

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document


No. 1203

H.P. 889

House of Representatives, April 8, 1993

An Act to Regulate the Use of Aircraft for Surveillance Purposes by Law Enforcement Agencies.

Reference to the Committee on Legal Affairs suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative TOWNSEND of Eastport.
Cosponsored by Representatives: DRISCOLL of Calais, GOULD of Greenville, PARADIS of Augusta, SKOGLUND of St. George.

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

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Sec. 1. 25 MRSA §2959 is enacted to read:

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§2959. Limitations on aerial inspection of marijuana cultivation
or trafficking

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A state, county or local law enforcement officer or agency
that participates in aerial surveillance for the purpose of
locating, observing, identifying, detecting or attempting to
detect marijuana cultivation or trafficking is subject to the
following limitations.

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1. Geographic locations. Only the following geographic
locations may be aerially inspected for evidence of marijuana
cultivation or trafficking:

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A. A geographic location about which the law enforcement
officer or agency has information that:

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(1) Marijuana is presently being cultivated at or
trafficked at or from that location;

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(2) Marijuana has been cultivated at or trafficked
from that location in the past; or

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(3) The location is used, controlled or maintained by
a specific individual, individuals, organization or
organizations with known drug ties or a prior arrest or
conviction; or

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B. A geographic location that is directly enroute to or
from a location identified in paragraph A or to or from
takeoff, landing, refueling and maintenance.

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2. Rotary blade aircraft; minimum altitude. Rotary blade
aircraft being used for aerial inspection of suspected marijuana
cultivation or trafficking locations may not drop below a minimum
altitude of 400 feet except:

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A. During takeoff at the start of the mission;

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B. During landing at the conclusion of the mission;

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C. For refueling or maintenance during missions;

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D. For eradication or removal of what has been identified
from at least a 400-foot altitude as marijuana where:

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(1) The marijuana is on obvious or known public
property; or

2 (2) The marijuana is in an open field and there is
4 insufficient ground support personnel available to
6 remove the marijuana or the marijuana is reasonably
 inaccessible to ground support personnel. For purposes
 of this subsection, "open field" has the same meaning
 as in Oliver v. United States, 466 US 170 (1984);

8 E. For eradication or removal of marijuana pursuant to a
10 search warrant;

12 F. For exigent situations, including but not limited to
14 mechanical or communications emergencies, or for inhibiting
 the imminent destruction of evidence; or

16 G. When the lower altitude flight or landing has been
18 approved in advance by the appropriate prosecuting officer
 for that jurisdiction.

20 3. Fixed-wing aircraft; minimum altitude. Fixed-wing
22 aircraft, while being used for aerial inspection of suspected
 marijuana cultivation or trafficking locations may not drop below
 a minimum altitude of 1,000 feet except:

24 A. During takeoff at the start of the mission;

26 B. During landing at the conclusion of the mission;

28 C. For refueling or maintenance during missions;

30 D. For exigent situations, including but not limited to
32 mechanical or communications emergencies, or for inhibiting
 the imminent destruction of evidence; or

34 E. When the lower altitude or landing has been approved in
36 advance by the appropriate prosecuting officer for that
 jurisdiction.

38 4. Limitations on officers. While participating in a
40 marijuana eradication program, a law enforcement officer may not:

42 A. Dress in military, paramilitary, mercenary, camouflage
 or ninja-style clothing;

44 B. Possess any firearm other than agency-issued side arms;

46 C. Fire any firearm from an aircraft or return fire from
48 any aircraft; or

50 D. Possess any explosive device.

52 5. Noncompliance or violation. Evidence may not be
 excluded in any proceeding before a court of this State as a

2 result of the failure of any state, county or local law
4 enforcement officer or the Maine National Guard to comply with
6 the limitations in this section. Any violation of this section
8 or complaint about a marijuana eradication program observed or
10 received by any state, county or local law enforcement agency
12 must be forwarded to the Maine Drug Enforcement Agency within 5
14 days of the observation or receipt of the complaint and the Maine
16 Drug Enforcement Agency shall promptly investigate such a
18 complaint.

12 STATEMENT OF FACT

14 This bill seeks to minimize the potential invasiveness of
16 aircraft surveillance by providing that only those locations
18 specified in the Maine Revised Statutes, Title 25, section 2959,
20 subsection 1 as enacted in this bill may be visually inspected
22 from the air. This bill is designed to ensure that agents or law
enforcement officers focus on approved inspection locations while
providing for those infrequent occasions when agents or law
enforcement officers unexpectedly observe marijuana at other than
approved inspection locations.

24 This bill specifically limits the altitude of the aircrafts
26 involved in the operation. The exceptions to these limitations
28 reflect the fact that agents and law enforcement officers
30 generally eradicate marijuana through the use of ground personnel
32 but occasions do arise in which remote marijuana sites are
eradicated and there appears no reasonable possibility of
identifying the persons responsible. The term "open field" in
this bill has the same meaning as in Oliver v. United States, 466
United States 170 (1984).

34 The bill prohibits officers engaged in a marijuana
36 eradication program from appearing as if they are engaged in a
military operation.

38 The bill makes it clear that any violation of the
40 limitations enacted in this bill by any state, county or local
42 law enforcement officer or any member of the Air National Guard
44 will not result in the elimination of evidence at trial. Any
46 violation of these limitations or complaints about a marijuana
eradication program must be reported to a designated individual
of the Maine Drug Enforcement Agency who shall promptly
investigate the complaint.