

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE
AT THE

SECOND REGULAR SESSION

January 4, 1978 to April 6, 1978

FIRST SPECIAL SESSION

(No laws enacted)

September 6, 1978 to September 15, 1978

SECOND SPECIAL SESSION

October 18, 1978

THIRD SPECIAL SESSION

December 6, 1978

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

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PUBLIC LAWS
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defraying the expenses of the program.

F. If any person convicted for a violation of this section appeals the judgment or sentence of a court, the license or permit and privilege to operate a motor vehicle shall be suspended during the time an appeal is pending, unless the court shall otherwise order, or unless the Secretary of State shall restore the license, permit or privilege to operate pending decision on the appeal.

G. Any suspension under this section shall run consecutively to any suspension imposed for refusal to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath.

Sec. 3. 29 MRSA § 1312, sub-§ 11, as enacted by PL 1977, c. 498, § 2, is repealed and the following enacted in its place:

11. Accidents and officer's duties.

A. After making an arrest for a violation of this section, the arresting officer shall investigate to determine whether the arrested person has any prior convictions under this section. As part of his investigation, the arresting officer shall make the necessary inquiries of the Secretary of State. If the arresting officer determines that the arrested person has a prior conviction, he shall cause to be issued a complaint for a 2nd violation in accordance with subsection 10, paragraph B.

B. Any officer authorized to arrest for violations of this section may arrest, without a warrant, any person involved in a motor vehicle accident, if the officer has probable cause to believe that that person has violated this section.

C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If the test indicates that the operator has consumed alcohol, the police officer may require the operator to submit to a chemical test in the manner set forth in this section.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective March 8, 1978

CHAPTER 627

AN ACT to Provide for Limited Guardianship.

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

Sec. 1. 18 MRSA § 3512 is enacted to read:

§ 3512. Limited guardian

The judge may appoint a limited guardian with fewer than all of the legal duties and powers of a guardian. The specific powers and duties of a limited guardian shall be enumerated in the decree or court order. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by the decree or order.

Sec. 2. 18 MRSA § 3621, as amended by PL 1977, c. 502, § 1, is further amended by inserting at the end the following new sentence:

The public guardian shall be ineligible to serve as guardian if a suitable relative or other appropriate person is available and is willing to assume the responsibilities of private guardian.

Sec. 3. 18 MRSA § 3622, first sentence, as enacted by PL 1969, c. 265, is amended to read:

The public guardian may be nominated and appointed as guardian of the person and estate or as a limited guardian of those mentally retarded persons who have been determined under this subchapter to be legally incompetent and in need of guardianship.

Sec. 4. 18 MRSA § 3622, as amended by PL 1977, c. 502, § 2, is further amended by adding at the end the following new sentence:

The appointment of a public guardian in no way enlarges the ward's right to services made available to all mentally retarded persons in the State.

Sec. 5. 18 MRSA § 3625, first sentence, as enacted by PL 1969, c. 265, is amended to read:

Pursuant to its nomination, the public guardian shall, or in its discretion in any other case may, petition for its appointment to act as guardian of the person and estate or as a limited guardian of an alleged mentally retarded person by filing a written petition in the probate court for the county in which the alleged mentally retarded person resides or in which his estate is located.

Sec. 6. 18 MRSA § 3626, as enacted by PL 1969, c. 265, is amended to read:

§ 3626. Notice and hearing

The probate court shall appoint a time and place for hearing and shall order that notice of the proceedings be given by serving the alleged mentally retarded person for whom a guardian is sought to be appointed with a copy of the petition and order of the court at least 14 days before the day of hearing. Like notice in hand, or by certified mail, shall be served upon the public guardian, **unless he is the petitioner**, and upon the parent, spouse or next of kin and upon such other persons as the court may direct.

At such hearing, the burden shall be on the petitioner to establish that the person for whom a guardian is sought to be appointed is mentally retarded to the degree that he is incapable, **in whole or in part**, of managing himself and his affairs

independently, and requires supervision and care of his person and estate.

Sec. 7. 18 MRSA § 3627, first ¶ and sub-§ 3, as enacted by PL 1969, c. 265, are amended to read:

Upon petition and hearing, as provided in this subchapter, the probate court shall appoint the public guardian as guardian of the person and estate or as a **limited guardian** if it shall find that:

3. **Incompetent.** By reason of such mental retardation the person is incapable of managing, in whole or in part, himself and his affairs independently and requires supervision and care ~~of his person and estate~~ and is, therefore, legally incompetent.

Sec. 8. 18 MRSA § 3628, 3rd sentence, as enacted by PL 1969, c. 265, is amended to read:

The public guardian may apply for, and effect the placement of, any ward in accordance with law **and the usual procedures for admission or commitment**, in an appropriate home, hospital or institution having facilities and staff adequate to provide care and supervision consistent with the needs of the ward.

Sec. 9. 18 MRSA § 3630, as enacted by PL 1969, c. 265, is repealed and the following enacted in its place:

§ 3630. Special guardian

The probate court may appoint the public guardian as special guardian of an alleged mentally retarded person if a proceeding under this subchapter is pending or an emergency prevents filing of a certificate or plan prior to the appointment. The special guardian may be appointed without notice to the ward, but the bureau shall be notified and given opportunity to be heard prior to its appointment as a special guardian. The special guardian may be appointed to act as guardian of the person and estate or as a limited guardian.

Sec. 10. 18 MRSA § 3630-A is enacted to read:

§ 3630-A. Limited guardian

The probate court may appoint the public guardian as a limited guardian as provided in section 3512, and shall expressly enumerate the powers of that guardian in a court order or decree. A public guardian appointed as a limited guardian shall only have those duties or powers that are enumerated in the order or decree.

Sec. 11. 18 MRSA § 3633, sub-§ 3 is enacted to read:

3. **Limited guardian.** Upon petition of the public guardian when the purposes of the guardianship are fulfilled.

Sec. 12. 18 MRSA § 3639, first sentence, as amended by PL 1977, c. 528, § 1, is repealed and the following enacted in its place:

The public guardian may be nominated and appointed as guardian of the person

and estate, or as a limited guardian, of those adults who have been determined under this subchapter to be incapacitated and in need of guardianship.

Sec. 13. 18 MRSA § 3640, as enacted by PL 1973, c. 631, § 1, is amended to read:

§ 3640. Definition

For the purpose of eligibility for guardianship under this subchapter, the phrase "incapacitated person" shall mean any person who is 18 years of age or over, and who is impaired by reason of advanced age, physical or mental illness or incapacity, or other cause to the extent that he lacks sufficient understanding or capacity, in whole or in part, to make, communicate or implement responsible decisions concerning his person or property, except that this subchapter shall not include those persons who are provided for under subchapter III-A.

Sec. 14. 18 MRSA § 3642, first sentence, as amended by PL 1977, c. 528, § 2, is repealed and the following enacted in its place:

Pursuant to its nomination, the public guardian shall, or in its discretion in any other case may, petition for its appointment to act as guardian of the person and estate, or as a limited guardian, of an alleged incapacitated person by filing a written petition in the probate court for the county in which the alleged incapacitated person resides or in which his estate is located.

Sec. 15. 18 MRSA § 3644, last ¶, as amended by PL 1977, c. 528, § 4, is further amended to read:

At such hearing, the burden shall be upon the petitioner to establish that the person for whom a guardian is sought to be appointed is so incapacitated by reason of advanced age, physical or mental illness or incapacity or other causes that he is incapable, in whole or in part, of managing himself and his affairs independently, and requires care and supervision of his person and estate ~~or both~~, or as a limited guardian.

Sec. 16. 18 MRSA § 3645, as enacted by PL 1973, c. 631, § 1, is repealed and the following enacted in its place:

§ 3645. Findings of probate court

Upon petition and hearing, as provided in this subchapter, the probate court shall appoint the public guardian of the person and estate or as a limited guardian, if it shall find:

1. Resident. The person is a resident of this State;
2. Incapacitated. The person is incapacitated by reason of advanced age, physical or mental illness or incapacity, or other cause to the extent that he lacks sufficient understanding or capacity, in whole or in part, to make, communicate or implement responsible decisions concerning himself or his property.

In every case in which the public guardian is appointed, the court shall adopt the guardianship plan as submitted or modified, under which the guardian shall act.

Sec. 17. 18 MRSA § 3648, as enacted by PL 1973, c. 631, § 1, is repealed and the following enacted in its place:

§ 3648. Special guardian

The probate court may appoint the public guardian as special guardian of an alleged mentally retarded person if a proceeding under this subchapter is pending or an emergency prevents filing of a certificate or plan prior to the appointment. The special guardian may be appointed without notice to the ward, but the department shall be notified and given opportunity to be heard prior to its appointment as a special guardian. The special guardian may be appointed to act as guardian of the person and estate or as a limited guardian.

Sec. 18. 18 MRSA § 3648-A is enacted to read:

§ 3648-A. Limited guardian

The probate court may appoint the public guardian as a limited guardian as provided in section 3512, and shall expressly enumerate the powers of that guardian in a court order or decree. A public guardian appointed as a limited guardian shall only have those duties and powers that are enumerated in the order or decree.

Sec. 19. 18 MRSA § 3650-B, sub-§ 3, is enacted to read:

3. Limited guardian. Upon petition of the public guardian when the purposes of the guardianship are fulfilled.

Sec. 20. 18 MRSA § 3650-B, last ¶, as enacted by PL 1973, c. 631, § 1, is amended to read:

The public guardian shall not be discharged on its own petition until the court appoints the substitute guardian, ~~or~~ determines that no new guardian is required or determines that the purposes of the guardianship have been fulfilled.

Effective July 6, 1978

CHAPTER 628

AN ACT to Prohibit Child Pornography.

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

Sec. 1. 17 MRSA c. 93-B is enacted to read:

CHAPTER 93-B