

# 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.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1999**

**Public Advocate**

Personal Services	\$27,750	\$60,000
Provides funds from the Public Advocate Regulatory Fund for the reclassification of the Public Advocate, General Counsel, Counsel, Administrative Assistant and Senior Legal Secretary positions.		

<b>EXECUTIVE DEPARTMENT TOTAL</b>	\$192,500	\$264,500
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See title page for effective date.

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**CHAPTER 260**

**H.P. 1002 - L.D. 1400**

**An Act to Amend Juvenile Corrections Laws and to Establish a Juvenile Records Repository**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

**PART A**

**Sec. A-1. 15 MRSA §3203-A, sub-§1, ¶C,** as amended by PL 1997, c. 645, §6, 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 officer believes that immediate secure detention is required. If the juvenile caseworker determines not to order the detention or continued detention of the juvenile, the caseworker shall inform the law enforcement officer and the attorney for the State prior to the juvenile's release. The attorney for the State, with or without a request from a law enforcement officer, shall consider the facts

of the case, 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. If detention or continued detention is ordered, the detention placement must be made by the juvenile caseworker within 12 hours following the juvenile's arrest.

**Sec. A-2. 15 MRSA §3203-A, sub-§2, ¶A,** as amended by PL 1997, c. 752, §8, is further amended to read:

A. When a juvenile is arrested, the law enforcement officer or the juvenile caseworker shall notify the legal custodian of the juvenile without unnecessary delay and inform the legal custodian of the juvenile's whereabouts, the name and telephone number of the juvenile caseworker who has been contacted and, if a juvenile has been placed in a secure detention facility, that a detention hearing will be held within 48 24 hours following this placement, excluding Saturday, Sunday and legal holidays.

**Sec. A-3. 15 MRSA §3203-A, sub-§3,** as amended by PL 1991, c. 493, §4, is further amended to read:

**3. Law enforcement officer's report.** An officer who notifies a juvenile caseworker pursuant to subsection 1, paragraph A or B shall file a brief written report with the juvenile caseworker, stating the juvenile's name, date of birth and address; the name and address of the juvenile's legal custodian; and the facts that led to the notification, including the offense that the juvenile is alleged to have committed. The report must contain sufficient information to establish the jurisdiction of the Juvenile Court.

A report of a notification pursuant to subsection 1, must be filed within 24 hours of the notification, excluding nonjudicial days. When a juvenile caseworker orders the conditional release of a juvenile and a report of the notification is not filed with the juvenile caseworker within 15 days, excluding nonjudicial days, the juvenile caseworker shall review the conditions imposed at the time of the release. Following the review, the juvenile caseworker may lessen or eliminate the conditions.

The date on which the report is received by the juvenile caseworker is the date of referral to the juvenile caseworker for an intake assessment.

**Sec. A-4. 15 MRSA §3203-A, sub-§4, ¶E**, as amended by PL 1997, c. 645, §7, 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 in time for the detention hearing to take place within 24 hours following 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. A-5. 15 MRSA §3203-A, sub-§5**, as amended by PL 1997, c. 645, §8 and c. 752, §9, is repealed and the following enacted in its place:

**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 within 24 hours following the detention, excluding Saturday, Sunday and legal holidays.

A. A detention hearing must precede and 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. Continued detention may not be ordered unless the Juvenile Court determines that there is probable cause to believe that the juvenile has committed a juvenile crime.

**Sec. A-6. 15 MRSA §3301, sub-§1, ¶A**, as enacted by PL 1977, c. 520, §1, is amended to read:

A. Decide that ~~no further~~ action requiring ongoing supervision is not required; either in the interests of the public or of the juvenile;

**Sec. A-7. 15 MRSA §3301, sub-§5, ¶A**, as amended by PL 1989, c. 502, Pt. A, §41, is further amended to read:

A. Decide that ~~no further~~ action requiring ongoing supervision is not required either in the interests of the public or of the juvenile. If the juvenile caseworker determines that the facts in the report prepared for the caseworker by the referring officer pursuant to section 3203-A, subsection 3; are sufficient to file a petition, but in the caseworker's judgment the interest of the juvenile and the public will be served best by providing the juvenile with services voluntarily accepted by the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated, the juvenile caseworker may refer the juvenile for that care and treatment and not request that a petition be filed;

**Sec. A-8. 15 MRSA §3301, sub-§6-A**, as enacted by PL 1997, c. 421, Pt. A, §3, is amended to read:

**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.

This subsection does not preclude the release of the identity of a juvenile on conditional release pursuant to section 3203-A or on informal adjustment pursuant to this section to a criminal justice agency for the administration of juvenile criminal justice.

**Sec. A-9. 15 MRSA §3314, sub-§2**, as amended by PL 1997, c. 752, §21, is further amended to read:

**2. Suspended disposition.** The court may impose any of the dispositional alternatives provided in subsection 1; and may suspend its disposition and place the juvenile on a specified period of probation that is subject to such provisions of Title 17-A, section 1204 as the court may order and that is administered pursuant to the provisions of Title 34-A, chapter 5, subchapter IV, except that in no case may the court impose the condition set out in Title 17-A, section 1204, subsection 1-A. The court may impose as a condition of probation that a juvenile must reside outside the juvenile's home in a setting satisfactory to the juvenile caseworker if the court determines that reasonable efforts have been made to prevent or

eliminate the need for removal of the juvenile from the juvenile's home and that continuation in the juvenile's home would be contrary to the welfare of the juvenile. Imposition of such a condition does not affect the legal custody of the juvenile.

Revocation of probation is governed by the ~~procedure procedures~~ contained in Title 17-A, sections 1205, ~~1205-A~~ and 1206, except that ~~the provisions of Title 17-A, section 1205, subsections 4 and 5 requiring a preliminary hearing and~~ Title 17-A, section 1206, subsection 7-A ~~does do~~ not apply; ~~provided that~~; ~~however~~, a disposition under subsection 1, paragraph F may be modified to a disposition under subsection 1, paragraph H. ~~If a motion for revocation of probation is filed with the court and if the juvenile is being detained pending the court hearing for an alleged violation of probation, the court shall review within 5 days of the filing of the motion~~ 48 hours following the ~~detention~~, excluding Saturdays, Sundays and legal holidays, the decision to detain the juvenile, ~~if the court has not previously reviewed the decision.~~ Following that review, the court shall order the juvenile's release unless the court finds ~~that there is probable cause to believe that the juvenile has violated a condition of probation and finds~~, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention under section 3203-A, subsection 4, paragraph C.

**Sec. A-10. 15 MRSA §3315, sub-§3**, as amended by PL 1997, c. 464, §2, is further amended to read:

**3. Court review of determination.** Whenever a court makes a determination pursuant to section 3314, subsection 1, paragraph F or section 3314, subsection 2, that determination must be reviewed by the court not less than once every 12 months until the juvenile is discharged or no longer residing outside the juvenile's home. This review does not affect a juvenile's commitment to a Department of Corrections juvenile correctional facility.

**Sec. A-11. 34-A MRSA §4104, sub-§1**, as enacted by PL 1991, c. 400, is repealed.

## PART B

**Sec. B-1. 25 MRSA §1541, sub-§4**, as enacted by PL 1975, c. 763, §4, is amended to read:

**4. Rules and regulations.** The commanding officer shall make and forward to all persons charged with any duty or responsibility under this section and sections ~~1542~~ 1542-A, 1544, 1547 and 1549; rules, regulations and forms for the taking, filing, preserving and distributing of fingerprints and other juvenile crime and criminal history record information as provided in this chapter. Before becoming effective,

such rules, regulations and forms are to be approved by the Attorney General.

**Sec. B-2. 25 MRSA §1541, sub-§4-A**, as amended by PL 1995, c. 65, Pt. A, §73 and affected by §153 and Pt. C, §15, is repealed and the following enacted in its place:

**4-A. Responsibility for the collection and maintenance of criminal history record information and juvenile crime information.** The commanding officer shall collect and maintain:

A. Fingerprints and other criminal history record information pertinent to the identification of individuals who have been arrested as fugitives from justice or who have been arrested or charged with any criminal offense under the laws of this State except a violation of Title 12 or 29-A that is a Class D or E crime other than an alcohol-related or drug-related offense. For purposes of this paragraph, an "alcohol-related or drug-related offense" is a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level or the operation or attempted operation of a motorcraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level. The commanding officer may collect and maintain fingerprints and other criminal history record information that may be related to other criminal offenses or to the performance of the commanding officer's obligations under state laws and under agreements with agencies of the United States or any other jurisdiction; and

B. Fingerprints and other juvenile crime information pertinent to the identification of individuals who have been taken into custody for juvenile crimes under a uniform interstate compact on juveniles or who have been arrested or charged with juvenile crimes under the laws of this State. The commanding officer may collect and maintain fingerprints and other juvenile crime information that may be related to other juvenile crimes or to the performance of the commanding officer's obligations under state laws and under agreements with agencies of the United States or any other jurisdiction.

**Sec. B-3. 25 MRSA §1542-A, sub-§1, ¶A**, as amended by PL 1995, c. 65, Pt. A, §74 and affected by §153 and Pt. C, §15, is further amended to read:

A. Charged with the commission of a criminal offense ~~other than a crime found in Title 12 or 29-A~~ except a violation of Title 12 or 29-A that is a Class D or E crime other than an alcohol-

related or drug-related offense, as defined in section 1541, subsection 4-A, paragraph A;

**Sec. B-4. 25 MRSA §1542-A, sub-§1, ¶B,** as enacted by PL 1987, c. 512, §3, is amended to read:

B. Arrested as a fugitive from justice or taken into custody for a juvenile crime pursuant to a uniform interstate compact on juveniles;

**Sec. B-5. 25 MRSA §1542-A, sub-§1, ¶E,** as amended by PL 1991, c. 548, Pt. A, §22, is further amended to read:

E. Who dies under circumstances of death constituting a medical examiner case under Title 22, section 3025, if sought pursuant to Title 22, section 3028, subsection 3; or at the request of the Chief Medical Examiner or the Attorney General; ~~or~~

**Sec. B-6. 25 MRSA §1542-A, sub-§1, ¶F,** as amended by PL 1999, c. 110, §5, is further amended to read:

F. Whose fingerprints have been ordered by a court; ~~or~~

**Sec. B-7. 25 MRSA §1542-A, sub-§1, ¶G,** as enacted by PL 1999, c. 110, §6, is amended to read:

G. Who is a teacher or educational personnel applicant subject to Title 20-A, section 6103-; or

**Sec. B-8. 25 MRSA §1542-A, sub-§1, ¶H** is enacted to read:

H. Charged with the commission of a juvenile crime.

**Sec. B-9. 25 MRSA §1542-A, sub-§2,** as enacted by PL 1987, c. 512, §3, is amended to read:

**2. Palm prints, footprints and photographs.** Whenever fingerprints are to be taken pursuant to subsection 1, paragraph A ~~or~~ B or G, palm prints, footprints and photographs may also be taken. Whenever palm prints, footprints or photographs are ordered to be obtained pursuant to subsection 1, paragraph C, D or F; or are sought pursuant to paragraph E, the palm prints, footprints or photographs ~~shall~~ must be taken.

**Sec. B-10. 25 MRSA §1542-A, sub-§3, ¶B,** as enacted by PL 1987, c. 512, §3, is amended to read:

B. The law enforcement agency ~~which~~ that arrests a fugitive from justice or takes a person into custody for a juvenile crime pursuant to a uniform interstate compact on juveniles shall take or cause to be taken the fingerprints of that person.

**Sec. B-11. 25 MRSA §1542-A, sub-§3, ¶G** is enacted to read:

G. The law enforcement agency that has primary responsibility for the investigation and prosecution of the juvenile offense shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph H. If the juvenile is arrested, fingerprints must be taken prior to that person's being released from custody. If a juvenile court proceeding is commenced against a person without a juvenile arrest having been made, fingerprints must be taken within 5 days of the filing of the petition at a time and place specified by the responsible agency after consulting with the juvenile caseworker. The juvenile shall appear at the specified time and place and shall submit to the process.

**Sec. B-12. 25 MRSA §1542-A, sub-§4,** as amended by PL 1999, c. 110, §8, is further amended to read:

**4. Duty to submit to State Bureau of Identification.** It is the duty of the law enforcement agency taking the fingerprints as required by subsection 3, paragraphs A ~~and~~ B and G to transmit forthwith to the State Bureau of Identification the criminal fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless an express request is made by the commanding officer of the State Bureau of Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be transmitted forthwith to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Education. The bureau shall retain the fingerprints, except as provided under Title 20-A, section 6103, subsection 9.

**Sec. B-13. 25 MRSA §1542-A, sub-§5, ¶A,** as enacted by PL 1987, c. 512, §3, is repealed.

**Sec. B-14. 25 MRSA §1542-A, sub-§5, ¶B,** as amended by PL 1995, c. 65, Pt. A, §75 and affected by §153 and Pt. C, §15, is further amended to read:

B. Charged with the commission of a criminal offense found in Title 12 or 29-A that is a Class D or E crime but is not an alcohol-related or drug-related offense as defined in section 1541, subsection 4-A, paragraph A;

**Sec. B-15. 25 MRSA §1542-A, sub-§6,** as enacted by PL 1987, c. 512, §3, is amended to read:

**6. Palm prints, footprints and photographs.** Whenever fingerprints are taken pursuant to subsection 5, paragraph ~~A,~~ B or C, palm prints, footprints and photographs may also be taken. In addition, palm

prints, footprints or photographs may also be taken for any law enforcement purpose when a person voluntarily submits to them.

**Sec. B-16. 25 MRSA §1542-A, sub-§8**, as amended by PL 1999, c. 110, §9, is further amended to read:

**8. Fingerprint record forms.** Fingerprints taken pursuant to subsection 1, paragraphs A, B as to a person arrested as a fugitive from justice and D and subsection 5, paragraphs B, C and D must be taken on a form furnished by the State Bureau of Identification, such form to be known as the Criminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraphs E, F and G must be taken on a form furnished by the bureau, such form to be known as the Noncriminal Fingerprint Record. Fingerprints taken pursuant to subsection ~~5, paragraph A~~ 1, paragraphs B as to a person taken into custody for a juvenile crime pursuant to a uniform interstate compact on juveniles and H must be taken on a form furnished by the State Bureau of Identification, such form to be known as the Juvenile Crime Fingerprint Record. Fingerprints taken pursuant to subsection 1, ~~paragraphs~~ paragraph C or F must be taken upon the form appropriate for that purpose.

**Sec. B-17. 25 MRSA §1547**, as amended by PL 1995, c. 65, Pt. A, §76 and affected by §153 and Pt. C, §15, is repealed and the following enacted in its place:

**§1547. Courts to submit juvenile and criminal records to the State Bureau of Identification**

At the conclusion of a juvenile court proceeding or at the conclusion of a prosecution for a criminal offense except a violation of Title 12 or Title 29-A that is a Class D or E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, the court shall transmit to the State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

**Sec. B-18. Effective date.** This Act takes effect September 1, 2000.

Effective September 1, 2000.

## CHAPTER 261

H.P. 1195 - L.D. 1705

### An Act to Amend the Maine Administrative Procedure Act

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

**Sec. 1. 5 MRSA §8056, sub-§1, ¶B**, as amended by PL 1995, c. 373, §6, is further amended to read:

B. File the original rule as signed by the Attorney General or an assistant attorney general and the authorized representative of the agency, and the statement required by section 8052, subsection 5, with the Secretary of State in a form prescribed by the Secretary of State, which form is susceptible to frequent and easy revision; .

(1) Through rulemaking, an agency may incorporate by reference all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this State or by a nationally recognized organization or association.

(2) The reference in the agency rules must fully identify the incorporated matter by exact title, edition or version and date of publication.

(3) The rules must state where copies of the incorporated matter are available at cost from the agency issuing the rule or where copies are available from the agency of the United States, this State or an organization or association originally issuing that matter.

(4) An agency incorporating a matter by reference shall submit a copy of the incorporated matter to the Secretary of State;

See title page for effective date.

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## CHAPTER 262

H.P. 1449 - L.D. 2070

### An Act to Protect Library Materials in Circulation

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

**Sec. 1. 17-A MRSA §360, sub-§1, ¶C**, as amended by PL 1997, c. 319, §1, is further amended to read: