

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

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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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Sec. 1. 15 MRSA §757, as repealed and replaced by PL 1981, c. 679, §1, is repealed.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

order upon the customer upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest. A subpoena, summons or warrant issued in connection with a criminal proceeding or state or federal grand jury proceeding, a request for information by the Department of Human Services for purposes related to establishing, modifying or enforcing a child support order or a trustee process lawfully issued need not be served upon the customer.

See title page for effective date.

CHAPTER 198

H.P. 1211 - L.D. 1740

An Act to Amend the Habitual Truancy Law

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

Sec. 1. 20-A MRSA §5051, sub-§2, ¶A-1, as enacted by PL 1989, c. 415, §19, is amended to read:

A-1. As part of the informal measures set out in paragraph A, the superintendent may ask the student's parents to attend a series of meetings with their child's teacher or other school personnel designated by the superintendent. The purpose of the meetings is to describe the education program to the parents and explain the value of their child attending an educational program, including, but not limited to, school, adult education, a high school equivalency degree program and other alternative education programs. The superintendent shall arrange meeting times convenient to the parents.

Sec. 2. 20-A MRSA §5051, sub-§2, ¶F, as amended by PL 1995, c. 124, §1, is further amended to read:

F. When a student is determined habitually truant and in violation of section 5001-A and the superintendent has made a good faith attempt to meet the requirements of paragraph A-1, the ~~school board~~ superintendent may notify the local law enforcement department of the decision. After this notification, a local law enforcement officer who sees a truant may offer to transport the truant to the appropriate school if the truant and the truant's parent or guardian provide verbal consent and if the truant:

- (1) Is off school grounds during school hours; and

- (2) Is not under the supervision of school personnel.

See title page for effective date.

CHAPTER 199

S.P. 351 - L.D. 1055

An Act to Bring Certain Maine Drug Test Levels into Conformity With Federal Standards

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

Sec. 1. 26 MRSA §683, sub-§2, ¶G, as amended by PL 1989, c. 832, §6, is further amended to read:

G. The cutoff levels for both screening and confirmation tests at which the presence of a substance of abuse in a sample is considered a positive test result.

- (1) Cutoff levels for confirmation tests for marijuana may not be lower than ~~20~~ 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples.

- (2) The Department of Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances of abuse, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the Department of Human Services establish a cutoff level for any substance of abuse for which the department has not established a cutoff level;

See title page for effective date.

CHAPTER 200

H.P. 685 - L.D. 941

An Act to Require That Certified Public Accounting and Public Accounting Firms Have a Majority of Their Owners Hold Certificates

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