

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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
1997

the employee's personnel file if the employer has a personnel file for that employee. The reviews and copying must take place at the location where the personnel files are maintained and during normal office hours unless, at the employer's discretion, a more convenient time and location for the employee are arranged. The cost of copying is paid by the person requesting the copy. For the purpose of this section, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits and nonprivileged medical records or nurses' station notes relating to the employee ~~which~~ that the employer has in the employer's possession. Any employer who, following a request pursuant to this section, without good cause fails to provide an opportunity for review and copying of a personnel file, within 10 days of receipt of that request, is subject to a civil forfeiture of \$25 for each day that a failure continues. The total forfeiture may not exceed \$500. An employee or former employee may bring an action in the District Court or the Superior Court for such equitable relief, including an injunction, as the court may consider to be necessary and proper. The employer may also be required to reimburse the employee or former employee for costs of suit including a reasonable attorney's fee if the employee receives a judgment in the employee's favor. For the purposes of this section, the term "nonprivileged medical records or nurses' station notes" means all those materials that have not been found to be protected from discovery or disclosure in the course of civil litigation under the Maine Rules of Civil Procedure, Rule 26, the Maine Rules of Evidence, Article V or similar rules adopted by the Workers' Compensation Board or other administrative tribunals.

See title page for effective date.

CHAPTER 421

S.P. 570 - L.D. 1727

An Act to Establish and Implement a Pilot Program for Restorative Justice

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

PART A

Sec. A-1. 15 MRSA §3204, as amended by PL 1989, c. 741, §10, is further amended to read:

§3204. Statements not admissible in evidence

~~No statements~~ Statements of a juvenile made to a juvenile caseworker during the course of a preliminary

investigation or made to a community resolution team under section 3301 ~~may be~~ are not admissible in evidence at an adjudicatory hearing against that juvenile if a petition based on the same facts is later filed.

Sec. A-2. 15 MRSA §3301, sub-§5, ¶B, as amended by PL 1985, c. 439, §11, is further amended to read:

B. Make whatever informal adjustment is practicable without a petition. The juvenile caseworker may effect whatever informal adjustment is agreed to by the juvenile and ~~his~~ the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated, including a restitution contract with the victim of the crime and the performance of community service. Informal adjustments ~~shall~~ may extend no longer than 6 months and ~~informal adjustments shall~~ may not be commenced unless:

(1) The juvenile caseworker determines that the juvenile and ~~his~~ the juvenile's parents, guardian or legal custodian, if the juvenile is not emancipated, were advised of their constitutional rights, including the right to an adjudicatory hearing, the right to be represented by counsel and the right to have counsel appointed by the court if indigent;

(2) The facts establish prima facie jurisdiction, except that any admission made in connection with this informal adjustment ~~cannot~~ may not be used in evidence against the juvenile if a petition based on the same facts is later filed; and

(3) Written consent to the informal adjustment is obtained from the juvenile and ~~his~~ the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated; or

Sec. A-3. 15 MRSA §3301, sub-§§5-A and 6-A are enacted to read:

5-A. Community resolution teams. In accordance with policy and procedures established by the Department of Corrections, the juvenile caseworker may establish a community resolution team after completing the preliminary investigation.

A. Team participants may include the team facilitator; the juvenile caseworker; the juvenile; the juvenile's parents, guardian or legal custodian; the complainant; the victim; a person designated by the victim; the law enforcement officer who notified the juvenile caseworker; and any other person who the juvenile caseworker determines is appropriate.

B. The community resolution team may agree to effect an informal adjustment or recommend to the juvenile caseworker one of the alternatives in subsection 5. If the team makes a recommendation, the juvenile caseworker shall consider the recommendation and decide which alternative to choose.

C. The Department of Corrections shall report on the progress of the community resolution teams to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than January 1st annually.

D. The Department of Corrections shall make a final report on the effectiveness of community resolution teams to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than March 1, 1999. Victims, the law enforcement community, prosecuting attorneys, defense attorneys and other parties that have been involved in community resolution teams may also address the committee at the time the Department of Corrections makes its final report.

E. This subsection is repealed May 1, 1999.

6-A. Records confidential. Except as otherwise provided in this Title, information contained in records pertaining to a juvenile against whom a juvenile petition has not been filed is confidential unless the juvenile, and the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated, has given informed written consent to the disclosure of the records.

Sec. A-4. 15 MRSA §3308, sub-§2, as amended by PL 1979, c. 681, §20, is further amended to read:

2. Hearings open to public. In the case of a hearing open to the general public under section 3307, the petition, the record of the hearing and the order of adjudication shall be open to public inspection, provided that any court subsequently sentencing the juvenile after he the juvenile has become an adult may consider only murder and Class A, Class B and Class C offenses committed by the juvenile. The petition, the record of the hearing and the order of adjudication are open to inspection by the victim regardless of whether the hearing is open to the general public under section 3307.

Sec. A-5. 15 MRSA §3308, sub-§7, ¶B, as amended by PL 1993, c. 354, §6, is further amended to read:

B. Nothing in this section precludes dissemination of any information contained in the records of juvenile court proceedings or other records

described in subsection 5 by one criminal justice agency to another criminal justice agency for the purpose of the administration of criminal justice, the administration of juvenile criminal justice and for criminal justice agency employment, as long as:

(1) The person concerning whom the records are sought has been convicted of a crime as an adult;

(2) The person concerning whom the records are sought has been adjudicated as having committed a juvenile crime that, if committed by an adult, would be defined as a Class A, B or C crime by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code;

(3) The person concerning whom the records are sought has been adjudicated as having committed a juvenile crime with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9;

(4) The person concerning whom the records are sought has been adjudicated as having committed 2 or more juvenile crimes that, if committed by an adult, would be defined as Class D or Class E crimes by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code; or

(5) The person seeking the records is the prosecuting attorney in any proceeding and the person concerning whom the records are sought is a defendant in that proceeding.

Sec. A-6. 15 MRSA §3308, sub-§7, ¶C, as enacted by PL 1993, c. 354, §7, is amended to read:

C. Nothing in this section precludes dissemination of any information in the records of the Department of Corrections if the person concerning whom the records are sought, the person's legal guardian, if any, and if the person is a minor, the person's parent or legal guardian has given informed written consent to the disclosure of the records.

PART B

Sec. B-1. 17-A MRSA §1202, sub-§2, as amended by PL 1989, c. 393, is further amended to read:

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation, or the person's

probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed by the court or a community reparations board, add further requirements authorized by section 1204, or relieve the person on probation of any requirement imposed by the court or a community reparations board that, in its opinion, imposes on the person an unreasonable burden.

Notwithstanding this subsection, the court may grant, ex parte, a motion brought by the probation officer to add further requirements if the requirements are immediately necessary to protect the safety of an individual or the public and if all reasonable efforts have been made to give written or oral notice to the person on probation. Any requirements added pursuant to an ex parte motion do not take effect until written notice of the requirements, along with written notice of the scheduled date, time and place when the court shall hold a hearing on the added requirements, is given to the person on probation.

Sec. B-2. 17-A MRSA §1204-A is enacted to read:

§1204-A. Community reparations boards

1. If the court imposes a sentencing alternative that includes a period of probation, the court shall require as a condition of probation that the convicted person appear before a community reparations board and abide by any requirement imposed by the board if:

A. The person has been sentenced to a suspended term of imprisonment with probation or a split sentence of imprisonment with probation the initial portion of which must be served in a county jail under section 1203;

B. The person has not been convicted of a crime under chapter 11 or a crime of domestic violence;

C. The Department of Corrections recommends that appearance before the board be required; and

D. The court finds no circumstance that makes appearance inappropriate.

2. A person required to appear before a community reparations board shall:

A. Cooperate with the preparation of the intake report to be submitted to the board;

B. Appear before the board as directed by the probation officer; and

C. Cooperate with the board.

3. The powers of a community reparations board are limited to requiring the convicted person to:

A. Pay restitution in accordance with chapter 54;

B. Perform community service;

C. Complete a prescribed course of counseling or education;

D. Refrain from frequenting specified places or consorting with specified persons;

E. Comply with reparative sanctions other than restitution, including, but not limited to, writing an apology to the victim and fulfilling crime-impact education measures; and

F. Report to the board regarding compliance with the other requirements of this subsection.

4. No requirement imposed by a community reparations board may extend longer than 6 months, except to pay restitution.

5. Failure to abide by the requirements of this section constitutes a violation of probation.

6. This section is repealed May 1, 1999.

Sec. B-3. 34-A MRSA §5811 is enacted to read:

§5811. Community reparations boards

1. **Reparations boards authorized.** The department may establish community reparations boards to exercise the powers set out in Title 17-A, section 1204-A.

2. **Members.** Members of the boards must be residents of the community or communities encompassed within the geographical areas served by the boards. The commissioner shall appoint members after conferring with officials within the geographical areas served by the boards, including district attorneys and officials from other law enforcement agencies. Board members serve without compensation and at the pleasure of the commissioner.

3. **Meetings.** Meetings of the boards must be conducted in accordance with policy and guidelines established by the department.

4. **Deliberations.** Meetings of the boards must be open to the public except as provided in subsection 5 and except that the deliberations of the boards as to the appropriate requirements to impose on persons appearing before them must be conducted in executive sessions from which all persons except board members are excluded. The requirements imposed,

however, must be announced in meetings open to the public.

5. Confidentiality. Intake reports submitted to the boards are confidential. Information contained in intake reports or otherwise provided to the boards that is made confidential by law may not be disclosed in meetings of the boards open to the public or be otherwise disclosed except in accordance with the governing law.

6. Reporting. The department shall report on the progress of the community reparations boards to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than January 1st of every year. The department shall make a final report on the effectiveness of community reparations boards to the joint standing committee of the Legislature having jurisdiction over criminal justice matters no later than March 1, 1999. Victims, the law enforcement community, prosecuting attorneys, defense attorneys and other parties that have been involved in community reparations boards may also address the committee at the time the department makes its final report.

7. Funding. Community reparations boards may not be established until federal funding or other special revenue is secured.

8. Repealed. This section is repealed May 1, 1999.

Sec. B-4. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

| | 1997-98 | 1998-99 |
|---|---------|---------|
| CORRECTIONS, DEPARTMENT OF | | |
| Administration - Corrections | | |
| All Other | \$500 | \$500 |
| Provides allocations to authorize the expenditure of funds for community reparation boards in the event that outside funding becomes available. | | |

See title page for effective date.

CHAPTER 422

H.P. 1276 - L.D. 1806

An Act to Amend Maine's Involuntary Commitment Laws

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

Sec. 1. 17-A MRSA §1204, sub-§4 is enacted to read:

4. Before imposing any condition of psychiatric outpatient or inpatient treatment or mental health counseling, the court may request a report be submitted by an agent of the Department of Mental Health, Mental Retardation and Substance Abuse Services who has been designated pursuant to Title 34-B, section 1220 for the purpose of assessing the appropriateness of psychiatric treatment or mental health counseling for the individual and the availability of this treatment or counseling. Whether or not a report is requested, the court shall notify the designated agent of the Department of Mental Health, Mental Retardation and Substance Abuse Services when any conditions of probation are imposed that include psychiatric outpatient or inpatient treatment or mental health counseling. This notification must include the name and last known address of the individual placed on probation, the name and address of the attorney of record and the conditions of probation.

Sec. 2. 34-B MRSA §1207, sub-§6 is enacted to read:

6. Duty to provide information. Any person conducting an evaluation of a mental health client in a professional capacity, who has a clear and substantial reason to believe that the mental health client poses an imminent danger of inflicting serious physical harm on the evaluator or others, shall provide information regarding such danger or harm to any other person to whom that client's care or custody is being transferred. For purposes of this subsection, the term "evaluation" includes professionally recognized methods and procedures for the purpose of assessing and treating mental illness and includes, but is not limited to, interviews, observation, testing and assessment techniques conducted by a person licensed as a physician, psychologist, nurse, clinical social worker or clinical professional counselor.

Sec. 3. 34-B MRSA §1220 is enacted to read:

§1220. Mental health services to persons on probation

The department shall designate at least one individual within each of the 7 areas described in section 3607, subsection 3 to act as liaison to the District Courts and Superior Courts of the State and to the Department of Corrections in its administration of probation and parole services and the Intensive Supervision Program established pursuant to Title 17-A, section 1261.