

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
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there is probable cause to believe that a death has occurred or will occur as a result of the accident. The investigating law enforcement officer shall cause a test to be administered as soon as practicable following the accident. A law enforcement officer may determine which type of test ~~shall be~~ is administered and shall report any failure of a person to submit to or complete a test at the officer's request to the Secretary of State by written statement under oath. The result of a test taken pursuant to this paragraph is ~~not~~ admissible at trial ~~unless~~ if the court, after reviewing all the evidence regardless of whether the evidence was gathered prior to, during or after the administration of the test, is satisfied that probable cause exists, independent of ~~such~~ the test result, to believe that the operator was under the influence of intoxicating liquor or drugs or had an excessive blood-alcohol level.

The Secretary of State shall suspend, for a period of one year, the license or permit to operate, right to operate a motor vehicle and right to apply for or obtain a license, pursuant to section 2241, subsection 1, paragraph N, of any person who fails to submit to or complete a test. The scope of any hearing the Secretary of State holds pursuant to section 2241 ~~shall~~ must include whether there was probable cause to believe that the person was the operator of a motor vehicle involved in a motor vehicle fatality accident, whether there was probable cause to believe that the accident resulted or would result in a fatality and whether that person failed to submit to or complete a test to determine the blood-alcohol level. If the person shows, after hearing, that ~~he~~ the person was not under the influence of intoxicating liquor or drugs or that ~~he~~ the person did not negligently cause the death accident, then any suspension ~~shall~~ must be removed immediately.

See title page for effective date.

CHAPTER 741

S.P. 823 - L.D. 2099

An Act to Clarify the Maine Juvenile Code

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

Sec. 1. 15 MRSA §3102, as enacted by PL 1977, c. 520, §1, is amended to read:

§3102. Venue

Proceedings in cases brought under the provisions of section 3101 ~~shall~~ must be commenced in accordance with ~~Rules 18, Rule 21 and 22~~ of the Maine ~~District Court~~ Rules of Criminal Procedure.

Sec. 2. 15 MRSA §3103, sub-§2, as amended by PL 1979, c. 681, §38, is further amended to read:

2. Dispositional powers. All of the dispositional powers of the Juvenile Court provided in section 3314 shall apply to a juvenile who is adjudicated to have committed a juvenile crime, except that no commitment to the Maine Youth Center or other detention may be imposed for conduct described in subsection 1, paragraphs B ~~and~~, C and C-1.

Sec. 3. 15 MRSA §3203-A, sub-§1, ¶B-1, as enacted by PL 1987, c. 398, §5, is amended to read:

B-1. When, in the judgment of a law enforcement officer, immediate secure detention is required to prevent a juvenile ~~who satisfies the requirements of subsection 4, paragraph D~~ from imminently inflicting bodily harm to others or to ~~himself~~ the juvenile, the officer may refer the juvenile for temporary, emergency detention to a facility approved pursuant to subsection 7, prior to notifying a juvenile caseworker or the Department of the Attorney General, as applicable. Such a facility may detain the juvenile on an emergency basis for up to 2 hours, provided that the law enforcement officer ~~from the facility~~ immediately notifies the juvenile caseworker or the Department of the Attorney General and requests authorization to detain the juvenile beyond the term of the temporary, emergency detention pursuant to paragraph B. The juvenile caseworker or the Department of the Attorney General shall order the conditional or unconditional release of a juvenile or shall effect a detention placement within 2 hours following a temporary, emergency detention. It shall be the responsibility of the law enforcement officer to remain at the facility until the juvenile caseworker or the Department of the Attorney General has released the juvenile or has authorized detention.

Sec. 4. 15 MRSA §3203-A, sub-§3, as enacted by PL 1985, c. 439, §9, is amended to read:

3. Law enforcement officer's report. An officer who notifies a juvenile caseworker pursuant to subsection 1, paragraph A or B shall file a brief written report with the juvenile caseworker, stating the juvenile's name, date of birth and address; the name and address of the juvenile's legal custodian; and the facts which led to the referral notification, including the offense which the juvenile is alleged to have committed. The report shall contain sufficient information to establish the jurisdiction of the Juvenile Court.

A report of a notification pursuant to subsection 1, paragraph A, must be filed within 24 hours of the ~~referral notification~~ notification, excluding nonjudicial days. A report of a notification pursuant to subsection 1, paragraph B, must be filed within 24 hours of the ~~referral~~ notification.

The date on which the report is received by the juvenile caseworker is the date of referral to the juvenile caseworker for an intake assessment.

Sec. 5. 15 MRSA §3203-A, sub-§4, ¶B, as amended by PL 1987, c. 698, §3, is further amended to read:

B. Release may be unconditional or conditioned upon the juvenile's promise to appear for subsequent official proceedings or, if a juvenile cannot appropriately be released on one of these 2 bases, upon the least onerous of the following conditions, or combination of conditions, necessary to ensure ~~his~~ the juvenile's appearance or to ensure the protection of the community or any member of the community:

(1) Upon the written promise of ~~his~~ the juvenile's legal custodian to produce the juvenile for subsequent official proceedings or at any place or time when so ordered by the juvenile caseworker or the Juvenile Court;

(2) Upon the juvenile's voluntary agreement to placement into the care of a responsible person or organization, including one providing attendant care;

(3) Upon prescribed conditions, reasonably related to securing the juvenile's presence at subsequent official proceedings or at any place or time when so ordered by the juvenile caseworker or the court, restricting the juvenile's activities, associations, residence or travel; ~~or~~

(4) Upon such other prescribed conditions as may be reasonably related to securing the juvenile's presence at subsequent official proceedings or at any place or time when so ordered by the juvenile caseworker or the court; or

(5) Upon prescribed conditions, reasonably related to ensuring the protection of the community or any member of the community.

Upon imposition of any condition of release described in subparagraph (2), (3) ~~or~~, (4) ~~or~~ (5), the juvenile caseworker shall provide the juvenile with a copy of the condition imposed, inform the juvenile of the consequences applicable to violation of the condition and inform the juvenile of the right to have the condition reviewed by the Juvenile Court pursuant to subsection 10 ~~of the consequences applicable to violation of any condition.~~

Sec. 6. 15 MRSA §3203-A, sub-§4, ¶D, as enacted by PL 1985, c. 439, §9, is amended to read:

D. Detention of a juvenile in a detention facility may be ordered by the Juvenile Court or a juvenile caseworker when there is probable cause to believe the juvenile:

(1) Has committed an act ~~which~~ that would be murder or a Class A, Class B or Class C crime if committed by an adult;

(2) Has refused to participate voluntarily in a conditional release placement or is incapacitated to the extent of being incapable of participating in a conditional release placement;

(3) Has intentionally or knowingly violated a condition imposed as part of conditional release on a pending offense or has committed an offense subsequent to that release, which would be a crime if committed by an adult;

(4) Has committed the juvenile crime ~~which~~ that would be escape if the juvenile was an adult;

(5) Has escaped from a facility to which the juvenile had been committed pursuant to an order of adjudication or is absent without authorization from a prior placement by a juvenile caseworker or the Juvenile Court; or

(6) Has a prior record of failure to appear in court when so ordered or summonsed by a law enforcement officer, juvenile caseworker or the court or has stated ~~his~~ the intent not to appear.

Nonetheless, when, in the judgment of the juvenile caseworker or the Juvenile Court, it is not necessary or appropriate to detain a juvenile who satisfies the criteria for detention, the juvenile caseworker or the Juvenile Court may order the placement of the juvenile in the juvenile's home or in an alternative facility or service, such as a temporary holding resource, group home, emergency shelter, foster placement or attendant care, subject to specific conditions, including supervision by a juvenile caseworker or a designated supervisor. Such a placement shall be considered a conditional release.

In no case may detention be ordered when either unconditional or conditional release is appropriate.

Sec. 7. 15 MRSA §3203-A, sub-§4, ¶E, as enacted by PL 1985, c. 439, §9, is amended to read:

E. If a juvenile caseworker orders a juvenile detained, the juvenile caseworker shall, within 24 hours, petition the Juvenile Court for a review of the detention, unless the juvenile caseworker has ordered the release of the juvenile prior to the expiration of the 24-hour period. The juvenile caseworker may order the release of the juvenile anytime prior to the detention hearing. If the juvenile is so released, a detention hearing shall not be held.

Sec. 8. 15 MRSA §3203-A, sub-§5, ¶A and C, as enacted by PL 1985, c. 439, §9, are amended to read:

A. A detention hearing shall precede and shall be separate from a bind-over or adjudicatory hearing. Evidence presented at a detention hearing may include testimony, affidavits and other reliable hearsay evidence as permitted by the court and may be considered in making any determination in that hearing.

C. No continued detention may be ordered unless the Juvenile Court shall determine that there is probable cause to believe that the juvenile has committed a juvenile crime. ~~That determination shall be made on the basis of evidence, including reliable hearsay evidence, presented in testimony or affidavits.~~

Sec. 9. 15 MRSA §3203-A, sub-§§9 and 10, as enacted by PL 1985, c. 439, §9, are amended to read:

9. Violation of conditions of release. Upon notification that a juvenile has intentionally or knowingly violated a condition of his release, whether imposed by a court or a juvenile caseworker, a juvenile caseworker or a law enforcement officer may apply to the Juvenile Court for a warrant of arrest.

A law enforcement officer having probable cause to believe that a juvenile has violated a condition of release in ~~his~~ the officer's presence may arrest the juvenile without a warrant.

Following the arrest of a juvenile for violation of a condition of his release, the law enforcement officer shall immediately notify the juvenile caseworker. The juvenile caseworker shall either direct the release of the juvenile with or without imposing different or additional conditions for release of the juvenile or shall revoke release and order the juvenile detained ~~for reasons set forth in accordance with~~ subsection 4, ~~paragraph~~ paragraphs C and D.

If different or additional conditions of release are imposed, the juvenile may request the Juvenile Court to review the conditions pursuant to subsection 10. The review of additional or different conditions shall include a hearing to determine if the preponderance of the evidence indicates that the juvenile intentionally or knowingly violated a condition of release.

10. Juvenile Court to review for abuse of discretion. Upon the request of a juvenile or legal custodian, the Juvenile Court shall, at the juvenile's first appearance or within 7 days, review for abuse of discretion, any condition of release imposed pursuant to subsection 4, paragraph B, subparagraph (2), (3) ~~or~~, (4) or (5).

Sec. 10. 15 MRSA §3204, as amended by PL 1985, c. 439, §10, is further amended to read:

§3204. Statements not admissible in evidence

No statements of a juvenile made to a juvenile caseworker during the course of a preliminary investigation under section 3301 may be admissible in evidence ~~in any proceeding at an adjudicatory hearing~~ against that juvenile if a petition based on the same facts is later filed.

Sec. 11. 15 MRSA §3302, as enacted by PL 1977, c. 520, §1, is amended to read:

§3302. Petition, form and contents

The form and content of a petition in any proceeding brought under chapter 503 ~~shall~~ must be substantially the same as the form and content of a complaint under Rule 3, Maine District Court Rules of Criminal Rules Procedure.

Sec. 12. 15 MRSA §3304, sub-§3, as amended by PL 1979, c. 681, §16, is further amended to read:

3. Service. The summons ~~shall~~ must be directed to and ~~shall~~ be served, pursuant to Rule 4 (c) of the Maine District Court Rules of Criminal Rules Procedure, upon the following persons:

A. The juvenile; and

B. The juvenile's parents, guardian or legal custodian, if the juvenile is not emancipated. Service upon a parent, guardian or legal custodian who is out of state may be by a reasonable method ordered by the court.

Sec. 13. 15 MRSA §3304, sub-§5, as amended by PL 1987, c. 720, §1, is repealed and the following enacted in its place:

5. Service on parents of juvenile. The following applies to service of the summons under subsection 3.

A. If the person or persons to whom a summons is served are the parents of the juvenile and if the juvenile principally resides with only one parent, then service on that parent is sufficient.

B. If the person or persons to whom a summons is served are not the parents or guardian of the juvenile, the summons must also be issued to the parents or guardian or both, notifying them of the pendency of the cause and of the time and place for hearing. The court may waive this requirement if the court finds that the service of the summons is not possible and explains this finding in writing, except as required by section 3314, subsection 1, paragraph C-1 or C-2.

Sec. 14. 15 MRSA §3305, first ¶, as enacted by PL 1977, c. 520, §1, is amended to read:

No An answer to a petition need not be entered by a juvenile or by the juvenile's parents, guardian or legal

custodian. A juvenile may enter an answer admitting the allegations of the petition, in accordance with ~~Rule~~ Rules 11 and 11A, Maine Rules of Criminal Procedure.

Sec. 15. 15 MRSA §3306-A is enacted to read:

§3306-A. Release or detention at first appearance

At the juvenile's first appearance or at any subsequent appearance before the court, the court may order, pending further appearances before the court, the juvenile's unconditional release, conditioned release or detention in accordance with section 3203-A.

Sec. 16. 15 MRSA §3309, as repealed and replaced by PL 1979, c. 512, §5, is amended to read:

§3309. Procedure

To the extent not inconsistent with or inapplicable to Part 6, procedure in juvenile proceedings ~~shall~~ must be in accordance with the Maine ~~District Court~~ Rules of Criminal ~~Rules~~ Procedure. The Supreme Judicial Court may promulgate rules for juvenile proceedings as provided under Title 4, section 8.

See title page for effective date.

CHAPTER 742

S.P. 821 - L.D. 2097

An Act to Clarify Definitions and Provisions of Marine Resources Laws

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

Sec. 1. 12 MRSA §6001, sub-§13-B is enacted to read:

13-B. Equipment. "Equipment" means a box, trap, crate, net or other device or machinery used to harvest or store marine organisms.

Sec. 2. 12 MRSA §6001, sub-§53, as enacted by PL 1977, c. 661, §5, is repealed and the following enacted in its place:

53. Vehicle. "Vehicle" means a machine or conveyance, including watercraft and aircraft, used to move or transport marine organisms.

Sec. 3. 12 MRSA §6207, first ¶, as enacted by PL 1977, c. 661, §5, is amended to read:

Any marine organism, ~~which~~ that is taken, bought, sold, shipped, transported or found in the possession of any person in violation of any provision of marine resources' laws, ~~shall be is~~ is contraband and ~~shall be is~~ is subject to forfeiture in accordance with this section and section 6206. All equipment and vehicles used or possessed in

violation of any provision of marine resources' laws ~~shall also be are~~ are contraband and are subject to forfeiture.

See title page for effective date.

CHAPTER 743

H.P. 1462 - L.D. 2039

An Act to Protect Public Health by Prohibiting Smoking on Public Transportation Buses

Emergency preamble. **Whereas**, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, recent evidence clearly demonstrates the danger of 2nd-hand smoke to health and indicates that people with hypersensitivity and infants are especially in jeopardy; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

22 MRSA §1580-C is enacted to read:

§1580-C. Smoking on public transportation buses prohibited

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Bus" means every motor vehicle designed to carry more than 15 people, including passengers and the operator, and used for the transportation of passengers. "Bus" does not include a chartered bus.

B. "Smoking" means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off smoke or containing any substance giving off smoke.

2. Smoking prohibited. No person may smoke tobacco or any other substance on any bus.

3. Notice. The operator of a bus subject to this section shall post a notice in a conspicuous location on the bus.

4. Violation. The following penalties apply.

A. Any person who fails to post a notice as required by this section commits a civil violation for which a forfeiture of not more than \$100 may be adjudged.