

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

H.P. 1381 - L.D. 1867

An Act To Protect Victims of Domestic Violence

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

PART A

Sec. A-1. 15 MRSA §1023, sub-§4, ¶B-1 is enacted to read:

B-1. Set preconviction bail for a defendant alleged to have committed any of the following offenses against a family or household member as defined in Title 19-A, section 4002, subsection 4:

(1) A violation of a protection from abuse order provision set forth in Title 19-A, section 4006, subsection 5, paragraph A, B, C, D, E or F or Title 19-A, section 4007, subsection 1, paragraph A, A-1, A-2, B, C, D, E or G;

(2) Any Class A, B or C crime under Title 17-A, chapter 9;

(3) Any Class A, B or C sexual assault offense under Title 17-A, chapter 11;

(4) Kidnapping under Title 17-A, section 301;

(5) Criminal restraint under Title 17-A, section 302, subsection 1, paragraph A, subparagraph (4) or Title 17-A, section 302, subsection 1, paragraph B, subparagraph (2);

(6) Domestic violence stalking that is a Class C crime under Title 17-A, section 210-C, subsection 1, paragraph B;

(7) Domestic violence criminal threatening that is a Class C crime under Title 17-A, section 209-A, subsection 1, paragraph B or domestic violence criminal threatening that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1252, subsection 4;

(8) Domestic violence terrorizing that is a Class C crime under Title 17-A, section 210-B, subsection 1, paragraph B or domestic violence terrorizing that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1252, subsection 4; or

(9) Domestic violence reckless conduct that is a Class C crime under Title 17-A, section 211-A, subsection 1, paragraph B or domestic violence reckless conduct

that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1252, subsection 4;

**Sec. A-2. 15 MRSA §1023, sub-§4, ¶C**, as amended by PL 2011, c. 341, §2, is further amended to read:

C. In a case involving domestic violence, set preconviction bail for a defendant before making a good faith effort to obtain from the arresting officer, the responsible prosecutorial office, a jail employee or other law enforcement officer:

- (1) A brief history of the alleged abuser;
- (2) The relationship of the parties;
- (3) The name, address, phone number and date of birth of the victim; ~~and~~
- (4) Existing conditions of protection from abuse orders, conditions of bail and conditions of probation; and
- (5) Information about the severity of the alleged offense;

**Sec. A-3. 15 MRSA §1095, sub-§2**, as amended by PL 2011, c. 341, §4, is further amended to read:

**2. Arrest.** Prior to the filing of a motion to revoke a defendant's preconviction bail under subsection 1, a law enforcement officer when requested by the attorney for the State, may arrest with a warrant, or without a warrant pursuant to Title 17-A, section 15, any defendant who the law enforcement officer has probable cause to believe has failed to appear as required, has violated a condition of preconviction bail or has been charged with a crime allegedly committed while released on preconviction bail. A defendant under arrest pursuant to this section must be brought before any judge or justice of the appropriate court. The judge or justice shall determine without hearing whether the existing preconviction bail order should be modified or whether the defendant should be committed without bail pending the bail revocation hearing. If either the underlying crime or the new criminal conduct alleged is an offense specified in section 1023, subsection 4, paragraph B-1, the judge or justice shall order that the defendant be committed without bail pending the bail revocation hearing, unless the judge or justice makes findings on the record that there are conditions of release that will reasonably ensure that the defendant will not commit new crimes while out on bail, that will reasonably ensure the defendant's appearance at the time and place required and that will ensure the integrity of the judicial process and the safety of others in the community pending the bail revocation hearing. A copy of the motion for revocation must be furnished to the defendant prior to the hearing on the alleged violation, unless the hearing must be conducted in the absence of the defendant.

**Sec. A-4. 15 MRSA §1097, sub-§2-A** is enacted to read:

**2-A. Crimes involving domestic violence.** If the underlying crime is an offense specified in section 1023, subsection 4, paragraph B-1 and the new conduct found by the court pursuant to section 1096 involves new allegations of domestic violence or contact with a victim or witness in the underlying case, the judge or justice shall issue an order denying bail, unless the judge or justice makes the findings on the record required by both

subsections 1 and 2. The judge or justice shall issue an order denying bail if there has been a previous revocation of preconviction bail pursuant to section 1096.

## PART B

**Sec. B-1. 17-A MRSA §207-A, sub-§1, ¶B**, as enacted by PL 2007, c. 436, §1 and affected by §7, is amended to read:

B. The person violates paragraph A and at the time of the offense:

- (1) ~~The person has~~ Has one or more prior convictions for violating paragraph A or for violating section 209-A, 210-B, 210-C or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 209-A, 210-B, 210-C or 211-A in another jurisdiction;
- (2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4011, subsection 1 in another jurisdiction; or
- (3) Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or subparagraph (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4002, subsection 4.

Violation of this paragraph is a Class C crime.

**Sec. B-2. 17-A MRSA §208, sub-§1, ¶C**, as amended by PL 1981, c. 317, §6, is further amended to read:

C. Bodily injury to another under circumstances manifesting extreme indifference to the value of human life. Such circumstances include, but are not limited to, the number, location or nature of the injuries, the manner or method inflicted, ~~or~~ the observable physical condition of the victim or the use of strangulation. For the purpose of this paragraph, "strangulation" means the intentional impeding of the breathing or circulation of the blood of another person by applying pressure on the person's throat or neck.

**Sec. B-3. 17-A MRSA §209-A, sub-§1, ¶B**, as enacted by PL 2007, c. 436, §2 and affected by §7, is amended to read:

B. The person violates paragraph A and at the time of the offense:

- (1) ~~The person has~~ Has one or more prior convictions for violating paragraph A or for violating section 207-A, 210-B, 210-C or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 207-A, 210-B, 210-C or 211-A in another jurisdiction;
- (2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or one or more prior convictions for engaging in conduct

substantially similar to that contained in Title 19-A, section 4011, subsection 1 in another jurisdiction; or

(3) ~~The person has~~ Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or subparagraph (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4002, subsection 4.

Violation of this paragraph is a Class C crime.

**Sec. B-4. 17-A MRSA §210-B, sub-§1, ¶B,** as enacted by PL 2007, c. 436, §3 and affected by §7, is amended to read:

B. The person violates paragraph A and at the time of the offense:

(1) ~~The person has~~ Has one or more prior convictions for violating paragraph A or for violating section 207-A, 209-A, 210-C or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 207-A, 209-A, 210-C or 211-A in another jurisdiction;

(2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4011, subsection 1 in another jurisdiction; or

(3) ~~The person has~~ Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or subparagraph (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4002, subsection 4.

Violation of this paragraph is a Class C crime.

**Sec. B-5. 17-A MRSA §210-C, sub-§1, ¶B,** as enacted by PL 2007, c. 436, §4 and affected by §7, is amended to read:

B. The person violates paragraph A and at the time of the offense:

(1) ~~The person has~~ Has one or more prior convictions for violating paragraph A or for violating section 207-A, 209-A, 210-B or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 207-A, 209-A, 210-B or 211-A in another jurisdiction;

(2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4011, subsection 1 in another jurisdiction; or

(3) ~~The person has~~ Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or

~~subparagraph~~ (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4002, subsection 4.

Violation of this paragraph is a Class C crime.

**Sec. B-6. 17-A MRSA §211-A, sub-§1, ¶B**, as enacted by PL 2007, c. 436, §5 and affected by §7, is amended to read:

B. The person violates paragraph A and at the time of the offense:

(1) ~~The person has~~ Has one or more prior convictions for violating paragraph A or for violating section 207-A, 209-A, 210-B or 210-C or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 207-A, 209-A, 210-B or 210-C in another jurisdiction;

(2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4011, subsection 1 in another jurisdiction; or

(3) Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or ~~subparagraph~~ (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4002, subsection 4.

Violation of this paragraph is a Class C crime.

**Sec. B-7. 17-A MRSA §1201, sub-§1, ¶A-1**, as amended by PL 2011, c. 465, §7, 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 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~~
- (9) A Class D crime under Title 17-A, section 1119, subsection 1; 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.

### PART C

**Sec. C-1. 19-A MRSA §4002, sub-§4**, as amended by PL 2007, c. 518, §8, is further amended to read:

**4. Family or household members.** "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of Title 15, section 1023, subsection 4, paragraph B-1, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

### PART D

**Sec. D-1. 25 MRSA §2803-B, sub-§1, ¶D**, as amended by PL 2011, c. 265, §2, is further amended to read:

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

- (1) A process to ensure that a victim receives notification of the defendant's release from jail;
- (2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, whether the commission of an alleged crime included the use of strangulation as defined in Title 17-A, section 208, subsection 1, paragraph C, the name of the victim and a

process to relay this information to a bail commissioner before a bail determination is made;

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

(4) Standard procedures to ensure that protection from abuse orders issued under Title 19-A, section 4006 or 4007 are served on the defendant as quickly as possible;

## **PART E**

**Sec. E-1. Report.** The judicial branch shall study the application of the provisions of this Act. The study must include, but is not limited to, information, if available, about the number of domestic violence cases in which preconviction bail for a person arrested for a domestic violence offense listed under the Maine Revised Statutes, Title 15, section 1023, subsection 4, paragraph B-1 was set or denied by a judge or justice without prior review by a bail commissioner. The judicial branch shall report the results of the study to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than January 30, 2013. The joint standing committee of the Legislature having jurisdiction over criminal justice matters may submit legislation to the First Regular Session of the 126th Legislature that is related to the report.

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In House of Representatives, ..... 2012

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2012

Read twice and passed to be enacted.

..... President

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Approved ..... 2012

..... Governor