

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 753

H.P. 562

House of Representatives, February 4, 1997

An Act to Allow Police to Take Intoxicated Persons into Custody.

Reference to the Committee on Criminal Justice suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative LEMKE of Westbrook.
Cosponsored by Representatives: McALEVEY of Waterboro, USHER of Westbrook,
WHEELER of Bridgewater.

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

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4 **Sec. 1. 17 MRSA §2003-A, sub-§1, ¶A-1** is enacted to read:

6 A-1. "Intoxicated" means having a disturbed mental capacity
8 resulting from the introduction of alcohol, drugs or similar
10 substances into the body.

12 **Sec. 2. 17 MRSA §2003-B** is enacted to read:

14 **§2003-B. Protective custody of intoxicated persons**

16 **1. Taking protective custody.** A law enforcement officer
18 may take protective custody of a person who is or reasonably
20 appears to be intoxicated in a public place or, if the person
22 unreasonably disturbs others, in a private place. The law
24 enforcement officer shall take the intoxicated person to a
26 municipal or county jail or lock-up, as defined in Title 30-A,
28 section 451, subsections 8 and 12.

30 **2. Notification of relative.** When an intoxicated person is
32 taken into protective custody and a relative can be contacted
34 with reasonable diligence, the facility at which the person is
36 held shall notify the relative of the person's whereabouts and
38 condition as promptly as possible. Notification may not be made
40 if the person is at least 18 years of age, is not incapacitated
42 and requests that no notification be made.

44 **3. Length of protective custody.** The person must be
46 released as soon as one of the following occurs.

48 A. The person becomes sober.

50 B. A responsible and sober adult voluntarily accepts
custody of the person.

C. Twelve hours have passed since the person was taken into
protective custody.

4. No official record. Protective custody of an
intoxicated person is not an arrest and no record may be made to
indicate that the person was arrested or charged with a crime.

5. Immunity. A law enforcement officer is not criminally
or civilly liable for taking protective custody of an intoxicated
person, unless the officer acts willfully and maliciously.

6. Voluntary protective custody. An intoxicated person may
voluntarily submit to protective custody.

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SUMMARY

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6 This bill permits law enforcement officers to take
intoxicated persons into protective custody by placing them in a
municipal or county jail or lock-up. It specifies that
8 protective custody is not an arrest, the person may not be
charged with a crime and the custody may not extend beyond 12
10 hours. The bill also exempts law enforcement officers from
criminal and civil liability for imposing protective custody,
12 unless the officer acts willfully and maliciously.