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Freedom of Access Conviction Record
Secretary of State Conviction Record

29 M.R.S.A. §1312
29 M.R.S.A. §893

17-A M.R.S.A. 201-204

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DEPARTMENT OF THE ATTORNEY GENERAL
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December 26, 1978

TO: Linwood Ross, Deputy Secretary of State
FROM: Steven F. Wright, Assistant Attorney General
Re: Maintaining records of convictions

You have asked whether, in light of the Freedom of Access law, the Secretary of State must maintain as confidential, and, therefore, deny public access to, records of convictions of operating under the influence of intoxicating liquor or drugs (29 M.R.S.A. §1312), leaving the scene of an accident involving death or personal injury (29 M.R.S.A. §893), and homicide with a motor vehicle in violation of 17-A M.R.S.A. §§201-204.¹ We answer in the affirmative.

"Every court", pursuant to 29 M.R.S.A. §2304, is required to transmit to the Secretary of State a certified abstract "in every case wherein a person is convicted of or adjudicated to have committed the violation of any statute relative to motor vehicles. . .". Section 2304 continues by stating that these abstracts "shall be open to public inspection during reasonable hours."

It should be noted that this provision is consistent with the freedom of access law, 1 M.R.S.A. §401, et seq., which, except as expressly otherwise specified, makes all public records in the possession of an agency available for public inspection. See 1 M.R.S.A. §§402 (3), 408. The only exception provided by the freedom of access law pertinent to the instant discussion is records that have been designated confidential by statute. 1 M.R.S.A. §402 (3)(A).

¹29 M.R.S.A. §1313, which authorizes revocations for vehicular homicides, or attempts of vehicular homicides, contains outdated language referring to the offenses involved; e.g., 17-A M.R.S.A. §205 was repealed by PL 1977, c. 510, §42. It should be noted that records of violations of former vehicular homicide statutes (29 M.R.S.A. §§1315, 1316, and 17 M.R.S.A. §§2551 and 2651) are all to be treated in the same manner.

Subsequent to the enactment of 29 M.R.S.A. §2304, the Legislature enacted the Criminal History Record Information Act, 16 M.R.S.A. §601, et. seq.², proscribing the disclosure and dissemination, whether orally, in writing or by electronic means³, of criminal history record information, except as expressly provided by that law. See, 16 M.R.S.A. §§602-604. 16 M.R.S.A. §605 makes the knowing dissemination of criminal history record information⁴ a Class E crime.

However, 16 M.R.S.A §602 (2) (E) excepts from the application of this law criminal history record information contained in:

"Records of traffic offenses including traffic infractions, maintained by the Secretary of State, except for violations of Title 29, sections 893 and 1312 and except for those violations resulting in revocation of license pursuant to Title 29, section 1313;" (emphasis supplied)

Correlating these various statutory provisions, the Secretary of State must maintain the records he receives pursuant to 29 M.R.S.A. §2304 so that they are open to public inspection, except where the records are clothed with statutory confidentiality. Under 16 M.R.S.A. §602 (2) (E), the Secretary of State is specifically prohibited from disclosing, and must, then, maintain as confidential, information pertaining to convictions of 29 M.R.S.A. §1312, 29 M.R.S.A. §893, and convictions of 17-A M.R.S.A. §§201-204 and the former vehicular homicide statutes.⁵

It must be noted, though, that there is one exception to these confidentiality requirements imposed on the Secretary of State by the criminal history record information law. The recently enacted

²16 M.R.S.A. §601, et seq., was enacted by PL 1975, c. 763.

³16 M.R.S.A. §601 (4).

⁴"'Criminal history record information' means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, complaints, indictments, informations and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprints, palm prints or photograph records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations". 16 M.R.S.A. §601 (2).

⁵See note 1, infra.

juvenile code, effective March 21, 1978, specifically and expressly included within the definition of juvenile crime "offenses involving the operation or attempted operation of any motor vehicle. . . as defined in Title 29, section 1312. . .". 15 M.R.S.A. §3103 (1). Offenses involving violations of any other sections of Title 29 by a juvenile are handled as if the juvenile were an adult. 15 M.R.S.A. §3308 (6) provides:

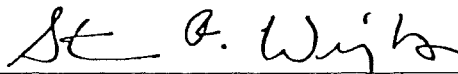
"Whenever a juvenile has been adjudicated as having committed a juvenile crime involving the operation of a motor vehicle, the court shall forthwith transmit to the Secretary of State an abstract, duly certified, setting forth the name of the juvenile, the offense, the date of the offense, the date of the adjudicatory hearing and any other pertinent facts. These records shall be admissible in evidence in hearings conducted by the Secretary of State or any of his deputies and shall be open to public inspection." (emphasis supplied)

As previously noted, the only juvenile crimes involving a motor vehicle for which a juvenile can be adjudicated are violations of 29 M.R.S.A. §1312 (operating or attempting to operate under the influence) and possibly 17-A M.R.S.A. §§201-204 (vehicular homicide).

Since 15 M.R.S.A. §3308 (6) was enacted subsequent to the criminal history record information act, since it is devoid of ambiguity, since it contains mandatory language, and since there is no apparent legislative intent to the contrary, the words of 15 M.R.S.A. §3308 (6) must be given their ordinary meaning. In re Camden Shipbuilding Co., 227 F. Supp 751 (D.C. Me. 1964), In re Belgrade Shores, Inc., Me., 371 A. 2d 413 (1977). The apparent legislative intent appears to be that records of juvenile adjudications of violations of 29 M.R.S.A. §1312 and 17-A M.R.S.A. §§201-204 must be maintained by the Secretary of State publicly and without the confidentiality that must attach to records of convictions of these same violations by adults. To the extent that 15 M.R.S.A. §3308 (6) is directly in conflict with 16 M.R.S.A. §602 (2)(E), 602 (2)(E) is impliedly repealed. Small v. Gartley, Me., 363 A. 2d 724 (1976).

To summarize, all abstracts of convictions forwarded to the Secretary of State must be maintained so that they are accessible to the public, except records of convictions of violations of 29 M.R.S.A. §893, records of adult vehicular homicides, and records of adult convictions of 29 M.R.S.A. §1312.

I hope this information is helpful.


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