

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
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THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

CHAPTER 142

S.P. 397 - L.D. 1192

An Act To Enhance Juvenile Rehabilitation

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

Sec. 1. 15 MRSA §3304, sub-§6-A, as amended by PL 1987, c. 720, §2, is further amended to read:

6-A. Attendance of parent, guardian or legal custodian; contempt. The parent, guardian or legal custodian shall appear in response to the summons served pursuant to subsection 5 and shall attend all proceedings concerning the juvenile. The failure of a parent, guardian or legal custodian to appear in response to the summons or for a later hearing, or the inability to serve such a party, ~~shall~~ may not prevent the court from continuing with the proceedings against a juvenile who is before the court, except as required in section 3314, subsection 1, paragraphs C-1 and C-2.

A. The court may excuse the attendance of a parent, guardian or legal custodian at a particular proceeding or all proceedings for good cause or if appearing in court will result in undue hardship to the parent, guardian or legal custodian.

B. If the parent, guardian or legal custodian fails to appear with the juvenile and the court has not found good cause for not appearing, the court, after notice and hearing on the issue of contempt, may find the parent, guardian or legal custodian in contempt of court in accordance with the Maine Rules of Criminal Procedure, Rule 42(d).

C. This subsection does not create a right for the juvenile to have the juvenile's parent, guardian or legal custodian present at any proceeding or court-ordered program that the juvenile attends or is required to attend.

Sec. 2. 15 MRSA §3314-B is enacted to read:

§3314-B. Counseling, treatment, education or case management for juveniles and their parents, guardians and legal custodians

1. Counseling, treatment, education or case management. In conjunction with a disposition under section 3314, the court may require the juvenile and the juvenile's parent, guardian or legal custodian to participate in counseling, treatment, education or case management as determined by the court. The counseling, treatment, education or case management

must be designed to create a favorable environment for sustained noncriminal behavior.

2. Costs. The court may order a parent, guardian or legal custodian to pay or cause to be paid all or part of the reasonable costs of any counseling, treatment, education or case management ordered pursuant to this section.

3. Enforcement. After notice and hearing and in accordance with the Maine Rules of Criminal Procedure, Rule 42(d), the court may invoke its contempt powers to enforce its counseling, treatment, education, case management or other order that applies to the juvenile, the juvenile's parent, guardian or legal custodian or any other person before the court who is subject to an order to participate in counseling, treatment, education or case management.

4. Probation. The court may not revoke a juvenile's probation because of a failure of the juvenile's parent, guardian or legal custodian to comply with an order under this section.

Sec. 3. Application. This Act applies to juvenile crimes for which a summons is served on or after the effective date of this Act.

See title page for effective date.

CHAPTER 143

H.P. 741 - L.D. 1020

An Act To Amend the Maine Criminal Code as Recommended by the Criminal Law Advisory Commission

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

Sec. 1. 17-A MRSA §106, sub-§1-A is enacted to read:

1-A. For purposes of subsection 1, "reasonable degree of force" is an objective standard. To constitute a reasonable degree of force, the physical force applied to the person may result in no more than transient discomfort or minor temporary marks on that person.

Sec. 2. 17-A MRSA §106, sub-§4, as enacted by PL 1975, c. 499, §1, is amended to read:

4. The justification extended in subsections 4, 2 and 3 does not apply to the ~~purposeful~~ intentional or reckless use of force that creates a substantial risk of death, serious bodily injury, or extraordinary pain.

Sec. 3. 17-A MRSA §107, as amended by PL 1995, c. 215, §§2 and 3, is further amended to read:

§107. Physical force in law enforcement

1. A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person:

A. When and to the extent that ~~he~~ the officer reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless ~~he~~ the officer knows that the arrest or detention is illegal; or

B. To defend himself or herself or a 3rd person from what ~~he~~ the officer reasonably believes to be the imminent use of unlawful nondeadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape.

2. A law enforcement officer is justified in using deadly force only when ~~he~~ the officer reasonably believes such force is necessary:

A. To defend himself or herself or a 3rd person from what ~~he~~ the officer reasonably believes is the imminent use of unlawful deadly force; or

B. To effect an arrest or prevent the escape from arrest of a person when the law enforcement officer reasonably believes that the person has committed a crime involving the use or threatened use of deadly force, is using a dangerous weapon in attempting to escape or otherwise indicates that the person is likely to endanger seriously human life or to inflict serious bodily injury unless apprehended without delay; and

(1) The law enforcement officer has made reasonable efforts to advise the person that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest and the officer has reasonable grounds to believe that the person is aware of this advice; or

(2) The law enforcement officer reasonably believes that the person to be arrested otherwise knows that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest.

For purposes of this paragraph, "a reasonable belief that another has committed a crime involving use or threatened use of deadly force" means such reasonable belief in facts, circumstances and the law which, if true, would constitute such an offense by that person. If the facts and circumstances reasonably believed would not constitute such an offense, an erroneous but

reasonable belief that the law is otherwise justifies the use of deadly force to make an arrest or prevent an escape.

3. A private person who has been directed by a law enforcement officer to assist ~~him~~ the officer in effecting an arrest or preventing an escape from custody is justified in using:

A. A reasonable degree of nondeadly force when and to the extent that ~~he~~ the private person reasonably believes such to be necessary to carry out the officer's direction, unless ~~he~~ the private person believes the arrest is illegal; or

B. Deadly force only when ~~he~~ the private person reasonably believes such to be necessary to defend himself or herself or a 3rd person from what ~~he~~ the private person reasonably believes to be the imminent use of unlawful deadly force, or when the law enforcement officer directs ~~him~~ the private person to use deadly force and ~~he~~ the private person believes ~~such~~ the officer himself is authorized to use deadly force under the circumstances.

4. A private person acting on his or her own is justified in using:

A. A reasonable degree of nondeadly force upon another when and to the extent that ~~he~~ the private person reasonably believes it necessary to effect an arrest or detention ~~which that~~ that is lawful for ~~him~~ the private person to make or prevent the escape from such an arrest or detention; or

B. Deadly force only when the private person reasonably believes such force is necessary:

(1) To defend ~~he~~ the person or a 3rd person from what the private citizen reasonably believes to be the imminent use of unlawful deadly force; or

(2) To effect a lawful arrest or prevent the escape from such arrest of a person who in fact:

(a) Has committed a crime involving the use or threatened use of deadly force, or is using a dangerous weapon in attempting to escape; and

(b) The private citizen has made reasonable efforts to advise the person that the citizen is a private citizen attempting to effect an arrest or prevent the escape from arrest and has reasonable grounds to believe the person is aware of this advice or the citizen reasonably believes that the person to be

arrested otherwise knows that the citizen is a private citizen attempting to effect an arrest or prevent the escape from arrest.

5. Except where otherwise expressly provided, a corrections officer, corrections supervisor or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in subsection 2. The officer or another individual responsible for the custody, care or treatment of those persons is justified in using a reasonable degree of nondeadly force when and to the extent the officer or the individual reasonably believes it necessary to prevent any escape from custody or to enforce the rules of the facility.

5-A. A corrections officer, corrections supervisor or law enforcement officer is justified in using deadly force against a person confined in the Maine State Prison ~~or the Maine Correctional Institution—Warren~~ when the officer or supervisor reasonably believes that deadly force is necessary to prevent an escape from custody. The officer or supervisor shall make reasonable efforts to advise the person that if the attempt to escape does not stop immediately, deadly force will be used. This subsection does not authorize any corrections officer, corrections supervisor or law enforcement officer who is not employed by a state agency to use deadly force.

7. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

8. Nothing in this section constitutes justification for conduct by a law enforcement officer or a private person amounting to an offense against innocent persons whom ~~he~~ the officer or private person is not seeking to arrest or retain in custody.

Sec. 4. 17-A MRSA §210, sub-§1, as amended by PL 2001, c. 383, §11 and affected by §156, is further amended to read:

1. A person is guilty of terrorizing if that person in fact communicates to any 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 such a threat, whether or not such consequence in fact occurs, is:

A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed. Violation of this paragraph is a Class D crime; or

B. To cause evacuation of a building, place of assembly or facility of public transport or to cause the occupants of a building to be moved to or required to remain in a designated secured area. Violation of this paragraph is a Class C crime.

Sec. 5. 17-A MRSA §454, sub-§1, ¶A, as amended by PL 2001, c. 383, §63 and affected by §156, is further amended to read:

A. Induces or otherwise causes, or attempts to induce or cause, a witness or informant:

(1) To testify or inform ~~falsely~~ falsely in a manner the actor knows to be false; or

(2) To withhold testimony, information or evidence.

Violation of this paragraph is a Class C crime;

Sec. 6. 17-A MRSA §1108, sub-§5, as enacted by PL 2001, c. 419, §20, is amended to read:

5. For purposes of the causation required by subsection 1, engaging in an act of deception described in subsection 2, paragraph A or B ~~is deemed to have~~ gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303, that the act of deception in fact resulted in the acquisition of any drugs prescribed to that person by that prescribing health care provider or person acting under the direction or supervision of that prescribing health care provider.

Sec. 7. 17-A MRSA §1158, first ¶, as repealed and replaced by PL 2001, c. 667, Pt. A, §37 and affected by §38, is amended to read:

As part of every ~~judgment of conviction and~~ sentence imposed, a firearm must be forfeited to the State if that firearm:

Sec. 8. 17-A MRSA §1159 is enacted to read:

§1159. Recalcitrant witness in execution of sentence involving imprisonment

In the event a witness in a grand jury or criminal proceeding has been ordered confined by a court of record in the State as a remedial sanction for refusing to comply with an order of the court to testify or provide evidence, and that witness is already in execution of an undischarged term of imprisonment on a sentence in the State, that court may order that the undischarged term of imprisonment be tolled for the duration of the coercive imprisonment.

Sec. 9. 17-A MRSA §1252, sub-§4-A, as amended by PL 2003, c. 1, §10, 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 was committed, the defendant had been convicted of 2 or more crimes violating chapter 9, 11, 13 or 27 or essentially similar crimes in other jurisdictions, 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.

Sec. 10. 17-A MRSA §1252-B, as repealed and replaced by PL 1995, c. 433, §1, is repealed.

Sec. 11. 17-A MRSA §1302, sub-§1, as enacted by PL 1999, c. 367, §3, is amended to read:

1. In determining the amount of a fine, unless the fine amount is mandatory, and in determining the method of payment of a fine, the court shall take into account the present and future financial capacity of the offender to pay the fine and the nature of the financial burden that payment of the fine will impose on the offender or a dependent of the offender, if any.

Sec. 12. 17-A MRSA §1352, sub-§3, as enacted by PL 1975, c. 740, §124, is amended to read:

3. In the event of the death or resignation of ~~any~~ a member, the vacancy for ~~his~~ the member's unexpired term ~~shall~~ must be filled by the Attorney General.

Sec. 13. 17-A MRSA §1355, sub-§1, as enacted by PL 1975, c. 740, §124, is amended to read:

1. The Attorney General shall notify all members of the time and place of the first meeting. At that time the commission shall organize, elect a ~~chairman~~ chair, vice-chairman ~~vice-chair~~ and secretary-treasurer and adopt rules as to the administration of the commission and its affairs. The commission shall maintain such financial records as may be required by the State Auditor.

Sec. 14. Effective date. That section of this Act that repeals the Maine Revised Statutes, Title 17-A, section 1252-B takes effect January 1, 2004.

See title page for effective date, unless otherwise indicated.

CHAPTER 144

H.P. 595 - L.D. 818

An Act To Amend Motor Vehicle Frame Height Laws

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

Sec. 1. 29-A MRSA §1920, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. **Minimum and maximum frame end heights.** A motor vehicle may not be operated on a public way or receive a certificate of inspection with a frame end height of less than 10 inches or a maximum frame end height based on the manufacturer's gross vehicle weight rating that is greater than:

- A. For an automobile, 22 inches in the front and rear;
- B. For a vehicle of 4,500 pounds and less, 24 inches in the front and 26 inches in the rear;
- C. For a vehicle of 4,501 pounds to 7,500 pounds, 27 inches in the front and 29 inches in the rear; and
- D. For a vehicle of 7,501 pounds to 10,000 pounds, 28 inches in the front and 30 inches in the rear.

Measurements must be taken from a level surface to the ~~lowest point on~~ bottom of the frame end. For the purposes of this subsection, "frame end" means the point at which the frame rail terminates at the bumper assembly.

See title page for effective date.

CHAPTER 145

S.P. 370 - L.D. 1098

An Act Regarding Mandated Reporters and Child Abuse

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

Sec. 1. 22 MRSA §3477, sub-§1, ¶A, as enacted by PL 2001, c. 345, §3, is amended to read:

- A. While acting in a professional capacity:
 - (1) An allopathic or osteopathic physician;
 - (2) A medical intern;