

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

Homestead Property Tax Exemption Reimbursement

All Other \$46,138,220
 Provides funds for 100% of the estimated amount of property tax exempted under the Maine Resident Homestead Property Tax Exemption program.

Homestead Property Tax Exemption - Mandate Reimbursement

All Other \$715,000
 Provides funds to reimburse municipalities for 90% of the estimated local costs incurred to implement the Maine Resident Homestead Property Tax Exemption program.

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES TOTAL

\$47,002,199

Sec. HHH-8. Transfer of funds. Notwithstanding the Maine Revised Statutes, Title 5, section 1585, or any other provision of law, the State Controller is authorized to transfer \$47,051,828 from the Tax Relief Fund for Maine Residents to the General Fund unappropriated surplus in fiscal year 1998-99.

Sec. HHH-9. Transfer of funds. Notwithstanding the Maine Revised Statutes, Title 5, section 1585, or any other provision of law, the State Controller is authorized to transfer \$29,080,192 from the Tobacco Tax Relief Fund to the General Fund unappropriated surplus in fiscal year 1998-99.

Sec. HHH-10. Retroactivity. This Act applies retroactively to April 1, 1998.

See title page for effective date, unless otherwise indicated.

CHAPTER 644

H.P. 447 - L.D. 597

An Act to Amend the Statutes Pertaining to Emergency Medical Services

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

Sec. 1. 32 MRSA §83, sub-§7, as enacted by PL 1981, c. 661, §2, is amended to read:

7. Basic emergency medical technician. "Basic emergency medical technician" means a basic emergency medical ~~services~~ services person who has successfully completed the ~~United States Department of Transportation~~ Maine Emergency Medical Services course for emergency medical treatments and has met the other requirements for licensure at this level.

Sec. 2. 32 MRSA §88, sub-§1, ¶A, as amended by PL 1995, c. 161, §9, is further amended to read:

A. The board has one member representing each regional council, and ~~7~~ 10 persons in addition. Of the additional persons, one is a an emergency physician, one an attorney, ~~one a representative~~ two representatives of the public, one a representative of for-profit ambulance services, one a an emergency professional nurse, one a representative of nontransporting emergency medical services, ~~one a representative of hospitals~~, ~~one a fire services provider~~ and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, non-transporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members ~~must be~~ are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

See title page for effective date.

CHAPTER 645

H.P. 662 - L.D. 915

An Act to Amend the Laws Concerning Juvenile Petition, Adjudication and Disposition

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

Sec. 1. 15 MRSA §3002, sub-§1, as amended by PL 1979, c. 663, §113, is further amended to read:

1. Purposes. The purposes of this Part are:

A. To secure for each juvenile subject to these provisions such care and guidance, preferably in

~~his~~ the juvenile's own home, as will best serve ~~his~~ the juvenile's welfare and the interests of society;

B. To preserve and strengthen family ties whenever possible, including improvement of home environment;

C. To remove a juvenile from the custody of ~~his~~ the juvenile's parents only when ~~his~~ the juvenile's welfare and safety or the protection of the public would otherwise be endangered or ~~where~~ when necessary, to punish a child adjudicated, pursuant to chapter 507, as having committed a juvenile crime;

D. To secure for any juvenile removed from the custody of ~~his~~ the juvenile's parents the necessary treatment, care, guidance and discipline to assist ~~him~~ that juvenile in becoming a responsible and productive member of society; ~~and~~

E. To provide procedures through which the provisions of the law are executed and enforced and ~~which will assure~~ that ensure that the parties receive fair hearings at which their rights as citizens are recognized and protected; ~~and~~

F. To provide consequences, which may include those of a punitive nature, for repeated serious criminal behavior or repeated violations of probation conditions.

Sec. 2. 15 MRSA §3101, sub-§4, ¶¶C-1 and C-2 are enacted to read:

C-1. With respect to the finding of probable cause required by paragraph E, subparagraph (1), the State has the burden of proof.

C-2. With respect to the finding of appropriateness required by paragraph E, subparagraph (2), the State has the burden of proof, except that in a case involving a juvenile who is charged with one or more juvenile crimes that, if the juvenile were an adult, would constitute murder, attempted murder, felony murder, Class A manslaughter other than the reckless or criminally negligent operation of a motor vehicle, elevated aggravated assault, arson that recklessly endangers any person, causing a catastrophe, Class A robbery or Class A gross sexual assault in which the victim submits as a result of compulsion, the juvenile has the burden of proof.

Sec. 3. 15 MRSA §3101, sub-§4, ¶D, as repealed and replaced by PL 1981, c. 470, Pt. A, §33, is repealed and the following enacted in its place:

D. The Juvenile Court shall consider the following factors in deciding whether to bind a juvenile over to Superior Court:

(1) Seriousness of the crime: the nature and seriousness of the offense with greater weight being given to offenses against the person than against property; whether the offense was committed in an aggressive, violent, premeditated or intentional manner;

(2) Characteristics of the juvenile: the record and previous history of the juvenile; the age of the juvenile; the juvenile's emotional attitude and pattern of living;

(3) Public safety: whether the protection of the community requires commitment of the juvenile for a period longer than the greatest commitment authorized; whether the protection of the community requires commitment of the juvenile to a facility that is more secure than any dispositional alternative under section 3314; and

(4) Dispositional alternatives: whether future criminal conduct by the juvenile will be deterred by the dispositional alternatives available; whether the dispositional alternatives would diminish the gravity of the offense.

Sec. 4. 15 MRSA §3101, sub-§4, ¶E, as repealed and replaced by PL 1979, c. 681, §5, is amended to read:

E. The Juvenile Court shall bind a juvenile over to the Superior Court if it finds:

(1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it; and

(2) ~~By a preponderance of the evidence that, after~~ After a consideration of the seriousness of the crime, the characteristics of the juvenile, the public safety and the dispositional alternatives available to the Juvenile Court, as specified in paragraph D, it is appropriate to prosecute the juvenile as if he were an adult, that:

(a) If the State has the burden of proof, the State has established by a preponderance of the evidence that it is appropriate to prosecute the juvenile as if the juvenile were an adult; or

(b) If the juvenile has the burden of proof, the juvenile has failed to establish by a preponderance of the evidence that it is not appropriate to prosecute the juvenile as if the juvenile were an adult.

Sec. 5. 15 MRSA §3101, sub-§4, ¶E-1, as enacted by PL 1987, c. 398, §2, is amended to read:

E-1. ~~If the juvenile court finds, pursuant to paragraph E, that it is appropriate to prosecute the juvenile as if he were an adult~~ Juvenile Court binds the juvenile over to Superior Court, the court may direct detention of any such juvenile who is to be detained ~~pending an adjudication hearing~~ in a section of a jail ~~which that~~ is used primarily for the detention of adults; when it finds by clear and convincing evidence that:

(1) The juvenile's behavior presents an imminent danger of harm to ~~himself that juvenile~~ or to others; and

(2) There is ~~no~~ not a less restrictive alternative to detention in an adult section ~~which that~~ serves the purposes of detention.

In determining whether the juvenile's behavior presents a danger to ~~himself that juvenile~~ or others, the ~~juvenile court~~ Juvenile Court shall consider, among other factors:

(a) The nature of and the circumstances surrounding the offense with which the juvenile is charged, including whether the offense was committed in an aggressive, violent, premeditated or ~~willful~~ intentional manner;

(b) The record and previous history of the juvenile, including ~~his~~ the juvenile's emotional attitude and pattern of living; and

(c) If applicable, the juvenile's behavior and mental condition during any previous and current period of detention or commitment.

Sec. 6. 15 MRSA §3203-A, sub-§1, ¶C, as amended by PL 1991, c. 39, is further amended to read:

C. In cases under Title 5, section 200-A, the law enforcement officer shall immediately notify the juvenile caseworker and the Department of the Attorney General. In all other cases the law enforcement officer shall immediately notify the juvenile caseworker if the law enforcement offi-

cer believes that immediate secure detention is required. If the juvenile caseworker determines not to order the detention or continued detention of the juvenile ~~in a case under Title 5, section 200-A~~, the caseworker shall inform the law enforcement officer and the attorney for the State prior to the juvenile's release. ~~The Attorney General or deputy or assistant attorney general for the State~~, with or without a request from a law enforcement officer, shall consider the facts of the case ~~and~~, consult with the juvenile caseworker who made the initial determination, consider standards for detention under subsection 4, paragraph C and subsection 4, paragraph D, subparagraphs (1) to (6) and may order detention or continued detention of the juvenile under the same or any authorized conditions pending the juvenile's initial appearance before the court.

Sec. 7. 15 MRSA §3203-A, sub-§4, ¶E, as amended by PL 1991, c. 493, §9, is further amended to read:

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

Sec. 8. 15 MRSA §3203-A, sub-§5, as amended by PL 1989, c. 741, §8, is further amended to read:

5. Detention hearing. Upon petition by a juvenile caseworker who ordered the detention or an attorney for the State who ordered the detention, the Juvenile Court shall review the decision to detain a juvenile.

A. A detention hearing ~~shall~~ must precede and ~~shall~~ must 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.

B. Following a detention hearing, a court shall order a juvenile's release, in accordance with subsection 4, unless it finds, by a preponderance

of the evidence, that continued detention is necessary to meet one of the purposes of detention provided in that subsection. The Juvenile Court shall ensure, by appropriate order, that any such continued detention is otherwise in accordance with the requirements of subsection 4.

C. ~~No continued~~ Continued detention may ~~not~~ be ordered unless the Juvenile Court ~~shall determine~~ determines that there is probable cause to believe that the juvenile has committed a juvenile crime.

Sec. 9. 15 MRSA §3301, sub-§6, as amended by PL 1985, c. 439, §11, is further amended to read:

6. Review by attorney for the State. If the juvenile caseworker decides not to request the ~~prosecuting attorney for the State~~ prosecuting attorney for the State to file a petition, ~~the juvenile caseworker shall inform~~ the juvenile caseworker shall inform the complainant, the law enforcement officer and the victim ~~shall be informed~~ of the decision and of the reasons therefor for the decision as soon as practicable ~~and~~ . ~~The juvenile caseworker shall be advised~~ advise the complainant, the law enforcement officer and the victim that they may submit their complaint to the prosecuting attorney for the State for review.

The ~~prosecuting attorney for the State~~ prosecuting attorney for the State on ~~his~~ that ~~attorney's~~ attorney's own motion or upon receiving a request for review by the law enforcement officer, the complainant or the victim, shall consider the facts of the case, consult with the juvenile caseworker who made the initial decision and then make a final decision as to whether ~~to file the petition shall be filed~~ to file the petition shall be filed. ~~Notwithstanding any action or inaction by the juvenile caseworker, the attorney for the State may file a petition at any time more than 30 days after the juvenile caseworker has been given notice pursuant to section 3203-A.~~

Sec. 10. 15 MRSA §3308, sub-§7, ¶B, as amended by PL 1997, c. 278, §1 and c. 421, Pt. A, §5, is repealed and the following enacted in its place:

B. Nothing in this section precludes sharing of any information in the records of court proceedings or other records described in subsection 5 by one criminal justice agency with another criminal justice agency for the administration of criminal justice or juvenile criminal justice or for criminal justice agency employment.

Sec. 11. 15 MRSA §3402, sub-§1, ¶B, as repealed and replaced by PL 1979, c. 512, §9, is amended to read:

B. An order of disposition, or of any subsequent order modifying disposition, for an abuse of discretion; and

Sec. 12. 15 MRSA §3402, sub-§1, ¶C, as repealed and replaced by PL 1979, c. 512, §9, is repealed.

Sec. 13. 15 MRSA §3402, sub-§4, as repealed and replaced by PL 1979, c. 512, §9, is amended to read:

4. Stays and releases. On an appeal pursuant to subsection 1, paragraphs A ~~through C~~ and B, the Superior Court shall consider a stay of execution and release pending the appeal.

Sec. 14. 15 MRSA §3405, sub-§2, as repealed and replaced by PL 1979, c. 512, §12, is amended to read:

2. Record on appeals. In appeals taken pursuant to section 3402, subsection 1, paragraphs A, ~~and B and C~~, review ~~shall~~ must be on the basis of the record of the proceedings in ~~juvenile court~~ Juvenile Court. In the interest of justice, the Superior Court may order that the record ~~shall~~ must consist of:

A. The untranscribed sound recording of the proceedings; or

B. An agreed or settled statement of facts with the consent of the parties.

Sec. 15. 15 MRSA §3407, sub-§2, ¶B, as enacted by PL 1979, c. 512, §14, is repealed.

Sec. 16. 15 MRSA §3407, sub-§3 is enacted to read:

3. Appeal from a bind-over order of the Juvenile Court. A bind-over order of the Juvenile Court by a party specified in section 3402, subsection 2 may be reviewed only by the Law Court pursuant to an appeal of a judgment of conviction in Superior Court following bind-over.

See title page for effective date.

CHAPTER 646

H.P. 535 - L.D. 726

An Act to Increase the Bonding Limits of the Maine Turnpike Authority

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

Sec. 1. 23 MRSA §1968, sub-§§1 and 2, as repealed and replaced by PL 1995, c. 138, §1, are amended to read: