

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

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ONE HUNDRED AND SIXTEENTH LEGISLATURE

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

CHAPTER 468

S.P. 345 - L.D. 1040

An Act to Provide Consistency in the Animal Welfare Laws

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 5 MRSA §1510-A, sub-§1, as amended by PL 1981, c. 493, §2, is further amended to read:

1. Claims against state agency. A state agency may hear and decide any claim of \$2,000 or less against it, or any of its agents, except a claim that may be submitted under the Maine Tort Claims Act, Title 14, chapter 741, or under another specific statutory provision. Any agency paying all or part of a claim heard under this subsection shall make payment as soon as practicable from currently available agency funds and, if no funds are then available, from agency funds from the following fiscal year. An agency deciding a claim under this subsection shall make its final decision, and reasons for the decision, in writing and shall, as soon as practicable, send a copy of that decision to the claimant by certified mail.

These claims ~~shall~~ include, but ~~shall~~ are not ~~be~~ limited to, claims for damage or injury caused by patients, inmates, prisoners in the care or custody of the Department of Mental Health and Mental Retardation or of any institution administered by a department; or by children in the custody of the Department of Human Services ~~and for damage to sheep done by dogs or wild animals.~~

Sec. 2. 7 MRSA §3906-B, sub-§4, as enacted by PL 1991, c. 779, §9, is amended to read:

4. Training and certification of animal control officers. The commissioner shall develop a program to train animal control officers. This program must include training in investigation of complaints of cruelty to pet animals, training in response to calls concerning animals suspected of having rabies and training in enforcement of dog licensing laws and rabies immunization laws. The commissioner shall certify all animal control officers who complete the training program and all persons who have been employed full time in the capacity of animal control officer for a period of one year or longer prior to the effective date of this subsection.

Sec. 3. 7 MRSA §3906-B, sub-§9, as enacted by PL 1991, c. 779, §9, is amended to read:

9. Employees. The commissioner shall employ personnel, subject to the Civil Service Law, as necessary to assist in enforcing this Part and in carrying out the duties and responsibilities of the department. The commissioner, in consultation with the board, shall employ, subject to the Civil Service Law, one full-time humane agent to assist the board in carrying out its duties and responsibilities. The commissioner may not hire as a state humane agent a person who has been convicted of a criminal violation under Title 17, chapter 42 or has been adjudicated of a civil violation for cruelty to animals under chapter 739.

Sec. 4. 7 MRSA §3907, sub-§3, as enacted by PL 1987, c. 383, §3, is amended to read:

3. Animal control. "Animal control" means control of dogs, cats, and domesticated or undomesticated animals ~~which may be a problem in the community and which are not controlled by any other law in accordance with section 3948.~~

Sec. 5. 7 MRSA §3907, sub-§18-A is enacted to read:

18-A. Livestock. "Livestock" means cattle, horses, sheep, goats, donkeys, swine or other animals if the animals are kept and used by a commercial farmer.

Sec. 6. 7 MRSA §3913, sub-§4, ¶A, as enacted by PL 1987, c. 383, §3, is amended to read:

A. Sell or give away the dog, provided that a license is first obtained in accordance with section 3922 or the animal control shelter issues a temporary license in accordance with section 3913-A; or

Sec. 7. 7 MRSA §3913, sub-§4, ¶B, as amended by PL 1991, c. 779, §22, is further amended to read:

B. Otherwise dispose of the dog humanely in accordance with Title ~~32, section 4872~~ 17, chapter 42, subchapter IV, if a veterinarian determines that the dog is not adoptable due to illness. Except as provided in this section, an animal control shelter must hold a dog at least 8 days before euthanasia.

Sec. 8. 7 MRSA §3913-A is enacted to read:

§3913-A. Temporary licenses

An animal control shelter shall issue a temporary dog license when transferring ownership vested in the shelter under section 3913, subsection 4 to a person buying or otherwise accepting ownership. The department shall provide animal control shelters with temporary license forms. The shelter shall complete all information

prescribed on the form, provide the owner with the temporary license and submit a copy to the appropriate municipal clerk. The shelter may retain a copy of the temporary license to comply with section 3914. A temporary license is valid for a period of 10 days beginning on the date of issuance. An animal control shelter may not charge a fee for issuing a temporary license.

Sec. 9. 7 MRSA §3916, sub-§1, as enacted by PL 1991, c. 779, §26, is amended to read:

1. Required for cats. An owner or keeper of a cat over 3 months of age shall have that cat vaccinated against rabies. Rabies vaccine must be administered by a licensed veterinarian or under the supervision of a licensed veterinarian. ~~An owner or keeper of a cat that is vaccinated after one year of age shall get booster vaccinations for that cat every 2 years thereafter. A cat vaccinated prior to one year of age~~ Upon receiving an initial vaccination, a cat is considered protected for one year and an owner or keeper of that cat shall get a booster vaccination for that cat one year after the initial vaccination and every 2 years thereafter.

Sec. 10. 7 MRSA §3917, sub-§1, as enacted by PL 1991, c. 779, §26, is amended to read:

1. Clinic establishment. ~~The department shall assist in facilitate the establishment of low-cost antirabies clinics, to be offered at locations and on dates as appropriate. At least one low-cost antirabies clinic must be conducted annually in each county. In assisting in facilitating the establishment of antirabies clinics, the department shall cooperate with local veterinarians and local organizations. When other arrangements can not be made for a licensed veterinarian to vaccinate or to supervise vaccinations by an animal technician at a low-cost clinic, a veterinarian employed by the department shall administer the vaccinations.~~ The department shall assist in facilitate the establishment of low-cost antirabies clinics, to be offered at locations and on dates as appropriate. At least one low-cost antirabies clinic must be conducted annually in each county. In assisting in facilitating the establishment of antirabies clinics, the department shall cooperate with local veterinarians and local organizations. When other arrangements can not be made for a licensed veterinarian to vaccinate or to supervise vaccinations by an animal technician at a low-cost clinic, a veterinarian employed by the department shall administer the vaccinations.

Sec. 11. 7 MRSA §3923, as amended by PL 1991, c. 779, §27 and affected by §§52 and 60, is repealed.

Sec. 12. 7 MRSA §§3923-A and 3923-B are enacted to read:

§3923-A. License and recording fees

Except as provided in subsection 3 and section 3921, a dog owner shall pay the license and recording fees established in this section.

1. Dogs capable of producing young. A dog owner shall pay a fee of \$7.50 to the municipal clerk for each dog 6 months of age or older and capable of producing young. A dog is considered capable of producing young unless certification required under subsection 2 is provided.

The clerk shall retain \$1 as a recording fee and pay the remaining \$6.50 to the department for deposit in the Animal Welfare Fund.

2. Dogs incapable of producing young. A dog owner shall pay a fee of \$4 to the municipal clerk for each dog 6 months of age or older and incapable of producing young. A dog is considered incapable of producing young when the owner provides the following:

A. A written certificate issued by a veterinarian stating that the veterinarian has neutered the dog;

B. A written certificate issued by a veterinarian stating that the veterinarian has examined the dog and determined that the dog is incapable of producing young; or

C. A previous license stating that the dog is incapable of producing young.

The clerk shall retain \$1 as a recording fee, deposit \$1 in the municipality's animal welfare account established in accordance with section 3945 and pay the remaining \$2 to the department for deposit in the Animal Welfare Fund.

3. Exemption from fees. A municipal clerk shall issue a license upon application and without payment of a license fee required under this section for:

A. A trained guide dog owned or kept by a visually impaired person or such a dog awaiting training;

B. A trained hearing dog owned or kept by a hearing-impaired person or such a dog awaiting training;

C. A trained service dog owned or kept by a physically impaired person or such a dog awaiting training; and

D. A trained search and rescue dog recognized by the Department of Inland Fisheries and Wildlife or by the statewide association of search and rescue that cooperates with the Department of Inland Fisheries and Wildlife in developing standards for search and rescue or such a dog awaiting training.

4. Late fees. An owner or keeper required to license a dog under section 3922, subsection 1 and applying for a license for that dog after January 31st must pay to the municipal clerk or dog recorder a late fee of \$3 in addition to the annual license fee paid in accordance with subsection 1 or 2. The clerk or recorder shall deposit all late fees collected under this subsection into the municipality's animal welfare account established in accordance with section 3945.

An owner or keeper whose name appears on a municipal warrant issued in accordance with section 3943 must pay the late fee required by that section and is not subject to this subsection.

§3923-B. Tags

1. Dog tags. The municipal clerk shall provide with each license issued under section 3923-A a dog tag indicating the year the license is issued and bearing other information prescribed by the department. The owner or keeper shall make sure that the tag is securely attached to a collar of leather, metal or material of comparable strength and that the collar is worn at all times by the dog for which the license was issued, except as provided in subsection 3.

If a tag is lost, the owner or keeper of the dog must obtain a new tag. The municipal clerk shall issue another tag upon presentation of the original license and payment of \$1. The clerk shall deposit 50¢ of the replacement fee into the municipality's animal welfare account established in accordance with section 3943 and pay the remaining 50¢ to the department for deposit into the Animal Welfare Fund.

2. Rabies tags. An owner shall make sure that a rabies tag obtained from a veterinarian for immunization against rabies is securely attached to a collar of leather, metal or material of comparable strength and that the collar is worn at all times by the dog for which the rabies tag was issued, except as provided in subsection 3.

3. Exceptions. A dog is not required to wear a dog tag or a rabies tag when hunting, in training or in an exhibition. When a dog is hunting, in training or in exhibition, its owner or keeper must produce proof of licensure within 24 hours upon request by a humane agent, animal control officer or law enforcement officer. When a dog is brought to this State from another state for hunting, training or exhibiting, its owner or keeper must produce proof of rabies immunization within 24 hours upon request by a humane agent, animal control officer or law enforcement officer, including a game warden.

Sec. 13. 7 MRSA §3931-A, sub-§3, as enacted by PL 1991, c. 779, §29, is repealed.

Sec. 14. 7 MRSA §§3935 and 3938, as enacted by PL 1987, c. 383, §3, are amended to read:

§3935. License prohibited

Municipalities shall may not issue a kennel license and the board shall department may not issue a license to maintain a boarding kennel, breeding kennel or pet shop to any person who, within the 5 years previous to the application for the license, has been convicted of a criminal violation under Title 17, chapter 42, or under

any criminal law involving cruelty to animals which that is no longer in effect, or within 2 years previous to the application for the license, has been adjudicated of a civil violation for cruelty to animals under chapter 739.

§3938. Violation

Any person maintaining a kennel, boarding kennel, breeding kennel or pet shop without having obtained a license, or after any license has been revoked or suspended, commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 a day may be adjudged.

Sec. 15. 7 MRSA §3947, as amended by PL 1991, c. 779, §39, is further amended to read:

§3947. Animal control officers

Each municipality shall appoint one or more animal control officers whose duties are enforcement of sections 3911, 3912, 3921, 3924, 3943, 3948, 3950, 3950-A and 3966 to 3970 responding to reports of animals suspected of having rabies in accordance with Title 22, sections 1313 and 1313-A and such other duties to control animals as the municipality may require.

A municipality may not appoint a person who has been convicted of a criminal violation under Title 17, chapter 42 or has been adjudicated of a civil violation for cruelty to animals under chapter 739 to the position of animal control officer.

Animal control officers must be certified in accordance with section 3906-B, subsection 4. Upon initial appointment, an animal control officer must complete training and be certified by the commissioner within 6 months of appointment.

Sec. 16. 7 MRSA §3948, sub-§3 is enacted to read:

3. Domesticated and undomesticated animals. A municipality shall control domesticated animals that are a problem in the community. A municipality shall control undomesticated animals that pose a threat to public health or safety. A municipality may control undomesticated animals in matters on which no other department is charged by law to regulate.

Sec. 17. 7 MRSA c. 729, first 2 lines are repealed and the following enacted in their place:

CHAPTER 729

DAMAGE BY ANIMALS

Sec. 18. 7 MRSA §3962, as enacted by PL 1987, c. 383, §3, is repealed.

Sec. 19. 7 MRSA §3962-A is enacted to read:

§3962-A. Penalty for damage to livestock by dogs

The owner or keeper of a dog that kills or injures livestock, poultry or domestic rabbits commits a civil violation for which a forfeiture not to exceed \$100 may be adjudged in addition to costs. The person who suffers damage may also pursue a civil action against the owner or keeper pursuant to section 3961.

Sec. 20. 7 MRSA §§3967 and 3968, as enacted by PL 1987, c. 643, §5, are amended to read:

§3967. Seizing of ferrets

Any animal control officer or person acting in that capacity shall seize, impound or restrain any domesticated ferret found in violation of section 3966, subsection 1, and deliver it to ~~any~~ an animal control shelter, as provided for in section 3968, or shall take it to its owner if known. If ownership ~~cannot~~ can not be established, such animals may be handled as stray ferrets for the purposes of acceptance by an approved animal control shelter as provided in this chapter.

§3968. Disposition of ferrets

1. Shelter. ~~A~~ An animal control shelter to which a stray ferret is taken, ~~as a condition of approval by the board,~~ shall accept the ferret for a period of ~~8~~ 6 days, unless the shelter is in quarantine or has a bona fide lack of adequate space or unless the ferret has or is suspected of having a contagious disease. The acceptance entitles the animal control shelter to receive from the ~~board department~~ the sum of \$2.50 a day for the period for which food and shelter are furnished to the ferret. ~~Shelters accepting ferrets from municipalities not contracting with them may seek assistance from the board. Shelters which are not approved by the board to receive state funds shall not be required to accept sick, stray, injured or abandoned ferrets. An animal control shelter may refuse to accept ferrets from municipalities not contracting with that shelter.~~

2. Claims; fees. The procedure for filing claims and calculating fees ~~shall be~~ is as follows.

A. On the next business day following the date of acceptance of the ferret, the animal control shelter shall notify the clerk of the respective municipality of the acceptance of the ferret, its description and the circumstances of its finding.

B. ~~A~~ An animal control shelter ~~which~~ that accepts a ferret under this section, within 45 days of acceptance of the ferret, shall submit a claim on a ~~board-approved department-approved~~ form to the clerk of the respective municipality for fees incurred in providing food and shelter and, upon verification of proper notification and holding period by the

clerk, the shelter shall forward the claim to the ~~board~~ department.

C. If the owner claims the ferret within the ~~8-day~~ 6-day period, the owner may have and receive the ferret upon payment of all ~~board-approved department-approved~~ fees, plus any pickup fees that the municipality may impose.

3. Ownership of ferret. Upon expiration of the ~~8-day~~ 6-day period, ownership of the ferret ~~shall vest is~~ vested in the animal control shelter. The animal control shelter may then:

A. Sell or give away the ferret with the warning notice required by section 3966; or

B. Otherwise dispose of the ferret humanely in accordance with Title ~~32, section 4872~~ 17, chapter 42, subchapter IV if a veterinarian determines that the ferret is not adoptable due to illness. Except as provided in this section, an animal control shelter must hold a ferret at least 8 days before euthanasia.

An animal control shelter shall establish and collect fees for reclaimed or adopted ferrets to offset costs of keeping a ferret beyond 6 days.

None of the proceeds obtained from the sale, donation, adoption or other disposition of the ferret ~~shall~~ may be deducted from the fee claimed.

Notwithstanding subsection 2, paragraph C, the previous owner may reacquire the ferret at any time prior to its sale, donation or disposal upon payment of the municipal impoundment fees and actual fees incurred for food, shelter, veterinary care and any other fees required by this chapter for each day that the ferret has been sheltered. In this case no fee may be allowed by the ~~board~~ department.

Sec. 21. 17 MRSA §1021, sub-§4, ¶A, as amended by PL 1991, c. 779, §47, is further amended by amending the first 2 paragraphs to read:

A. A state humane agent, sheriff, deputy sheriff, constable, police officer, animal control officer, person authorized to make arrests or, in a case involving a pet animal, the board may apply to the District Court, Superior Court or a justice of the peace for an ex parte order for authorization to take possession of any maimed, disabled, diseased, dehydrated, malnourished or injured animal or any animal whose owner has cruelly abandoned or cruelly treated it and turn it over to the applicant or any other suitable person.

An order may be entered ex parte upon findings by the court or justice of the peace that there is a reasonable likelihood that:

Sec. 22. 17 MRSA §1021, sub-§5-A is enacted to read:

5-A. Seizure by state humane agent without court order. A state humane agent who has reasonable cause to believe that a violation of section 1031 or 1032 has taken place or is taking place may take possession of the cruelly treated animal. Upon taking possession of an animal under this section, the humane agent shall present the owner with a notice that:

- A. States the reason for seizure;
- B. Gives the name, address and phone number of a humane agent to contact for information regarding the animal; and
- C. Advises the owner of the ensuing court procedure.

If the owner can not be found, the humane agent shall send a copy of the notice to the owner at the owner's last known address by certified mail, return receipt requested. If the owner is not known or can not be located, the humane agent shall contact the animal control shelter or shelters used by the municipality in which the animal was found. The humane agent shall provide the shelter with a description of the animal, the date of seizure and the name of a person to contact for more information.

Within 3 working days of possession of the animal, the humane agent shall apply to the court for a possession order. The court shall set a hearing date and that hearing date must be within 10 days of the date the animal was seized. The humane agent shall arrange care for the animal including medical treatment, if necessary, pending the hearing.

The humane agent shall notify the owner, if located, of the time and place of the hearing. If the owner has not been located, the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found stating the case and circumstances and giving 48 hours' notice of the hearing.

It is the owner's responsibility at the hearing to show cause why the animal should not be seized permanently or disposed of humanely. If it appears at the hearing that the animal has been cruelly abandoned or cruelly treated by its owner, the court shall declare the animal forfeited and order its sale, adoption or donation or order the animal to be disposed of humanely if a veterinarian determines that the animal is diseased or disabled beyond recovery.

Sec. 23. 22 MRSA §§1313 and 1313-A are enacted to read:

§1313. Procedures for the transportation, quarantine, euthanasia and testing of animals suspected of having rabies

1. Establishment of procedures. The commissioner, in consultation with the Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Inland Fisheries and Wildlife shall adopt rules, in accordance with the Maine Administrative Procedure Act, establishing procedures for responding to a report of an animal suspected of having rabies. The procedures must include provisions for the transportation, quarantine, euthanasia and testing of an animal suspected of having rabies. The procedures may differ based on the perceived public health threat determined in part by consideration of the following factors:

- A. Whether the animal is a domesticated animal for which a known effective vaccine exists and, if so, can the animal's vaccination status be verified; and
- B. Whether the animal has bitten a person or exhibited other aggressive behavior.

2. Role of animal control officer; game warden. An animal control officer appointed in accordance with Title 7, section 3947, receiving a report of an animal suspected of having rabies shall ensure that the procedures established pursuant to this section and section 1313-A are carried out. If the animal is an undomesticated animal, a game warden shall assist the animal control officer.

3. Costs associated with transportation, quarantine, testing and euthanasia. The Department of Inland Fisheries and Wildlife shall pay all costs for transportation, quarantine, euthanasia and testing of an undomesticated animal suspected of having rabies. The owner of a domesticated animal suspected of having rabies shall pay all costs for transportation, quarantine, euthanasia and testing of the animal. If a domesticated animal is a stray or the owner is unknown, the municipality in which the animal was apprehended is responsible for transportation, quarantine, euthanasia and testing costs.

§1313-A. Provisions for immediate destruction of certain animals

If an undomesticated animal or a domesticated ferret, domesticated wolf or domesticated wolf hybrid suspected of having rabies bites a person, an animal control officer, a local health officer or a game warden may immediately kill or order killed that animal without destroying the head. The Department of Inland Fisheries and Wildlife shall arrange for the transportation of the head to the State Health and Environmental Testing Laboratory; except that the animal control officer shall make the arrangements if the animal is a domesticated ferret, domesticated wolf or domesticated wolf hybrid.

The Department of Inland Fisheries and Wildlife shall pay transportation and testing costs for undomesticated animals. The owner of a domesticated ferret, domesticated wolf or domesticated wolf hybrid shall pay transportation and testing costs for that animal.

Sec. 24. Report. The Commissioner of Human Services shall submit a report on rabies prevention and protection efforts in the State to the Joint Standing Committee on Agriculture by January 15, 1994. The report must include a copy of the rules adopted to establish rabies response procedures. If statutory changes or enactment of new provisions relating to rabies prevention and protection are recommended in the report, the commissioner must submit implementing legislation with the report.

Sec. 25. Revision clause. Wherever in the Maine Revised Statutes, Title 7, chapters 721, 723, 725, 729, 731, 733, 735, 737 and 739 the word "board" appears or reference is made to "board," that word is amended to read and mean "commissioner," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 469

H.P. 1053 - L.D. 1405

An Act Concerning Tribal Protection Orders

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

Whereas, there exists a present inability to criminally prosecute violations of protection orders issued by the tribal courts of the Passamaquoddy Tribe and the Penobscot Nation; 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:

Sec. 1. 5 MRSA §4651, sub-§1, as amended by PL 1991, c. 760, §1, is further amended to read:

1. Court. "Court" means any District Court and, with regard to section 4659, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

Sec. 2. 5 MRSA §4659, as amended by PL 1987, c. 695, §2, is further amended to read:

§4659. Violation

1. Crime committed. Violation of a temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation or a court-approved consent agreement, when the defendant has prior actual notice of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 4655, subsection 1, paragraphs D to F. Violation of these paragraphs shall must be treated as contempt and punished in accordance with law.

2. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation as defined in this section of an order or consent agreement may be made without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order.

Sec. 3. 19 MRSA §762, sub-§3, as amended by PL 1991, c. 760, §4, is further amended to read:

3. Court. "Court" means any District Court and, with regard to section 769, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

Sec. 4. 19 MRSA §769, sub-§1, as amended by PL 1989, c. 862, §20, is further amended to read:

1. Crime committed. Violation of a temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation or a court approved consent agreement, when the defendant has prior actual notice, which may be notice by means other than service in hand, of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 766, subsection 1, paragraphs F to K. Violation of section 766, subsection 1, paragraphs F to K, must be treated as contempt and punished in accordance with law.

Sec. 5. 19 MRSA §770, sub-§5, as amended by PL 1991, c. 824, Pt. A, §29, is further amended to read:

5. Arrest in certain situations. When a law enforcement officer has probable cause to believe that there has been a criminal violation as defined in section 769 of a court-approved consent agreement or a protection order issued pursuant to this chapter or Title 15, chapter 12-A, or that a violation of Title 17-A, sec-