

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

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NON-EMERGENCY LAWS IS
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J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

§5684. Funding for mandated programs

1. Mandated program. Any legislation containing a state mandate enacted by the Legislature after July 1, 1991, that requires additional funding, must provide for full funding by the State. The funding requirements to implement the mandate must be identified in the legislation. Any legislation subject to this section for which full funding is not provided may not be enacted.

For the purposes of this section, "state mandate" means any state regulatory or statutory action that requires county or municipal government, or a unit of county or municipal government, to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a state court or any legislation necessary to comply with a federal mandate.

See title page for effective date.

CHAPTER 923

S.P. 998 - L.D. 2465

An Act to Authorize the Department of Marine Resources to Purchase, Lease or Lease-Purchase Facilities at McKown Point in Boothbay Harbor

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

Sec. 1. 5 MRSA §1587, as amended by PL 1989, c. 237, §1, is further amended by adding at the end a new paragraph to read:

Upon execution of any lease-purchase agreements that exceed the amounts listed above, all departments and agencies shall provide information to the Treasurer of State pertaining to the actual amount of the lease-purchase, including the term and the interest cost of the lease-purchase agreement.

Sec. 2. Authorization of purchase, lease or lease-purchase of a new marine research and office facility. Pursuant to the Maine Revised Statutes, Title 5, section 1587, the Department of Marine Resources is authorized to purchase, lease with an option to purchase or enter into lease-purchase financing agreements for a new laboratory and office facility with an outright purchase price of not more than \$8,000,000 to be constructed on the site of the current Department of Marine Resources facility at McKown Point in Boothbay Harbor. The Commissioner of Marine Resources is authorized to encumber, mortgage and otherwise give security interests in the building and real property appurtenant to the facility and to provide for reasonable access to the facility and property as part of any financing arrangement authorized by this Act.

The term of any lease-purchase agreement may not exceed 10 years, totaling \$8,000,000 with interest costs at 8% of approximately \$3,600,000.

All plans, contracts, terms, terms of financing and other terms relating to any agreement reached must be subject to the review of the Joint Standing Committee on Appropriations and Financial Affairs.

See title page for effective date.

CHAPTER 924

H.P. 1803 - L.D. 2474

An Act to Amend the Maine Criminal Code with Regard to Drugs

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

Sec. 1. 17-A MRSA §1102, sub-§1, ¶I, as amended by PL 1989, c. 334, §2, is further amended to read:

I. Unless listed or described in another schedule, all narcotic drugs, including, but not limited to, heroin (diacetylmorphine), methadone, pethidine, morphine and opium. As used in this chapter, "heroin" means any compound, mixture or preparation containing heroin;

Sec. 2. 17-A MRSA §1102, sub-§1, ¶J, as enacted by PL 1977, c. 649, §1, is amended to read:

J. Phencyclidine;

Sec. 3. 17-A MRSA §1102, sub-§1, ¶¶K to M are enacted to read:

K. Lysergic acid diethylamide, and its salts, isomers and salts of isomers;

L. Lysergic acid; and

M. Lysergic acid amide.

Sec. 4. 17-A MRSA §1102, sub-§2, ¶H, as enacted by PL 1975, c. 740, §100, is amended to read:

H. Unless listed or described in another schedule, any of the following hallucinogenic drugs or their salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 3, 4 -- methylenedioxy amphetamine;

(2) 5 -- methoxy -- 3, 4 -- methylenedioxy amphetamine;

- (3) 3, 4, 5 -- trimethoxy amphetamine;
- (4) 4 -- methyl -- 2, 5 -- dimethoxyamphetamine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) Dipropyltryptamine;
- ~~(8) Lysergic acid diethylamide~~
- ~~(9) (8) 2, - 3 methylenedioxy amphetamine;~~
- ~~(10) (9) 2, 5 -- dimethoxyamphetamine;~~
- ~~(11) (10) 4 -- bromo -- 2, 5 -- dimethoxyamphetamine; and~~
- ~~(12) (11) 4 -- methoxyamphetamine; and~~

Sec. 5. 17-A MRSA §1102, sub-§2, ¶I, as enacted by PL 1975, c. 740, §100, is repealed.

Sec. 6. 17-A MRSA §1102, sub-§2, ¶J, as amended by PL 1977, c. 649, §3, is repealed.

Sec. 7. 17-A MRSA §1102, sub-§4, ¶C, as amended by PL 1987, c. 747, §1, is further amended to read:

C. All nonprescription drugs other than those included in schedules W, X or Y as the Board of Commissioners of the Profession of Pharmacy shall duly designate;

Sec. 8. 17-A MRSA §1103, sub-§3, as amended by PL 1989, c. 336, is repealed and the following enacted in its place:

3. A person is presumed to be unlawfully trafficking in scheduled drugs if the person intentionally or knowingly possesses any scheduled drug that is, in fact:

- A. More than 2 pounds of marijuana;
- B. Fourteen grams or more of cocaine;
- C. Four grams or more of heroin; or
- D. Lysergic acid diethylamide in any of the following quantities, states or concentrations:

(1) Any compound, mixture, substance or solution in a liquid state that contains a detectable quantity of lysergic acid diethylamide;

(2) Fifty or more squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or

(3) Any quantity of any compound mixture or substance that, in the aggregate, contains 2,500 micrograms or more of lysergic acid diethylamide.

Sec. 9. 17-A MRSA §1103, sub-§5 is enacted to read:

5. Quantities of scheduled drugs involved in violations of this section or sections 1105 to 1107, committed pursuant to one scheme or course of conduct and confiscated within a 48-hour period, may be aggregated to charge a single violation of this section of appropriate class. Subject to the requirement that the conduct of the defense may not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregate count be considered as separate violations. An aggregate count of violations may not be deemed duplicitous because of such an order and no election may be required. Prosecution may be brought in any venue in which one of the violations aggregated was committed.

Sec. 10. 17-A MRSA §1105, sub-§1, ¶¶D and E, as enacted by PL 1989, c. 600, Pt. A, §§5 and 6, are amended to read:

D. A person violates section 1103 or 1106, and, at the time of the offense, the person trafficks in or furnishes cocaine in a quantity of 112 grams or more; ~~or~~

E. A person violates section 1103, and, at the time of the offense, the person is on a school bus or on or within 1,000 feet of the real property comprising a private or public elementary or secondary school. For purposes of this paragraph, "school bus" has the same meaning as set forth in Title 29, section 2011, subsection 2; or

Sec. 11. 17-A MRSA §1105, sub-§1, ¶F is enacted to read:

F. A person violates section 1103, and, at the time of the offense, the person enlists or solicits the aid of or conspires with a child who is, in fact, under 18 years of age, to traffick in or furnish any scheduled drug.

Sec. 12. 17-A MRSA §1106, sub-§3, as amended by PL 1989, c. 253 and c. 344, §2 and as repealed and replaced by PL 1989, c. 600, Pt. A, §§7 and 8, is repealed and the following enacted in its place:

3. A person is presumed to be unlawfully furnishing scheduled drugs if the person intentionally or knowingly possesses a scheduled drug that is, in fact:

- A. More than 1 1/4 ounces of marijuana;
- B. Seven grams or more of cocaine;
- C. Two grams or more of heroin; or

D. Lysergic acid diethylamide in any of the following quantities or concentrations:

(1) Not less than 25 squares, stamps, tablets or units of any compound mixture or substance containing a detectable quantity of lysergic acid diethylamide; or

(2) Any quantity of any compound mixture or substance that, in the aggregate, contains not less than 1,250 micrograms of lysergic acid diethylamide.

Sec. 13. 17-A MRSA §1322, sub-§3, as amended by PL 1989, c. 188, is further amended to read:

3. Economic loss. "Economic loss" includes economic detriment consisting of environmental clean-up expense, property loss, allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment.

A. Allowable expense. "Allowable expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. The term includes reasonable and customary charges incurred for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

B. ~~Dependent's economic loss.~~ "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to ~~his~~ the decedent's dependents, not including services they would have received from the decedent if he the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

C. ~~Dependent's replacement services loss.~~ "Dependent's replacement loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if ~~he~~ the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

C-1. "Environmental clean-up expense" means any reasonable expense incurred for products and services needed to clean up any harm or damage caused to the environment, including any harm or damage caused by chemicals, to restore the environment to its previous condition prior to any harm or damage and for the proper disposal of chemicals and other materials, including those used in the manufacture of scheduled drugs in violation of chapter 45.

D. ~~Property loss.~~ "Property loss" means the value of property taken from the victim, or of property destroyed or otherwise broken or harmed. A property loss ~~shall include~~ includes the value of taxes or other obligations due to the government that have not been paid.

E. ~~Replacement services loss.~~ "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of ~~himself~~ the injured person or ~~his~~ the injured person's family, if ~~he~~ the injured person had not been injured.

F. ~~Work loss.~~ "Work loss" means loss of income from work the injured person would have performed if ~~he~~ the injured person had not been injured and expenses reasonably incurred by ~~him~~ the injured person in obtaining services in lieu of those ~~he~~ the injured person would have performed for income, reduced by any income for substitute work actually performed by ~~him~~ the injured person or by income ~~he~~ the injured person would have earned in available appropriate substitute work ~~he~~ the injured person was capable of performing but unreasonably failed to undertake.

Sec. 14. 25 MRSA §2003, sub-§4, ¶¶B and C, as enacted by PL 1985, c. 478, §2, are amended to read:

B. Information of record relative to 3 or more convictions of the applicant for crimes punishable by less than one year imprisonment or one or more adjudications of the applicant for juvenile offenses involving conduct ~~which~~ that, if committed by an adult, is punishable by less than one year imprisonment; ~~or~~

C. Information of record indicating that the applicant has engaged in reckless or negligent conduct; or

Sec. 15. 25 MRSA §2003, sub-§4, ¶D is enacted to read:

D. Information of record indicating that the applicant has been convicted of or adjudicated as having committed a violation of Title 17-A, chapter 45 or Title 22, section 2383, or adjudicated as having committed a juvenile crime that is a violation of

Title 22, section 2383 or a juvenile crime that would be defined as a criminal violation under Title 17-A, chapter 45 if committed by an adult.

See title page for effective date.

CHAPTER 925

H.P. 1814 - L.D. 2486

An Act Relating to Correctional Policy

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

Sec. 1. 4 MRSA §454, as amended by PL 1979, c. 47, §§1 and 2, is further amended to read:

§454. Maine Criminal Justice Sentencing Institute

There is established a Maine Criminal Justice Sentencing Institute under the administrative supervision of the State Court Administrator to provide a continuing forum for the regular discussion of the most appropriate methods of sentencing convicted offenders and adjudicated juveniles by judges in the criminal justice system, prosecutors, law enforcement and correctional personnel, representatives of advisory and advocacy groups and such representatives of the defense bar as the ~~chairman~~ chair of the Judicial Council may invite. All Supreme Judicial Court, Superior Court, District Court and Administrative Court Judges, all District Attorneys and attorneys within the Criminal Division of the Office of the Attorney General are, and such other criminal justice personnel as the Judicial Council may authorize ~~shall~~ may be members of the institute.

The institute shall meet not less than once every 3 years, at the call of the Judicial Council, for a 2-day period to discuss recommendations for changes in the sentencing authority and policies of the ~~state's~~ State's criminal and juvenile courts, in response to current law enforcement problems and the available alternatives for criminal and juvenile rehabilitation within the ~~state's~~ State's correctional system. Inasmuch as possible the deliberations of the institute ~~shall~~ must be open to the general public.

Members of the institute ~~shall~~ are not entitled to receive ~~no~~ compensation for their services, but ~~shall be~~ are allowed, out of any appropriation or other fund made available for the purpose, such expenses for clerical and other services, travel and incidentals as the Judicial Council may authorize.

Sec. 2. 15 MRSA §3003, sub-§26, as enacted by PL 1985, c. 439, §7, is amended to read:

26. Temporary holding resource. "Temporary holding resource" means an area not in a jail, consisting of not more than 2 rooms, with a capacity to serve no more than 4 juveniles, which may be used to provide secure or nonsecure ~~shelter~~ supervision for a juvenile for a period not to exceed ~~72 hours~~ 48 hours, excluding

Saturday, Sunday and legal holidays. The level of security provided is dependent on the intensity of personal supervision employed rather than on the physical characteristics of the facility.

Sec. 3. 15 MRSA §3006 is enacted to read:

§3006. Review of Maine Juvenile Code

The Department of Corrections shall review the provisions of this Part that relate to detention, custody and supervision of juveniles and submit reports and recommended legislation to the joint committee having jurisdiction over juvenile corrections matters and to the Office of the Executive Director of the Legislative Council on January 15, 1992 and on January 15, 1994.

Sec. 4. 15 MRSA §3203-A, sub-§1, ¶B-1, as amended by PL 1989, c. 741, §3, is further amended to read:

B-1. When, in the judgment of a law enforcement officer, immediate secure detention is required to prevent a juvenile from imminently inflicting bodily harm ~~to~~ on others or ~~to~~ the juvenile, the officer may refer the juvenile for temporary, emergency detention ~~to a~~ in a jail or other secure facility intended or primarily used for the detention of adults approved pursuant to subsection 7, paragraph A or a facility approved pursuant to subsection 7, paragraph B, 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 on an emergency basis, provided that the law enforcement officer 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 may, if continued emergency detention is required to prevent the juvenile from imminently inflicting bodily harm on others or the juvenile, authorize temporary emergency detention in that facility for an additional 4 hours. Following any temporary emergency detention, 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.~~ After December 31, 1991, any detention beyond 6 hours must be in a placement other than a facility intended or primarily used for the detention of adults and must be authorized by a juvenile caseworker or the Department of the Attorney General. It ~~shall be~~ is 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. 5. 15 MRSA §3203-A, sub-§2, ¶A, as amended by PL 1989, c. 318, is further amended to read: