

# 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

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K. J. Printing  
Augusta, Maine  
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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**  
AS PASSED AT THE  
**SECOND REGULAR SESSION**  
of the  
ONE HUNDRED AND EIGHTH LEGISLATURE  
January 4, 1978 to April 6, 1978

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Sec. 17. 18 MRSA § 3648, as enacted by PL 1973, c. 631, § 1, is repealed and the following enacted in its place: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

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## 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

## SEXUAL EXPLOITATION OF MINORS

## § 2921. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Commercial use. "Commercial use" means sale, barter, trade or otherwise exchange for consideration.
2. Disseminate. "Disseminate" means, for consideration, to manufacture, publish, distribute, exhibit, print, sell or transfer possession or to offer or agree to do any of these acts.
3. Minor. "Minor" means a person under 16 years of age.
4. Photograph. "Photograph" means to make a print, negative, slide, motion picture, videotape or other mechanically reproduced visual material.
5. Sexually explicit conduct. "Sexually explicit conduct" means any of the following acts:
  - A. Sexual intercourse or sexual act, as defined in Title 17-A, section 251, subsection 1, paragraphs B and C;
  - B. Bestiality;
  - C. Masturbation;
  - D. Sadomasochistic abuse for the purpose of sexual stimulation;
  - E. Lewd exhibition of the genitals or pubic area of a person; or
  - F. Conduct that creates the appearance of the acts in paragraphs A through D and also exhibits any uncovered portions of the genitals or pubic area.

## § 2922. Sexual exploitation of a minor

1. Offense. A person is guilty of sexual exploitation of a minor if:
  - A. Knowing or intending that the conduct will be photographed for commercial use, he intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, who is in fact a minor, to engage in sexually explicit conduct; or
  - B. Being a parent, legal guardian or other person having care or custody of another person, who is in fact a minor, he knowingly or intentionally permits

that minor to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed for commercial use.

2. **Penalty.** Sexual exploitation of a minor is a Class B crime, except that any person convicted of this crime shall be sentenced by imprisonment for not less than 5 years. If the State pleads and proves a prior conviction under this section, then the crime is a Class A crime, except that any person convicted of this 2nd crime shall be sentenced by imprisonment for not less than 10 years. The court shall not suspend either minimum term of imprisonment unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor, the history and character of the defendant, and shall only suspend the minimum term if it is of the opinion that the exceptional features of the case justify the imposition of another sentence.

§ 2923. Dissemination of sexually explicit materials

1. **Offense.** A person is guilty of dissemination of sexually explicit materials if he intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material which:

- A. Depicts any minor, whom the person knows or has reason to know is a minor, engaging in sexually explicit conduct;
- B. To the average individual, applying contemporary community standards, considered as a whole, appeals to the prurient interest; and
- C. Considered as a whole, lacks serious literary, artistic, political or scientific value.

2. **Presumption.** For the purposes of this section, possession of 10 or more copies of the same book, magazine, newspaper, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material shall give rise to a presumption that the person possesses those items with intent to disseminate.

3. **Penalty.** Dissemination of sexually explicit materials is a Class C crime, except that any person convicted of this crime shall be sentenced by imprisonment for not less than 2 years. If the State pleads and proves a prior conviction under this section, then the crime is a Class B crime, except that any person convicted of this 2nd crime shall be sentenced by imprisonment for not less than 5 years. The court shall not suspend either minimum term of imprisonment unless it sets forth in detail, in writing, the reasons for suspending the sentence.

The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor, the history and character of the defendant,

and shall only suspend the minimum term if it is of the opinion that the exceptional features of the case justify the imposition of another sentence.

Sec. 2. 30 MRSA § 508 is enacted to read:

§ 508. Disclosure of minor victims of sexual offenses

The Legislature finds that publicity given to the identity of minor victims of sexual offenses causes intense shame and humiliation for which abused children are particularly ill-prepared and may cause severe and permanent emotional harm to the victim of such an offense.

The Legislature therefore declares its intent that district attorneys, their assistants and employees and other law enforcement officials refrain from any unnecessary pretrial public disclosure of information that may identify a minor victim of an offense under Title 17, chapter 93-B, Title 17-A, chapter 11 or Title 71-A, section 556.

Effective July 6, 1978

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## CHAPTER 629

### AN ACT to Clarify Procedures for Emergency Admission to Hospitals for Mentally Ill.

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

Sec. 1. 34 MRSA § 2332-A, 2nd ¶, last sentence, as enacted by PL 1975, c. 559, § 6, is amended to read:

In the event that the examiner shall execute the certificate provided for under section 2333, the officer having protective custody of the person examined shall have authority to detain him for ~~as long as is necessary to obtain the~~ a reasonable period of time not to exceed 18 hours pending endorsement by a judicial officer provided for under section 2333; provided that the officer shall undertake to secure such endorsement forthwith upon execution of the certificate by the examiner.

Sec. 2. 34 MRSA § 2333, sub-§ 1, ¶ C, last ¶, as repealed and replaced by PL 1977, c. 429, § 3, is repealed and the following enacted in its place:

No person shall be held against his will in the hospital pursuant to this section, whether he was informally admitted under section 2290 or is sought to be involuntarily admitted under this section, unless the application and certificate have been endorsed by a judge or justice, except that a person for whom an