

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2299

6
7 H.P. 1745

House of Representatives, March 19, 1984

8 Approved for introduction by the Legislative Council pursuant to Joint
9 Rule 26.

10 Reference to the Committee on Judiciary is suggested and ordered
printed.

EDWIN H. PERT, Clerk

Presented by Representative Joseph of Waterville.

11 Cosponsors: Representative Benoit of So. Portland, Senator Bustin of
Kennebec and Representative Gauvreau of Lewiston.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Ensure Statewide Uniformity
18 in the Procedures for Body Searches and Body
19 Cavity Searches of Arrestees by Law Enforcement
20 Officers while Respecting the Civil Rights and
21 Liberties of Arrestees.
22

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

25 Sec. 1. 25 MRSA §2901-B is enacted to read:

26 §2901-B. Rules issued

27 The Commissioner of Public Safety shall prepare
28 rules in accordance with the Maine Administrative
29 Procedure Act, Title 5, chapter 375, subchapter II,
30 relating to body searches and body cavity searches of
31 arrestees.

32 These rules shall establish reasonable grounds
33 for body searching an arrestee or conducting a body

1 cavity search of an arrestee when the arrestee is
2 concealing a weapon or where an officer has a reason-
3 able belief that the arrestee may be concealing con-
4 traband or evidence of a crime.

5 Each officer within the Department of Public
6 Safety and within any sheriff's department or police
7 department shall follow these rules relating to body
8 searches and body cavity searches. Any officer who
9 fails to comply with the rules shall be subject to a
10 civil suit for damages.

11 A copy of these rules shall be furnished to each
12 officer within the department and to each sheriff's
13 department and police department statewide and shall
14 be filed and be available for public inspection at
15 the headquarters of each department.

16 An arrestee shall not be subject to a body search
17 or body cavity search when he has been arrested for a
18 traffic violation or a Class E or D crime, or a vio-
19 lation of a city, county or town ordinance which is
20 punishable by no more than 30 days in jail, unless
21 there is reasonable cause to believe on the part of
22 the law enforcement officer authorizing the search
23 that the individual is concealing a weapon, contra-
24 band or evidence of a crime or unless the arrestee is
25 about to come into contact with the inmate population
26 of a detention facility.

27 Body cavity searches other than the mouth shall
28 be conducted by or under the supervision of medically
29 trained personnel.

30 Body searches or body cavity searches shall be
31 conducted by an officer or officers of the same sex
32 as the arrestee under conditions so that the search
33 cannot be observed by persons other than the officer
34 or officers conducting the search.

35 Each body search or body cavity search shall be
36 recorded in a log kept by the department, sheriff's
37 department or police department indicating the person
38 who ordered the search, the name of the arrestee and
39 the location of the search.

1 Sec. 2. 30 MRSA §1001, sub-§1, as repealed and
2 replaced by PL 1977, c. 564, §113-A, is repealed and
3 the following enacted in its place:

4 1. Sheriff's duties. The sheriff shall act as
5 the chief county law enforcement officer and be re-
6 sponsible for administering and directing the
7 sheriff's department as authorized by the county bud-
8 get. Each officer within the sheriff's department
9 shall follow the rules promulgated by the Commis-
10 sioner of Public Safety, pursuant to Title 25, section
11 2901-B, relating to body searches and body cavity
12 searches of arrestees. Any officer who fails to con-
13 form to these rules shall be subject to a civil suit
14 for damages.

15 A copy of the rules shall be furnished to each offi-
16 cer.

17 The sheriff shall inform the county commissioners of
18 the sheriff's department activities on a regular ba-
19 sis and meet with the commissioners as required under
20 subsection 3.

21 Sec. 3. 30 MRSA §2361, sub-§3 is enacted to
22 read:

23 3. Rules. Each officer within a police depart-
24 ment shall comply with the rules promulgated by the
25 Commissioner of Public Safety, pursuant to Title 25,
26 section 2901-B, relating to body searches and body
27 cavity searches of arrestees. Any officer who fails
28 to comply with these rules shall be subject to a civ-
29 il suit for damages.

30 A copy of the rules shall be furnished to each offi-
31 cer by the officer or person responsible for adminis-
32 tering the department.

33 STATEMENT OF FACT

34 The purpose of this bill is to ensure statewide
35 uniformity in the procedures for body searches and
36 body cavity searches of arrestees by law enforcement
37 officers. Under this bill, the Commissioner of Pub-
38 lic Safety shall prepare and promulgate rules relat-
39 ing to body searches and body cavity searches which

1 shall be complied with by all officers. If any offi-
2 cer does not comply with the rules, he will be sub-
3 ject to a civil suit for damages.

4 It is intended that this bill will enable police
5 officers to perform body searches and body cavity
6 searches in a safe and responsible manner while re-
7 specting the civil rights and liberties of arrestees.

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