

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 598

H.P. 433

House of Representatives, March 6, 1989

Reference to the Committee on Fisheries and Wildlife suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative GOULD of Greenville.

Cosponsored by Representative JACQUES of Waterville and Representative TRACY of Rome.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act Regulating the Use of Fish and Game Roadblocks and Check Stations.



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

3 Sec. 1. 12 MRSA §7053, sub-§2, ¶D, as enacted by PL 1979, c.
420, §1, is repealed.

5 Sec. 2. 12 MRSA §7053, sub-§2, ¶¶D-1 to D-4 are enacted to read:

7
9 D-1. If in uniform and if they have a reasonable and
11 articulable suspicion that a motor vehicle or other
13 conveyance, or its operator or occupant, is or has been
15 involved in, or may contain evidence of, a violation of
17 chapters 701 to 721, stop the motor vehicle or other
19 conveyance to check its registration and vehicle
21 identification number, request personal identification of
23 the operator or occupant and question the operator or
25 occupant about the violation;

27
29 D-2. If in uniform and if there is probable cause to
31 believe that the operator or occupant of a motor vehicle or
33 other conveyance is or has been involved in a violation of
35 chapters 701 to 721, arrest the operator or occupant and
37 search the arrested person and the passenger compartment of
39 the vehicle or conveyance under the search incident to a
41 lawful arrest doctrine of the Fourth Amendment to the United
43 States Constitution, provided that the refusal of the
45 operator or occupant to consent to a search of the motor
47 vehicle or conveyance is not a factor that may be considered
49 in determining whether there is probable cause to arrest the
51 operator or occupant;

D-3. If in uniform and if there is probable cause to
believe that the vehicle is or has been involved in, or may
contain evidence of, a violation of chapters 701 to 721,
search the motor vehicle or other conveyance, provided that
the refusal of the operator or occupant to consent to a
search of the vehicle or other conveyance is not a factor
that may be considered in determining whether there is
probable cause to search the vehicle or other conveyance;

D-4. Conduct any search and seizure under circumstances and
to the extent authorized by the Fourth Amendment to the
United States Constitution;

STATEMENT OF FACT

The purpose of this bill is to clarify the law enforcement powers of game wardens. The bill makes game wardens' duty to comply with the United States Constitution Fourth Amendment principles governing searches and seizures, including arrests and investigatory stops, express in law. The current law is susceptible to a reading which grants game wardens

1 unconstitutionally broad search and seizure authority. As a
3 result, the current law provides insufficient guidance to game
wardens.

5 Section 1 of the bill repeals the Maine Revised Statutes,
7 Title 12, section 7053, subsection 2, paragraph D, which details
9 the game wardens' powers to stop and search a vehicle and arrest
11 persons in the vehicle when they suspect a violation of Title 12,
13 chapters 701 to 721, the fish and game laws, is being or has been
committed. Section 2 clarifies that different factual
circumstances must be present to justify an arrest and search of
the vehicle as opposed to an investigatory stop of the vehicle.

15 Section 2 also provides that a game warden may, if the
17 warden has an articulable and reasonable suspicion that a fish
19 and game violation is being or has been committed or that the
21 vehicle may contain evidence of a crime, stop a vehicle and
question the occupants. No arrest of the occupants or search of
the vehicle or its occupants is justified under these
circumstances.

23 Section 2 also provides that a game warden who has probable
25 cause to believe that the operator or occupant of a vehicle is or
27 has been involved in a fish and game violation may arrest the
operator or occupant and search both the arrested person and the
passenger compartment of the vehicle in accordance with the
United States Constitution Fourth Amendment principles
established by the United States Supreme Court in New York v
29 Belton, 453 U.S. 454 (1981). The operator's or occupant's
31 refusal to consent to a search cannot be used as a factor in
determining whether there is probable cause to arrest.

33 Consistent with the United States Constitution Fourth
35 Amendment's automobile exception to the warrant requirement,
37 section 2 of the bill allows game wardens to search a motor
vehicle or other conveyance which they have probable cause to
believe is or has been involved in a fish and game violation or
may contain evidence of a violation in United States Supreme
39 Court decisions in Carroll v United States, 267 U.S. 132 (1925);
41 United States v Ross, 456 U.S. 798 (1982). This section provides
43 that the refusal of the vehicle's operator or occupant to consent
to a search is not probable cause to search the motor vehicle or
conveyance.

45 Section 2 ensures that game wardens may conduct any search
47 and seizure or investigatory stop, such as a roadblock, which is
authorized by the United States Constitution Fourth Amendment but
not expressly provided for by law. See the Maine Law Court's
49 decisions in State v Cloukey, 486 A.2d 143 (Me. 1985); State v
Leighton, 551 A.2d 116 (Me. 1989).