

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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
1999

C. The person has no opportunity to perform the act.

3. Possession of something is involuntary if the person:

A. Did not knowingly procure or receive the thing possessed; or

B. Was not aware of the person's control of the possession for a sufficient period to have been able to terminate the person's possession of the thing.

See title page for effective date.

CHAPTER 196

H.P. 950 - L.D. 1347

An Act Addressing an Allegation of Prior Conviction When the Sentence Is Enhanced

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

Sec. 1. 15 MRSA §757, as repealed and replaced by PL 1981, c. 679, §1, is repealed.

Sec. 2. 17-A MRSA §9-A is enacted to read:

9-A. Allegation of prior conviction when sentence enhanced

1. Except as otherwise provided by law, a prior conviction must be specially alleged if the sentencing provision of a crime requires that a present sentence be enhanced because the person has been previously convicted of a specified crime. For the purpose of this section, a sentence is enhanced only if the maximum sentence that may be imposed is increased or a mandatory minimum nonsuspendable sentence must be imposed. The Supreme Judicial Court shall provide by rule the manner of alleging the prior conviction in a charging instrument and conditions for using that prior conviction at trial.

2. If the name and date of birth of the person charged with the current principal offense are the same as those of the person who has been convicted of the prior offense, it is presumed that the person charged with the current principal offense is the same person as that person convicted of the prior offense.

Sec. 3. 29-A MRSA §2412-A, sub-§3, as amended by PL 1995, c. 645, Pt. B. §19, is further amended by amending the last paragraph to read:

A separate reading of the allegation and a separate trial as are not required by Title 15, section 757 do not apply to a proceeding under this subsection.

Sec. 4. 29-A MRSA §2433, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. Permissible considerations. Notwithstanding the provisions of Title ~~15~~ 17-A, section ~~757~~ 9-A, in determining the appropriate sentence, the court shall consider whether the defendant operated with a passenger under 16 years of age, the record of convictions for criminal traffic offenses, adjudications of traffic infractions or suspensions of license for failure to submit to a test.

In determining the appropriate sentence, the court may rely on oral representations based on records maintained by the courts, the State Bureau of Identification or the Secretary of State, including telecommunications of records maintained by the Secretary of State.

If the defendant disputes the accuracy of a representation concerning a conviction or adjudication, the court shall grant a continuance to determine the accuracy of the record.

See title page for effective date.

CHAPTER 197

H.P. 1161 - L.D. 1672

An Act Concerning Service Relating to the Disclosure of Financial Records

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

Sec. 1. 9-B MRSA §163, sub-§1, as amended by PL 1997, c. 537, §2 and affected by §62, is further amended to read:

1. Service. A fiduciary institution shall disclose financial records under section 162 pursuant to a subpoena, summons, warrant or court order that on its face appears to have been issued upon lawful authority only if the subpoena, summons, warrant or court order is served upon the customer prior to disclosure by the fiduciary institution. The agency or person requesting the disclosure of financial records shall certify in writing to the fiduciary institution the fact that the subpoena, summons, warrant or court order has been served upon the customer. The court for good cause shown may delay or dispense with service of the subpoena, summons, warrant or court order upon the customer. The court shall delay or dispense with service of the subpoena, summons, warrant or court