

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

FIRST SPECIAL SESSION
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

during the preceding January has requested in writing to have its name included on the ballot for that racing segment. Eligible voters for each racing segment are entitled to vote in the election held for that racing segment either by returning the commission's official mailed ballot to the commission not later than the following February 28th or by appearing and voting in person, by secret ballot, at the public polling conducted pursuant to subsection 3.

3. Public polling to be held. Every eligible voter within a racing segment must be afforded the opportunity to vote at a public polling for the exclusive bargaining agent to represent horse owners, trainers and drivers within that racing segment. With respect to each commercial track, the public polling must be conducted at the commercial track on one of the first 3 live race dates assigned to the track within the calendar year during which the election is conducted. The public polling with respect to the racing segment that consists of racing at all tracks other than commercial tracks must be conducted during May at a place to be determined by the commission. Notice of the right to vote at such public polling and of the date, time and place of the public polling must be included with the ballot mailed by the commission pursuant to subsection 2.

4. Results certified by commission. If one entity receives more than 50% of the total ballots cast under subsections 2 and 3 for election of an exclusive bargaining agent within a racing segment, that bargaining agent shall be certified by the commission as the exclusive bargaining agent within that segment. If no entity receives more than 50% of the ballots, a runoff election among the 2 entities receiving the most votes must be conducted as described in subsection 2. The entity receiving the most votes at that runoff election must be certified by the commission as the exclusive bargaining agent for that racing segment.

5. Term of certification. Certification of the exclusive bargaining agent with a racing segment is for a 2-year term.

6. Expenses. Any expenses incurred by the commission in conducting an election must be borne in equal assessments by those organizations requesting to be placed on the ballot for that election.

7. Repeal. This section is repealed January 1, 2000.

Sec. 6. Effective date. This Act takes effect October 15, 1997.

Effective October 15, 1997.

CHAPTER 475

H.P. 858 - L.D. 1163

An Act to Amend Child Protective Laws

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

Sec. 1. 22 MRSA §4035, sub-§4, as amended by PL 1995, c. 481, §2, is further amended to read:

4. Final protection order. The court shall issue a final protection order within ~~18~~ 12 months of the filing of the child protection petition ~~unless good cause is shown why the order should not be issued within that time period.~~

Notwithstanding any other provision of this subsection, if the court makes a finding pursuant to ~~section 4055,~~ subsection ~~1-A~~ 2, then the court shall issue a final protection order within ~~12~~ 9 months of the filing of the child protection petition ~~unless good cause is shown why the order should not be issued within that time period. Good cause does not include a scheduling problem. if:~~

A. The parent has acted toward a child in a manner that is heinous or abhorrent to society or has failed to protect a child in a manner that is heinous or abhorrent to society, without regard to the intent of the parent;

B. The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

- (1) Murder;
- (2) Felony murder;
- (3) Manslaughter;
- (4) Aiding or soliciting suicide;
- (5) Aggravated assault;
- (6) Rape;
- (7) Gross sexual misconduct or gross sexual assault;
- (8) Sexual abuse of minors;
- (9) Incest;
- (10) Kidnapping;
- (11) Promotion of prostitution; or

(12) A comparable crime in another jurisdiction;

C. The child has been placed in the legal custody or care of the department, the parent has a chronic substance abuse problem and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide safe care of a child for a period of 12 months due to substance abuse constitutes a chronic substance abuse problem;

D. The child has been placed in the legal custody or care of the department, the court has previously terminated parental rights to another child who is a member of the same family and the parent continues to lack the ability or willingness to show the court that the parent has sought services that would rehabilitate the parent, or the parent can not show evidence that an additional period of services would result in reunification in a time reasonably calculated to meet the needs of the child and the child's need for a permanent home; or

E. The child has been placed in the legal custody or care of the department for at least 12 months and the parents have been offered or received services to correct the situation but have refused or have made no significant effort to correct the situation.

A time period in this subsection does not apply if good cause is shown why the order should not be issued within that time period. Good cause does not include a scheduling problem.

Sec. 2. 22 MRSA §4038, sub-§1, as amended by PL 1987, c. 269, §1, is further amended to read:

1. Mandated review. If a court has made a final protection order, it shall review the case at least once within ~~18~~ 12 months of the final protection order and at least every 2 years thereafter, unless the child has been emancipated or adopted.

Sec. 3. 22 MRSA §4038, sub-§1-A, ¶¶B and C, as enacted by PL 1987, c. 269, §2, are amended to read:

B. When custody has been granted to a parent who did not have custody at the time the child protection petition was filed; ~~or~~

C. When the child lives with the foster parent with whom the department has entered into a

long-term foster care agreement pursuant to section 4064; or

Sec. 4. 22 MRSA §4038, sub-§1-A, ¶D is enacted to read:

D. When there is a signed adoptive placement agreement regarding the child between the department and the prospective parent or parents.

Sec. 5. 22 MRSA §4038, sub-§7, ¶A, as amended by PL 1991, c. 176, §3, is further amended to read:

A. The court shall review the final protection order and make a determination within ~~48~~ 12 months of its initial order either to:

- (1) Return the child to the parent;
- (2) Continue reunification efforts for a specific limited time not to exceed 6 months and to judicially review the matter within the time specified; or
- (3) Enter an order under section 4036, subsection 1, paragraph G-1.

The court may not order reunification efforts to continue under subparagraph (2) more than once unless all parties agree to the order to continue reunification and unless the court determines reunification efforts to be in the best interest of the child.

Sec. 6. 22 MRSA §4038, sub-§7, ¶C, as enacted by PL 1991, c. 176, §3, is amended to read:

C. When 2 placements with the same parent have failed and the child is returned to the custody of the department, the court shall enter an order under section 4036, subsection 1, paragraph G-1 unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interest of the child.

Sec. 7. 22 MRSA §4052, sub-§2, as amended by PL 1983, c. 249, §1, is further amended to read:

2. Time filed. A termination petition may be brought no earlier than ~~3 months~~ 45 days after disposition under section 4036 or under Title 19, section 213, 214 or 752.

Sec. 8. 22 MRSA §4052, sub-§2, as amended by PL 1995, c. 694, Pt. D, §47 and affected by Pt. E, §2, is further amended to read:

2. Time filed. A termination petition may be brought no earlier than ~~3 months~~ 45 days after

disposition under section 4036 or under Title 19-A, section 1502 or 1653.

Sec. 9. 22 MRSA §4055, sub-§1-A, ¶¶C and E, as enacted by PL 1995, c. 481, §4, are amended to read:

C. The child has been placed in the legal custody or care of the department, the parent has a chronic substance abuse problem, and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide safe care of a child for a period of ~~12~~ 9 months due to substance abuse constitutes a chronic substance abuse problem;

E. The child has been placed in the legal custody or care of the department for at least ~~12~~ 9 months, and the parents have been offered or received services to correct the situation but have refused or have made no significant effort to correct the situation.

Sec. 10. 22 MRSA §4055, sub-§2, as amended by PL 1995, c. 481, §5, is further amended to read:

2. Primary considerations. In deciding to terminate parental rights, the court shall consider the best interest of the child, the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachments and separation, the child's ability to integrate into a substitute placement or back into the parent's home and the child's physical and emotional needs.

Sec. 11. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 22, section 4052, subsection 2, as amended by Public Law 1995, chapter 694, Part D, section 47 and affected by Part E, section 2, takes effect October 1, 1997.

See title page for effective date, unless otherwise indicated.

CHAPTER 476

H.P. 400 - L.D. 545

An Act to Enhance the Penalty for Operating a Motor Vehicle after Habitual Offender Revocation When the Actor Has Had a Prior Conviction for Operating after Revocation or Operating under the Influence within the Previous 10 Years

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

Sec. 1. 29-A MRSA §2557, sub-§2, ¶¶A and B, as affected by PL 1995, c. 65, Pt. A, §153 and amended by Pt. C, §14 and affected by §15, are further amended to read:

A. A Class D crime if:

(1) The person has no conviction for operating after revocation under this section or under former Title 29, section 2298 within the previous ~~5~~ 10 years; and

(2) The person has no conviction for violating section 2411 or former Title 29, section 1312-B within the previous ~~5~~ 10 years; and

B. A Class C crime if:

(1) The person has one or more convictions for operating after revocation under this section or under former Title 29, section 2298 within the previous ~~5~~ 10 years; or

(2) The person has one or more convictions for violating section 2411 or former Title 29, section 1312-B within the previous ~~5~~ 10 years.

See title page for effective date.

CHAPTER 477

H.P. 264 - L.D. 328

An Act to Increase the Penalty for Burglary When the Actor has Prior Convictions for Certain Enumerated Crimes

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

Sec. 1. 17-A MRSA §401, sub-§2, ¶B, as amended by PL 1977, c. 510, §51, is repealed and the following enacted in its place:

B. A Class B crime if:

(1) The defendant intentionally or recklessly inflicted or attempted to inflict bodily injury on anyone during the commission of the burglary or an attempt to commit the burglary or in immediate flight after the commission or attempt;