

# MAINE STATE LEGISLATURE

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*Drinking in Public: Juveniles  
Public Intoxication  
17 M.R.S.A. § 2003*

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



*15 M.R.S.A. § 3103  
22 M.R.S.A. § 2383*

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DEPARTMENT OF THE ATTORNEY GENERAL  
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December 13, 1978

The Honorable David H. Brenerman  
122 North Street  
Portland, Maine 04101

Dear Representative Brenerman:

Enclosed are the answers to the questions which you posed to Attorney General Brennan in your letter of November 16, 1978.

On the subject of drinking in public, I anticipate that the Criminal Law Advisory Commission will be considering a proposal to replace the present statute (17 M.R.S.A. § 2003) with a new version in the Criminal Code. Since that proposal would also recriminalize public drinking, its enactment by the Legislature would restore the authority of the police to arrest both adults and juveniles for such conduct.

Please feel free to contact me if I can be of any further service.

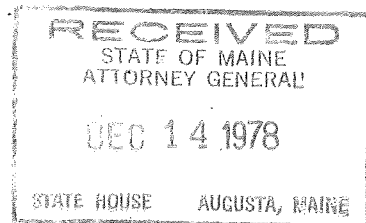
Sincerely,

*Stephen L. Diamond*

STEPHEN L. DIAMOND  
Assistant Attorney General

SLD:sm

Encl.



### Question 1

How do regulations concerning the possession and/or use of marijuana differ between adults and juveniles? What is considered a "useable" amount?

#### Answer

Possession of marijuana by an adult for personal use is a civil violation, for which a civil penalty not to exceed \$200 may be imposed. (22 M.R.S.A. §2383). No arrest is permissible unless the individual refuses to identify himself to the officer. However, the marijuana may be seized. If the marijuana is possessed with the intent to sell or furnish it to another, then the person commits a crime.

Possession of marijuana by a juvenile for personal use is a juvenile crime. (15 M.R.S.A. §3103(1)(B)). However, the court may not commit the juvenile to the Maine Youth Center for this offense, but may impose a fine or probation. (15 M.R.S.A. §3103(2)). If the juvenile willfully refuses to pay the fine or willfully violates the terms of his probation, he may then be committed to the Youth Center. (15 M.R.S.A. §3103(1)(E)).

Our statutes do not define the term, "useable amount", nor do I know of any Maine court decisions on this point. Cases in other states, however, give the term a rather literal interpretation, such as an amount useable as a drug. Based upon my reading of those cases, the apparent purpose behind the "useable amount" requirement is to prevent a conviction when the amount is so miniscule as to be incapable of being put to any effective use. To my knowledge, the requirement has not caused any serious enforcement problems either in Maine or in any other jurisdiction in which it exists.

### Question 2

What is the legal status of juvenile:

- (a) drinking in a public place, street or highway?
- (b) possession of alcohol?
- (c) intoxication?

#### Answer

(a) Technically speaking, drinking in a public place, etc., by a juvenile is a civil violation for which a civil penalty not to exceed \$50 may be imposed. (17 M.R.S.A. §2003). Since, however, that conduct would inevitably seem to involve possession of intoxicating liquor by the juvenile, my answer to your next question applies here as well.

(b) Possession of intoxicating liquor by a juvenile on any street or highway, or in any public place, or in any automobile, or in any on-sale premises is a juvenile crime. (28 M.R.S.A. §303). Possession by the juvenile in other locations, such as a private home, does not appear to be prohibited.

As with possession of marijuana, a juvenile may not be sent to the Youth Center for possession of intoxicating liquor in a public place, etc., but may be sentenced to pay a fine or to probation. (15 M.R.S.A. §3103(2)). If the juvenile willfully refuses to pay the fine or willfully violates the terms of his probation, he may then be committed to the Youth Center. (15 M.R.S.A. §3103(1)(D)).

(c) There is no law which prohibits a juvenile from being intoxicated in a public place or elsewhere. Accordingly, neither criminal nor civil sanctions are available. There are, however, two situations under which the police might possibly exercise limited custody over an intoxicated juvenile. The first arises under the interim care provision of the Juvenile Code (15 M.R.S.A. c. 511) which allows a police officer to take a juvenile into interim care if the officer has reasonable grounds to believe that the juvenile is seriously endangered in his surroundings and that immediate removal is necessary for his protection. The second situation arises under the Uniform Alcoholism and Intoxication Treatment Act. (22 M.R.S.A. c. 254). Section 1373 of that Act provides that an intoxicated person who has threatened, attempted or inflicted physical injury on another and is likely to inflict harm on another unless committed, or is incapacitated by alcohol, may be committed to an approved public treatment facility for emergency treatment. Although there may be some question as to whether this procedure is available for juveniles, I see nothing on the face of the Act to indicate that it is limited to intoxicated adults.

### Question 3

What is the legal status of an adult:

- (a) drinking in a public place, street, or highway?
- (b) intoxication?

### Answer

(a) Drinking in a public place, street or highway by an adult is a civil violation for which a civil penalty not to exceed \$50 may be imposed. (17 M.R.S.A. §2003).

(b) Being in a state of intoxication, either in a public place or elsewhere, is not prohibited conduct. Accordingly, neither criminal nor civil sanctions are available. As I explained in my answer to Question 2(c), the Uniform Alcoholism and Intoxication Treatment Act allows emergency commitment of an intoxicated adult to a public treatment facility under the limited circumstances described in the Act.

Question 4

What range of actions may a police officer take when confronted with juvenile drinking:

- (a) on public property, i.e. store front, street corner, public park, in a car, etc.?
- (b) on private property, i.e. at a party in a juvenile's home (is a complaint necessary?), on a juvenile's front steps (less than 6 people), etc.?

Answer

(a) For the civil violation of drinking in a public place (17 M.R.S.A. §2003), the officer may not arrest (unless the juvenile refuses to identify himself), but may only give the juvenile a civil violation citation. In addition, officers generally seize the liquor as evidence of the violation.

For the juvenile crime of possession of intoxicating liquor in a public place (28 M.R.S.A. §303), the Juvenile Code is somewhat ambiguous as to whether officers are authorized to make a warrantless arrest. Without detailing the reasons for this ambiguity (which I hope will be resolved during the upcoming session of the Legislature), let me simply state that our Office has interpreted the Code to preclude such an arrest. Accordingly, the officer's only course of action is to refer the case to an intake worker in order to have a petition filed.

(b) Since it is not unlawful for a juvenile either to possess or to consume intoxicating liquor in a private place, a law enforcement officer has no authority over such conduct. If, however, the juvenile or juveniles were to engage in disorderly conduct, as defined in 17-A M.R.S.A. §501, in the presence of the officer, then a warrantless arrest would be authorized with or without a complaint.

Question 5

What range of actions may a police officer take when confronted with an adult drinking:

- (a) on public property, i.e. store front, street corner, public park, in a car, etc.?
- (b) on the front steps of a home owned by the adult in question or on the front steps of another person's home?

Answer

(a) Since drinking in a public place is a civil violation (17 M.R.S.A. §2003), the officer may not arrest (unless the person refuses to identify himself), but may only give the person a civil violation citation. As noted above, officers generally seize the liquor in these situations. I should add that the

reach of this statute is limited by the definition of public place in 17 M.R.S.A. §2003(2), which reads as follows:

2. Public place defined. "Public place" as used in this section shall mean any common carrier, dance, entertainment, amusement or sport or grounds adjacent thereto and used in conjunction therewith or any highway, street or lane, to which the public is invited or has access.

In light of this definition, a public park would generally not be a public place, and thus, the prohibition in §2003 would not apply.

(b) There is no law prohibiting an adult from either possessing or drinking intoxicating liquor in a private place. Thus, absent disorderly conduct, a police officer would have no authority to deal with a person who engaged in such behavior on the front steps of his own home. If, however, the behavior occurred on the steps of a home owned by another person, then a warrantless arrest for criminal trespass (17-A M.R.S.A. §402) would be in order under the following circumstances: (1) if the adult refused to comply with a demand by the owner, made in the presence of the police officer, that he leave the property; or (2) if the adult refused to comply with a demand by the police officer that he leave the property, assuming the officer had been authorized by the owner to make such a demand.

#### Question 6

What would be a police officer's range of actions if the person in question is publicly intoxicated (what is the definition of public intoxication?)

#### Answer

I believe my answers to Questions 2(c) and 3(k) explain the police officer's options when confronted with a person intoxicated in public.

With respect to the second part of your question, Maine law does not define "public intoxication" since that concept no longer has legal significance. The Uniform Alcoholism and Intoxication Treatment Act does, however, define "intoxicated person" in 22 M.R.S.A. §1362(11).

11. Intoxicated person. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

You should keep in mind that intoxication alone does not justify emergency commitment under the Act. Such commitment is permitted only if the intoxicated person either (1) has threatened, attempted or inflicted physical harm on another and is likely to inflict physical harm on another unless committed, or (2) is incapacitated by alcohol. "Incapacitated by alcohol" means that the person, as a result of the use of alcohol, is unconscious or

has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment. (22 M.R.S.A. §1362(9)). Finally, I should emphasize that emergency commitment, when authorized, must be to an approved public treatment facility; it does not allow custody in a lock-up, county jail or other correctional or penal institution.

Addendum

For purposes of responding to your inquiries, I have treated all adults as falling within the same category. To be technically correct, I should point out that there are some provisions which apply only to those adults who are at least 18 years of age but who are under the age of 20. In the context of your questions, however, these provisions generally overlap with other laws applicable to all adults, and thus, they do not significantly affect the answers which I have given.