5 MRSA §4654, sub-§4, ¶F, as amended by PL 1995, c. 650, §6, is further amended to read:

F. Repeatedly and without reasonable cause:

- (1) Following the plaintiff; or
- (2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; or

Sec. C-3. 5 MRSA §4654, sub-§4, ¶G, as enacted by PL 1995, c. 650, §7, is amended to read:

G. Having any direct or indirect contact with the plaintiff; or

Sec. C-4. 5 MRSA §4654, sub-§4, ¶H is enacted to read:

H. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A.

Sec. C-5. 5 MRSA §4655, sub-§1, ¶¶E and F, as amended by PL 1993, c. 475, §2, are further amended to read:

E. Ordering the defendant to pay court costs or reasonable attorney's fees; ~~and~~

F. Entering any other orders determined necessary or appropriate in the discretion of the court;

Sec. C-6. 5 MRSA §4655, sub-§1, ¶¶G and H are enacted to read:

G. With respect to unauthorized dissemination of certain private images as described in Title 17-A, section 511-A, ordering the defendant to remove, destroy or return or to direct the removal, destruction or return of the private images, ordering the defendant to cease the dissemination of the private images and prohibiting the defendant from disseminating the private images; or

H. With respect to unauthorized dissemination of certain private images as described in Title 17-A, section 511-A, entering any orders determined necessary or appropriate in the discretion of the court, including but not limited to ordering the defendant to pay costs associated with removal, destruction or return of the private images.

Sec. C-7. 5 MRSA §4661 is enacted to read:

§4661. Access to certain private images and written information

Access to and dissemination of certain private images as described in Title 17-A, section 511-A and any written information describing and directly pertaining to the images contained in court records are governed by rule or administrative order adopted by the Supreme Judicial Court.

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

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

S.P. 588 - L.D. 1526

**An Act Regarding the Disclosure of Intelligence and Investigative Record
Information**

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

Sec. 1. 16 MRSA §806, sub-§3, as enacted by PL 2013, c. 267, Pt. A, §3, is repealed.

Sec. 2. 16 MRSA §806, sub-§4 is enacted to read:

4. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as defined in section 53-B, subsection 1, paragraph A. A person to whom intelligence and investigative record information is disclosed pursuant to this subsection:

A. May use the information only for planning for the safety of the victim of a sexual assault or domestic or family violence incident to which the information relates;

B. May not further disseminate the information;

C. Shall ensure that physical copies of the information are securely stored and remain confidential;

D. Shall destroy all physical copies of the information within 30 days after their receipt;

E. Shall permit criminal justice agencies providing such information to perform reasonable and appropriate audits to ensure that all physical copies of information obtained pursuant to this subsection are maintained in accordance with this subsection; and

F. Shall indemnify and hold harmless criminal justice agencies providing information pursuant to this subsection with respect to any litigation that may result from the provision of the information to the person.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

S.P. 575 - L.D. 1477

An Act To Protect Victims of Sexual Assault

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

Sec. 1. 19-A MRSA §1658, as enacted by PL 1997, c. 363, §1, is repealed and the following enacted in its place:

§1658. Termination of parental rights and responsibilities in cases involving sexual assault

This section applies to the termination of parental rights and responsibilities with respect to a specific child conceived as a result of an act of sexual assault by the parent of that child.

1. Petitioner. The petition for termination may be filed by the other parent or, if the other parent is a minor, the parent or guardian of the other parent.

2. Petition. The petitioner may file a petition with the District Court that requests the termination of the parental rights and responsibilities of the parent and alleges:

A. That the parent was convicted of a crime involving sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction, that resulted in the conception of the child; or

B. That the child was conceived as a result of an act of sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction.

3. Termination. Except as provided in subsection 4, if the petitioner proves the allegation in subsection 2, paragraph A by a preponderance of the evidence, the court shall terminate the parental rights and responsibilities of the parent. If the petitioner proves the allegation in subsection 2, paragraph B by clear and convincing evidence, the court may terminate the parental rights and responsibilities of the parent.

4. Exception. The court is not required to terminate the parental rights and responsibilities of a parent convicted of gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B that resulted in the conception of the child if:

- A. The parent or guardian of the other parent filed the petition;
- B. The other parent informs the court that the sexual act was consensual; and
- C. The other parent opposes the termination of the parental rights and responsibilities of the parent convicted of the gross sexual assault.

Sec. 2. 22 MRSA §4055, sub-§1-B is enacted to read:

1-B. Conception by sexual assault as grounds for termination. The court may order termination of parental rights if the court finds, based on clear and convincing evidence, that the child was conceived as a result of an act by the parent of sexual assault or a comparable crime in another jurisdiction. For purposes of this subsection, "sexual assault" has the same meaning as in Title 17-A, section 253, 254 or 556. A guilty plea or conviction for sexual assault is considered clear and convincing evidence for purposes of this subsection.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

S.P. 666 - L.D. 1639

**An Act To Implement the Recommendations of the Intergovernmental
Pretrial Justice Reform Task Force****Be it enacted by the People of the State of Maine as follows:**

Sec. 1. 15 MRSA §1023, sub-§4, ¶D, as amended by PL 2013, c. 519, §2, is further amended to read:

D. Set preconviction or post-conviction bail for a violation of condition of release pursuant to section 1092, except as provided in section 1092, subsection 4; or

Sec. 2. 15 MRSA §1023, sub-§4, ¶E, as enacted by PL 2011, c. 341, §2, is amended to read:

E. Set preconviction bail using a condition of release not included in every order for pretrial release without specifying a court date within 8 weeks of the date of the bail order;

Sec. 3. 15 MRSA §1023, sub-§4, ¶¶F and G are enacted to read:

F. Set preconviction bail for crimes involving allegations of domestic violence without specifying a court date within 5 weeks of the date of the bail order; or

G. Notwithstanding section 1026, subsection 3, paragraph A, subparagraph (9-A), impose a condition of preconviction bail that a defendant submit to random search with respect to a prohibition on the possession, use or excessive use of alcohol or illegal drugs.

Sec. 4. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 2013, c. 227, §1, is further amended to read:

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines that the release described in subsection 2-A will not reasonably ensure the appearance of the defendant at the time and place required, will not reasonably ensure that the defendant will refrain from any new criminal conduct, will not reasonably ensure the integrity of the judicial process or will not reasonably ensure the safety of

others in the community, the judicial officer shall order the pretrial release of the defendant subject to the least restrictive further condition or combination of conditions that the judicial officer determines will reasonably ensure the appearance of the defendant at the time and place required, will reasonably ensure that the defendant will refrain from any new criminal conduct, will reasonably ensure the integrity of the judicial process and will reasonably ensure the safety of others in the community. These conditions may include that the defendant:

(1) Remain in the custody of a designated person or organization agreeing to supervise the defendant, including a public official, public agency or publicly funded organization, if the designated person or organization is able to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. When it is feasible to do so, the judicial officer shall impose the responsibility upon the defendant to produce the designated person or organization. The judicial officer may interview the designated person or organization to ensure satisfaction of both the willingness and ability required. The designated person or organization shall agree to notify immediately the judicial officer of any violation of release by the defendant;

(2) Maintain employment or, if unemployed, actively seek employment;

(3) Maintain or commence an educational program;

(4) Abide by specified restrictions on personal associations, place of abode or travel;

(5) Avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family or household members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions;

(6) Report on a regular basis to a designated law enforcement agency or other governmental agency;

(7) Comply with a specified curfew;

(8) Refrain from possessing a firearm or other dangerous weapon;

(9) Refrain from the possession, use or excessive use of alcohol and from any use of illegal drugs. A condition under this subparagraph may be imposed only upon the presentation to the judicial officer of specific facts demonstrating the need for such condition;

(9-A) Submit to:

(a) A random search for possession or use prohibited by a condition imposed under subparagraph (8) or (9); or

(b) A search upon articulable suspicion for possession or use prohibited by a condition imposed under subparagraph (8) or (9);

(10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose;

(10-A) Enter and remain in a long-term residential facility for the treatment of substance abuse;

(11) Execute an agreement to forfeit, in the event of noncompliance, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community and post with an appropriate court such evidence of ownership of the property or such percentage of the money as the judicial officer specifies;

(12) Execute a bail bond with sureties in such amount as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community;

(13) Return to custody for specified hours following release for employment, schooling or other limited purposes;

(14) Report on a regular basis to the defendant's attorney;

(15) Notify the court of any changes of address or employment;

(16) Provide to the court the name, address and telephone number of a designated person or organization that will know the defendant's whereabouts at all times;

(17) Inform any law enforcement officer of the defendant's condition of release if the defendant is subsequently arrested or summonsed for new criminal conduct;

(18) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community; and

(19) Participate in an electronic monitoring program, if available.

Sec. 5. 15 MRSA §1051, sub-§2-A is enacted to read:

2-A. Violation of probation; standards. This subsection governs bail with respect to a motion to revoke probation.

A. A judge or justice may deny or grant bail.

B. In determining whether to admit the defendant to bail and, if so, the kind and amount of bail, the judge or justice shall consider the nature and circumstances of the crime for which the defendant was sentenced to probation, the nature and circumstances of the alleged violation and any record of prior violations of probation

as well as the factors relevant to the setting of preconviction bail listed in section 1026.

Sec. 6. 15 MRSA §1073, 3rd ¶, as amended by PL 1997, c. 543, §18, is further amended to read:

The judge or justice may absolve the person of responsibility to pay all or part of the bond or may order the return of cash bail, except that a person may not be absolved of the responsibility to pay all or part of the bond, or receive any cash deposited as bail, if, prior to terminating the agreement, the defendant has failed to appear as required or, ~~if the precondition in section 1073-A has been satisfied,~~ the defendant has failed to comply with each condition of release. Nothing in this section may be construed to relieve or release a person of the responsibility for the appearance of the defendant, notwithstanding the termination of the agreement, until the defendant is in the custody of the sheriff of the county in which the case is pending, new or substitute sureties have appeared, new cash bail has been deposited or the defendant has otherwise been admitted to bail.

Sec. 7. 15 MRSA §1073-A, as enacted by PL 1997, c. 543, §19, is repealed.

Sec. 8. 17-A MRSA §1205-C, sub-§§4 and 5, as enacted by PL 1999, c. 246, §3, are amended to read:

4. At the initial appearance, the court shall advise the probationer of the contents of the motion, the right to a hearing on the motion, the right to be represented by counsel at a hearing and the right to appointed counsel. If the probationer can not afford counsel, the court shall appoint counsel for the probationer. The court shall call upon the probationer to admit or deny the alleged violation. If the probationer refuses to admit or deny, a denial must be entered. In the case of a denial, the court shall set the motion for hearing and may commit the ~~person~~ probationer, with or without bail, pending hearing. If the probationer is committed without bail pending hearing, the date of the hearing must be set no later than 45 days from the date of the initial appearance unless otherwise ordered by the court.

5. In deciding whether to set bail under this section and in setting the kind and amount of that bail, the court must be guided by the standards of post-conviction bail in Title 15, section 1051, ~~subsections 2 and 3~~ subsection 2-A. Appeal is governed by Title 15, section 1051, subsections 5 and 6. Bail set under this section is also governed by the sureties and other forms of bail provisions in Title 15, chapter 105-A, subchapter ~~IV~~ 4 and the enforcement provisions in Title 15, chapter 105-A, subchapter ~~V~~ 5, articles 1 and 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

Sec. 9. 17-A MRSA §1302, sub-§3 is enacted to read:

3. Notwithstanding any other provision of law, the court may suspend all or a portion of a minimum fine under section 1301, subsection 6 or under section 207, subsection 3 or under Title 29-A, section 2412-A, subsection 3, and the court may impose a fine other than the mandatory fine if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:

A. Reliable evidence of financial hardship on the part of the offender and the offender's family and dependents;

B. Reliable evidence of special needs of the offender or the offender's family and dependents;

C. Reliable evidence of the offender's income and future earning capacity and the offender's assets and financial resources from whatever source;

D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and

E. The impact of imposition of the mandatory fine on the offender's reasonable ability to pay restitution under chapter 54.

Sec. 10. 17-A MRSA §1304, sub-§3, ¶A, as amended by PL 2011, c. 568, §1, is further amended to read:

A. Unless the offender shows by a preponderance of the evidence that the default was not attributable to an intentional or knowing refusal to obey the court's order or to a failure on the offender's part to make a good faith effort to obtain the funds required for the payment, the court shall find that the default was unexcused and may:

(1) Commit the offender to the custody of the sheriff until all or a specified part of the fine is paid. The length of confinement in a county jail for unexcused default must be specified in the court's order and may not exceed 6 months. An offender committed for nonpayment of a fine is given credit toward the payment of the fine for each day of confinement that the offender is in custody at the rate specified in the court's order, which may not be less than \$25 or more than \$100 of unpaid fine for each day of confinement. The offender is also given credit for each day that the offender is detained as the result of an arrest warrant issued pursuant to this section. An offender is responsible for paying any fine remaining after receiving credit for confinement and detention. A default on the remaining fine is also governed by this section; or

(2) If the unexcused default relates to a fine imposed for a Class C, Class D or Class E crime, as authorized by chapter 53, order the offender to perform community service work, as authorized in chapter 54-C, until all or a specified part of the fine is paid. The number of hours of community service work must be specified in the court's order and the offender must receive a credit against the unpaid fine ~~of no less than \$25 for every 8 hours of community service work completed, which may not exceed one hundred 8-hour days at a rate equal to the current hourly minimum wage.~~ An offender ordered to perform community service work pursuant to this subparagraph is given credit toward the payment of the fine for each 8-hour day of community service work performed at the rate specified in the court's order. The offender is also given credit toward the payment of the fine for each day that the offender is detained as a result of an arrest warrant issued pursuant to this section at a rate specified in the court's order that is up to \$100 of unpaid fine per day of confinement. An offender is responsible for paying any fine remaining after receiving credit for any detention

and for community service work performed. A default on the remaining fine is also governed by this section.

Sec. 11. 34-A MRSA §1210-D, sub-§2, ¶C, as enacted by PL 2015, c. 335, §23, is amended to read:

C. Before distributing to a county that county's entire distribution under this section, the department shall require that county to submit appropriate documentation verifying that the county expended 30% of its prior distribution for the purpose of community corrections as required by this section.

Sec. 12. 34-A MRSA §1210-D, sub-§2-A is enacted to read:

2-A. Pretrial release or conditional release programs. Using community corrections funds distributed under this section, each county shall provide a program, directly or through contract with an organization, to supervise defendants subject to a pretrial release condition imposed pursuant to Title 15, section 1026, subsection 3, paragraph A, subparagraph (1) and such requirements as may be established by rule or order of the Supreme Judicial Court.

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND SIXTEEN

—
 S.P. 593 - L.D. 1531

An Act To Protect Victims of Human Trafficking

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

Sec. 1. 5 MRSA §4651, sub-§2, ¶C, as amended by PL 2001, c. 134, §1, is further amended to read:

C. A single act or course of conduct constituting a violation of section 4681; Title 17, section 2931; or Title 17-A, ~~sections~~ section 201, 202, 203, 204, 207, 208, 209, 210, 210-A, 211, 253, 301, 302, 303, 506-A, 511, 556, 802, 805 ~~or~~, 806, 852 or 853.

Sec. 2. 5 MRSA §4654, sub-§4, ¶F, as amended by PL 1995, c. 650, §6, is further amended to read:

F. Repeatedly and without reasonable cause:

- (1) Following the plaintiff; or
- (2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; ~~or~~

Sec. 3. 5 MRSA §4654, sub-§4, ¶G, as enacted by PL 1995, c. 650, §7, is amended to read:

G. Having any direct or indirect contact with the plaintiff; ~~or~~

Sec. 4. 5 MRSA §4654, sub-§4, ¶H is enacted to read:

H. Destroying, transferring or tampering with the plaintiff's passport or other immigration document in the defendant's possession.

Sec. 5. 5 MRSA §4655, sub-§1, ¶¶E and F, as amended by PL 1993, c. 475, §2, are further amended to read:

E. Ordering the defendant to pay court costs or reasonable attorney's fees; ~~and~~

F. Entering any other orders determined necessary or appropriate in the discretion of the court; and

Sec. 6. 5 MRSA §4655, sub-§1, ¶G is enacted to read:

G. Prohibiting the defendant from destroying, transferring or tampering with the plaintiff's passport or other immigration document in the defendant's possession.

Sec. 7. 5 MRSA §4659, sub-§1, as amended by PL 1993, c. 469, §2, is further amended to read:

1. Crime committed. Violation of a temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation or a court-approved consent agreement, when the defendant has prior actual notice of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 4655, subsection 1, paragraphs D to F G. Violation of these paragraphs must be treated as contempt and punished in accordance with law.

Sec. 8. 17-A MRSA §1201, sub-§1, ¶A-1, as amended by PL 2013, c. 194, §11, is further amended to read:

A-1. The conviction is for a Class D or Class E crime other than:

- (1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode and, as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;
- (2) A Class D crime that the State pleads and proves was committed against a family or household member or a dating partner under chapter 9 or 13 or section 554, 555 or 758. As used in this subparagraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; "dating partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A;
- (2-A) A Class D crime under Title 5, section 4659, subsection 1, Title 15, section 321, subsection 6 or Title 19-A, section 4011, subsection 1;
- (3) A Class D or Class E crime in chapter 11 or 12;
- (4) A Class D crime under section 210-A;
- (4-A) A Class E crime under section 552;
- (5) A Class D or Class E crime under section 556, section 853, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;
- (6) A Class D crime in chapter 45 relating to a schedule W drug;
- (7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B;
- (8) A Class D crime under Title 17, section 1031; or

(10) A Class E crime under Title 15, section 1092, subsection 1, paragraph A, if the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) and the underlying crime involved domestic violence.

Sec. 9. 19-A MRSA §4002, sub-§1, ¶¶E and F, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

E. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed; ~~or~~

F. Repeatedly and without reasonable cause:

- (1) Following the plaintiff; or
- (2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; or

Sec. 10. 19-A MRSA §4002, sub-§1, ¶G is enacted to read:

G. Engaging in aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively.

Sec. 11. 19-A MRSA §4005, sub-§1, as amended by PL 2015, c. 339, §2, is further amended to read:

1. Filing. An adult who has been abused by a family or household member or a dating partner may seek relief by filing a complaint alleging that abuse.

When a minor child in the care or custody of a family or household member or a dating partner has been abused by a family or household member or a dating partner, a person responsible for the child, as defined in Title 22, section 4002, subsection 9, or a representative of the department may seek relief by filing a petition alleging that abuse.

An adult who has been a victim of conduct defined as stalking in Title 17-A, section 210-A or described as sexual assault in Title 17-A, chapter 11 or described as unauthorized dissemination of certain private images in Title 17-A, section 511-A or described as aggravated sex trafficking or sex trafficking in Title 17-A, section 852 or 853, respectively, whether or not the conduct was perpetrated by a family or household member or dating partner, may seek relief by filing a complaint alleging that conduct without regard to whether criminal prosecution has occurred. When a minor has been a victim of such conduct, the minor's parent, other person responsible for the child or a representative of the department may seek relief by filing a petition alleging that conduct.

When an adult who is 60 years of age or older or a dependent adult, as defined in Title 22, section 3472, subsection 6, or an incapacitated adult, as defined in Title 22, section 3472, subsection 10, has been the victim of abuse as defined in section 4002, subsection 1 or Title 22, section 3472, subsection 1 by an extended family member or an unpaid care

provider, the adult victim, the adult victim's legal guardian or a representative of the department may seek relief by filing a complaint alleging the abusive conduct. For the purposes of this subsection, "extended family member" includes, but is not limited to: a person who is related to the victim by blood, marriage or adoption, whether or not the person resides or has ever resided with the victim. "Unpaid care provider" includes, but is not limited to, a caretaker who voluntarily provides full, intermittent or occasional personal care to the adult victim in the victim's home similar to the way a family member would provide personal care.

Sec. 12. 19-A MRSA §4006, sub-§5, ¶¶E and F, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

E. Taking, converting or damaging property in which the plaintiff may have a legal interest; ~~or~~

F. Having any direct or indirect contact with the plaintiff; or

Sec. 13. 19-A MRSA §4006, sub-§5, ¶G is enacted to read:

G. Destroying, transferring or tampering with the plaintiff's passport or other immigration document in the defendant's possession.

Sec. 14. 19-A MRSA §4007, sub-§1, ¶M, as amended by PL 2005, c. 510, §11, is further amended to read:

M. Entering any other orders determined necessary or appropriate in the discretion of the court; ~~or~~

Sec. 15. 19-A MRSA §4007, sub-§1, ¶N, as enacted by PL 2005, c. 510, §12, is amended to read:

N. Directing the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household; or

Sec. 16. 19-A MRSA §4007, sub-§1, ¶O is enacted to read:

O. With regard to conduct described as aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively, entering any other orders determined necessary or appropriate in the discretion of the court, including, but not limited to, requiring the defendant to pay economic damages related to the return or restoration of the plaintiff's passport or other immigration document and any debts of the plaintiff arising from the trafficking relationship.

Sec. 17. 19-A MRSA §4011, sub-§2, as amended by PL 2011, c. 178, §1, is further amended to read:

2. Exception. When the only provision that is violated concerns relief authorized under section 4007, subsection 1, paragraph F or F-1 or section 4007, subsection 1, paragraphs H to ~~N~~ O, the violation must be treated as contempt and punished in accordance with law.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

H.P. 1043 - L.D. 1518

An Act To Ensure Children in the Care of Caretaker Relatives and Other Surrogates Can Access Health Care

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

Sec. 1. 22 MRSA §1501, sub-§§1-A and 4 are enacted to read:

1-A. Health care. "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

4. Surrogate. "Surrogate" means:

A. An adult who is not a parent or legal guardian but who is related to a minor by blood, marriage or adoption and with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent. "Surrogate" does not include a person to whom a parent has delegated parental authority to consent to the minor's medical treatment through a power of attorney or other written instrument; or

B. If an adult relative described in paragraph A does not exist, an adult to whom a parent or legal guardian has not delegated parental authority through a power of attorney or other written instrument with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent.

Sec. 2. 22 MRSA §1503-A is enacted to read:

§1503-A. Authority for consent by a surrogate

1. Consent by a surrogate; notice of need for health care. A surrogate may give consent for health care for a minor except that a surrogate may not withhold or withdraw life-sustaining treatment or deny surgery, procedures or other interventions that are life-saving and medically necessary. The existence of a surrogate does not affect the ability of a minor to give consent as otherwise provided by law. Before the surrogate may give consent, the surrogate must make a reasonable good faith attempt to inform the minor's parents or legal guardian of the minor's need for health care and the parents' right to make those decisions. If parental notification is not required by other provisions of law, the

surrogate is not required to inform or attempt to inform the minor's parents or legal guardian.

2. Notice of health care received. Unless parental notification is not required by other provisions of law, a surrogate giving consent pursuant to subsection 1 shall make a reasonable good faith attempt to inform the minor's parents or legal guardian of the health care that the minor received. A health care practitioner or health care provider who provides health care pursuant to this section shall inform the minor's surrogate of this obligation. The sending of correspondence by regular mail, e-mail, texting, posting to a personal website or other written means of communication to the last known address or contacting by telephone using the last known telephone number of the minor's parents or legal guardian, whichever means the surrogate believes to be the most effective way to ensure actual notification, is deemed a reasonable good faith attempt to provide notice for purposes of this subsection.

3. Penalties. The following penalties apply to violations of this section.

A. A surrogate who makes decisions for a minor knowing that the decisions are prohibited by subsection 1 commits a Class E crime.

B. A person who knowingly acts as a surrogate for a minor without meeting the definition of "surrogate" in section 1501, subsection 4 commits a Class E crime.

C. A surrogate who fails to attempt to give notice as required in subsection 1 or 2 commits a Class E crime.

Sec. 3. 22 MRSA §1504, as enacted by PL 1995, c. 694, Pt. C, §8 and affected by Pt. E, §2, is repealed and the following enacted in its place:

§1504. Good faith reliance on consent

1. Reliance on minor's consent. A health care practitioner or health care provider who takes reasonable steps to ascertain that a minor is authorized to consent to health care as authorized in section 1503 and who subsequently renders health care in reliance on that consent is not liable for failing to have secured consent of the minor's parents or legal guardian prior to providing health care to the minor.

2. Reliance on surrogate's consent. Recovery is not allowed against any health care practitioner or health care provider upon the grounds that the health care was rendered without informed consent if consent is given by the minor's surrogate pursuant to section 1503-A and the health care practitioner or provider acts with good faith reliance on that consent.

Sec. 4. 22 MRSA §1507, as enacted by PL 1999, c. 90, §1, is amended to read:

§1507. Consent for sexual assault forensic examination

Notwithstanding the limitations set forth in section 1503 or the existence of a surrogate described in section 1503-A, a minor may consent to health services associated with a sexual assault forensic examination to collect evidence after an alleged sexual assault.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

H.P. 1094 - L.D. 1603

**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;

Violation of this paragraph is a Class C crime;

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);

Violation of this paragraph is a Class C crime;

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;

Violation of this paragraph is a Class D crime;

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;

Violation of this paragraph is a Class D crime;

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. Violation of this paragraph is a Class D crime;

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). Violation of this paragraph is a Class D crime;

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). Violation of this paragraph is a Class D crime;

I. Has been discharged from the United States Armed Forces under dishonorable conditions. Violation of this paragraph is a Class D crime; or

J. Has, having been a citizen of the United States, renounced that person's citizenship. Violation of this paragraph is a Class D crime.

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 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~~ during the deferred disposition period. Violation of this paragraph is a Class C crime.

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-A, as amended by PL 2015, c. 287, §4, is further amended to read:

1-A. Limited prohibition for nonviolent juvenile offenses. A person who 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 subsection 1, paragraph A-1 or subsection 1-B, paragraph A but is not an adjudication under subsection 1, paragraph C or an adjudication under subsection 1-B, paragraph B in which bodily injury to another person was threatened or resulted may not own or have in that person's possession or control a firearm for a period of 3 years following completion of any disposition imposed or until that person reaches 18 years of age, whichever is later. Violation of this subsection by a person at least 18 years of age is a Class C crime.

Sec. 3. 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~~.

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 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 ~~the effective date of this subsection~~ October 15, 2015.

Sec. 4. 15 MRSA §393, sub-§8, as amended by PL 2007, c. 670, §12, is repealed.

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

Sec. 6. 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. 7. 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 as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act.

Sec. 8. 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 ~~or as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or 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; 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), 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. 9. 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 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. 10. 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 or 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;~~ the administration of juvenile criminal justice; or the statutory functions of a state agency.

Sec. 11. 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 interest~~ sentencing 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. 12. 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 interest~~ sentencing 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. 13. 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 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. 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.

Sec. 14. 34-A MRSA §1001, sub-§10-A, as amended by PL 2013, c. 80, §5, is further amended to read:

10-A. Investigative officer. "Investigative officer" means an employee of the department designated by the commissioner as having the authority to conduct investigations of crimes or juvenile crimes relating to the security or orderly management of a facility administered by the department and engage in any other activity that is 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 or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act,~~ the administration of juvenile criminal justice as defined in Title 15, section 3308, subsection 7, paragraph A, subparagraph (2) ~~or the administration of juvenile justice~~ and who is certified by the Board of Trustees of the Maine Criminal Justice Academy as a full-time law enforcement officer.

Sec. 15. 34-A MRSA §1001, sub-§19, as amended by PL 2013, c. 267, Pt. B, §26, is repealed.

Sec. 16. 34-A MRSA §1001, sub-§22 is enacted to read:

22. Administration of juvenile justice. "Administration of juvenile justice" has the same meaning as in Title 15, section 3308-A, subsection 1, paragraph A.

Sec. 17. 34-A MRSA §1214, sub-§4, as enacted by PL 2001, c. 439, Pt. G, §1, is amended to read:

4. Confidentiality. Requests for action by the office must be treated confidentially and may be disclosed only to a state agency if necessary to carry out the statutory functions of that agency or to a 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 juvenile criminal justice. In no case may a victim's request for notice of release be disclosed outside the department and the office of the attorney for the State with which the request was filed.

Sec. 18. 34-A MRSA §1216, sub-§1, ¶D, as repealed and replaced by PL 2013, c. 588, Pt. A, §44, is 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 juvenile criminal justice or for criminal justice agency employment;

Sec. 19. 34-A MRSA §3011, sub-§1, as amended by PL 2013, c. 80, §6, is further amended to read:

1. Exercise of law enforcement powers. Investigative officers and other employees of the department who are certified by the Board of Trustees of the Maine Criminal Justice Academy as law enforcement officers may exercise the powers of other law enforcement officers with respect to crimes or juvenile crimes relating to the security or orderly management of a facility and engage in any other activity that is 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 or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record~~

Information Act, the administration of juvenile criminal justice as defined in ~~Title 15, section 3308, subsection 7, paragraph A, subparagraph (2)~~ or the administration of juvenile justice, if authorized to exercise these powers by the commissioner. These employees may issue administrative subpoenas, if authorized to exercise these powers by the commissioner and by the Attorney General or the Attorney General's designee. These powers are in addition to any powers the employees may otherwise have as employees of the department. Internal investigations of employees of the department must be conducted pursuant to any applicable collective bargaining agreement.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1154 - L.D. 1689

An Act To Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have Been Convicted of Crimes

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

Whereas, the safety of children cared for and supervised by child care providers in this State is of the utmost importance; and

Whereas, child care facilities and family child care providers, as well as the families who rely on them, need to know that the providers of care and staff members do not have disqualifying criminal records from other states; and

Whereas, the 2014 reauthorization of the Child Care and Development Fund program through the federal Child Care and Development Block Grant Act of 2014 has identified that best practices for background checks include fingerprint-based national criminal background checks for all child care providers who supervise children and all persons who have unsupervised access to children who are cared for or supervised by a child care provider; and

Whereas, the transition to the criminal background check process required by federal law raises significant questions, not the least of which are the employment needs of child care providers while waiting for background check results and the costs involved in the more rigorous criminal background checks than the checks currently required under state law; and

Whereas, it is the intent of the Legislature to ensure that the additional criminal background check process will be cost-effective and will not create an undue burden on parents or child care providers; and

Whereas, the development of major substantive rules to comply with the federal Child Care and Development Block Grant Act of 2014 by September 2017 should include the participation of child care facilities and family child care providers; 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:

Sec. 1. 22 MRSA §7702-A, sub-§3, ¶C, as enacted by PL 1999, c. 363, §3, is amended to read:

C. Section 8302-A, subsection 1, paragraphs B to I J and subsection 2, paragraphs A to F and H to J K.

Sec. 2. 22 MRSA §8302-A, sub-§1, as amended by PL 2005, c. 530, §8, is further amended to read:

1. Rules for child care facilities. Rules for child care facilities must include, but are not limited to, rules pertaining to the following:

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- G. The age, criminal record and personal history of the provider of care for children and staff members;
- H. The administration of medication; and
- I. Licensing procedures; and
- J. Requiring a criminal background check for:

(1) Each child care staff member whose activities involve the care or supervision of children; and

(2) Each adult who has unsupervised access to children who are cared for or supervised by a child care facility.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, except that rules adopted pursuant to paragraph J to comply with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 3. 22 MRSA §8302-A, sub-§2, as amended by PL 2005, c. 530, §8, is further amended to read:

2. Rules for family child care providers. Rules for family child care providers must include, and are limited to, rules pertaining to the following:

- A. Cardiopulmonary resuscitation;
- B. Water for drinking and cooking;
- C. Wastewater;
- D. Rabies vaccinations for pets;
- E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers;
- G. Child to staff ratios;
- H. Health and safety of the children and staff;
- I. Procedures for waivers of rules and for suspension and revocation of certification; ~~and~~
- J. The age, criminal record and personal history of the family child care provider, staff and members of the household; and
- K. Requiring a criminal background check for:
 - (1) The family child care provider;
 - (2) Each child care staff member whose activities involve the care or supervision of children; and
 - (3) Each adult who has unsupervised access to children who are cared for or supervised by the family child care provider.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A and rules adopted pursuant to paragraphs G to J ~~K~~ are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 4. Department of Health and Human Services; adoption of rules. The Department of Health and Human Services shall adopt rules required by the Maine Revised Statutes, Title 22, section 8302-A, subsections 1 and 2 to require criminal background checks for all providers of care and staff members of child care facilities and family child care providers, to be effective September 1, 2017. The rules must be provisionally adopted and submitted to the Legislature for review by the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 12, 2017. The department may submit to the committee recommendations for

legislation to support the rules to implement changes in criminal background checks in a manner that is effective for the department and child care facilities and family child care providers.

Sec. 5. Implementing legislation. The joint standing committee of the Legislature having jurisdiction over judiciary matters may submit a bill, including recommendations provided by the department pursuant to section 4, to the First Regular Session of the 128th Legislature to implement the criminal background checks required by 42 United States Code, Section 9858f(b). In developing the bill, the committee shall take into account the concerns of child care providers, including but not limited to employment needs while waiting for background check results, and shall explore options, including the application of federal grant funds, to defray all or some of the initial and ongoing additional costs.

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

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

S.P. 601 - L.D. 1540

**An Act To Protect All Students in Elementary or Secondary Schools from
Sexual Assault by School Officials**

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

Sec. 1. 17-A MRSA §253, sub-§2, ¶F, as amended by PL 2001, c. 383, §15 and affected by §156, is amended to read:

F. The other person, not the actor's spouse, ~~has not in fact attained the age of 18 years and~~ is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class C crime;

Sec. 2. 17-A MRSA §255-A, sub-§1, ¶¶K and L, as enacted by PL 2001, c. 383, §23 and affected by §156, are amended to read:

K. The other person, not the actor's spouse, is ~~in fact less than 18 years of age and~~ is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class D crime;

L. The other person, not the actor's spouse, is ~~in fact less than 18 years of age and~~ is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

Sec. 3. 17-A MRSA §260, sub-§1, ¶F, as enacted by PL 2003, c. 138, §5, is amended to read:

F. The other person, not the actor's spouse, is ~~in fact less than 18 years of age and~~ is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official

having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class D crime;

Sec. 4. 19-A MRSA §1653, sub-§6-A, as amended by PL 2011, c. 597, §4, is further amended to read:

6-A. Custody and contact limited; convictions for sexual offenses. The award of primary residence and parent-child contact with a person who has been convicted of a child-related sexual offense is governed by this subsection.

A. For the purposes of this section, "child-related sexual offense" means the following sexual offenses if, at the time of the commission of the offense, the victim was under 18 years of age or the victim was a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the person was a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student:

- (1) Sexual exploitation of a minor, under Title 17-A, section 282;
- (2) Gross sexual assault, under Title 17-A, section 253;
- (3) Sexual abuse of a minor, under Title 17-A, section 254;
- (4) Unlawful sexual contact, under Title 17-A, section 255-A or former section 255;
- (5) Visual sexual aggression against a child, under Title 17-A, section 256;
- (6) Sexual misconduct with a child under 14 years of age, under Title 17-A, section 258;
- (6-A) Solicitation of a child to commit a prohibited act, under Title 17-A, section 259-A; or
- (7) An offense in another jurisdiction that involves conduct that is substantially similar to that contained in subparagraph (1), (2), (3), (4), (5), (6) or (6-A). For purposes of this subparagraph, "another jurisdiction" means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa and each of the several states except Maine. "Another jurisdiction" also means the Passamaquoddy Tribe when that tribe has acted pursuant to Title 30, section 6209-A, subsection 1, paragraph A or B and the Penobscot Nation when that tribe has acted pursuant to Title 30, section 6209-B, subsection 1, paragraph A or B.

B. A court may award primary residence of a minor child or parent-child contact with a minor child to a parent who has been convicted of a child-related sexual offense only if the court finds that contact between the parent and child is in the best interest of the child and that adequate provision for the safety of the child can be made.

C. In an order of parental rights and responsibilities, a court may require that parent-child contact between a minor child and a person convicted of a child-related sexual offense may occur only if there is another person or agency present to supervise the

contact. If the court allows a family or household member to supervise parent-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

- (1) Minimize circumstances when the family of the parent who is a sex offender or sexually violent predator would be supervising visits;
- (2) Ensure that contact does not damage the relationship with the parent with whom the child has primary physical residence;
- (3) Ensure the safety and well-being of the child; and
- (4) Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.