

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

2001-02

**TREASURER OF STATE,
OFFICE OF**

Debt Service - Treasury

All Other \$5,000,000

Provides funds to meet the debt service payments related to a \$100,000,000 tax anticipation note authority for fiscal year 2001-02.

PART B

Sec. B-1. 22 MRSA §258, sub-§8 is enacted to read:

8. Transition. When benefits are not available under this section, the commissioner may provide benefits under pharmaceutical benefits programs that were in effect on May 26, 2001.

Sec. B-2. Transfer of General Fund and Fund for a Healthy Maine funding. Notwithstanding any other provision of law, the Commissioner of Human Services is authorized to transfer appropriations from the General Fund and Other Special Revenue allocations from the Fund for a Healthy Maine legislatively authorized to the Department of Human Services for operation of the elderly low-cost drug program pursuant to the Maine Revised Statutes, Title 22, section 254. Transfers under this section are limited to transfers from the Medical Care - Payments to Providers program to the Elderly Low-cost Drug program as a separate program for budget purposes. Transfers under this section may be accomplished by financial order upon the recommendation of the State Budget Officer and approval of the Governor.

Sec. B-3. Transfer of Other Special Revenue funding. Notwithstanding any other provision of law, the Commissioner of Human Services is authorized to transfer Other Special Revenue allocations legislatively authorized to the Department of Human Services for purposes of providing prescription drug benefits under the Healthy Maine Prescription Program under the Maine Revised Statutes, Title 22, section 258. Transfers under this section are limited to transfers from the Medical Care - Payments to Providers program to the Maine Rx Program under the Maine Revised Statutes, Title 22, section 2681. Transfers under this section may be accomplished by financial order upon the recommendation of the State Budget Officer and approval of the Governor.

Sec. B-4. Retroactivity. Section 1 of this Part applies retroactively to May 26, 2001.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 28, 2001.

CHAPTER 468

H.P. 158 - L.D. 169

An Act to Ensure the Continuing Beauty and Accessibility of Capitol Park

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

Sec. 1. 3 MRSA §162, sub-§17, as amended by PL 1997, c. 43, §1, is further amended to read:

17. Approve plans to preserve and develop the State House and the immediate grounds. To approve architectural, aesthetic and decorative alterations to the State House. The Legislative Council also has authority to preserve and develop the aesthetic and historical integrity of the State House and the immediate grounds. The exercise of this authority with respect to Capitol Park must be consistent with the plan for Capitol Park developed by the Olmsted Brothers firm in 1920 as revised by the Pressley firm in 1990. The Legislative Council has the power to enter into contracts and other powers necessary to implement this subsection and chapter 31;

Sec. 2. 3 MRSA §902-A, sub-§2, ¶B is enacted to read:

B. Any action taken with respect to Capitol Park must be consistent with the plan for Capitol Park developed by the Olmsted Brothers firm in 1920 as revised by the Pressley firm in 1990.

See title page for effective date.

CHAPTER 469

H.P. 1250 - L.D. 1698

An Act to Amend the Laws Governing DNA Testing

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

Sec. 1. 15 MRSA c. 305-B is enacted to read:

CHAPTER 305-B

POST-JUDGMENT CONVICTION MOTION FOR DNA ANALYSIS

§2136. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. CODIS. "CODIS" means the Federal Bureau of Investigation's national DNA identification index system that allows for storage and exchange of DNA records submitted by state and local forensic DNA laboratories and is derived from the Combined DNA Index System.

2. Crime lab. "Crime lab" means the Maine State Police Crime Laboratory located in Augusta.

3. DNA. "DNA" means deoxyribonucleic acid.

4. DNA analysis. "DNA analysis" means DNA typing tests that derive identification information specific to a person from that person's DNA.

5. DNA record. "DNA record" means DNA identification information obtained from DNA analysis and stored in the state DNA data base or CODIS.

6. DNA sample. "DNA sample" means a blood sample provided by a person convicted of one of the offenses listed in this chapter or submitted to the crime lab for analysis pursuant to a criminal investigation.

7. State DNA data base. "State DNA data base" means the DNA identification record system administered by the Chief of the State Police.

8. State DNA data bank. "State DNA data bank" means the repository of DNA samples maintained by the Chief of the State Police at the crime lab collected pursuant to chapter 194 and this chapter.

§2137. Postjudgment of conviction motion for DNA analysis; new trial based on analysis results

A person convicted of a crime under the laws of this State that carries the potential punishment of imprisonment of at least 20 years and for which the person is in actual execution of a sentence of imprisonment or is subject to a sentence of imprisonment that is to be served in the future because another sentence must be served first may file a written postjudgment of conviction motion in the underlying criminal proceeding moving the court to order DNA analysis of evidence in the control or possession of the State that is related to the underlying investigation or prosecution that led to the person's conviction and a new trial based on the results of that analysis as authorized by this chapter.

§2138. Motion; process

1. Filing motion. A person authorized in section 2137 who chooses to move for DNA analysis shall file the motion in the underlying criminal proceeding. The motion must be assigned to the trial judge or justice who imposed the sentence unless that judge or justice is unavailable, in which case the appropriate chief judge or chief justice shall assign the motion to another judge or justice. Filing and service must be made in accordance with Rule 49 of the Maine Rules of Criminal Procedure.

2. Preservation of evidence. If a motion is filed under this chapter, the court shall order the State to preserve during the pendency of the proceeding all evidence in the State's possession or control that could be subjected to DNA analysis. The State shall prepare an inventory of the evidence and submit a copy of the inventory to the defense and the court. If evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions.

3. Counsel. If the court finds that the person filing a motion under section 2137 is indigent, the court may appoint counsel for the person at any time during the proceedings under this chapter.

4. Proof required. The court shall order DNA analysis if a person authorized under section 2137 presents prima facie evidence that:

A. The evidence sought to be analyzed is material to the issue of the person's identity as the perpetrator of, or accomplice to, the crime that resulted in the conviction;

B. A sample of the evidence is available for DNA analysis;

C. The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced or altered in a material way;

D. The evidence was not previously subjected to DNA analysis or, if previously analyzed, will be subject to DNA analysis technology that was not available when the person was convicted; and

E. The identity of the person as the perpetrator of the crime that resulted in the conviction was at issue during the person's trial.

5. Court finding; analysis ordered. The court shall state its findings of fact on the record or shall make written findings of fact supporting its decision to grant or deny a motion to order DNA analysis. If the court grants a motion for DNA analysis under this section, the crime lab shall perform DNA analysis on the identified evidence and on a DNA sample obtained from the person.

6. Appeal from court decision to grant or deny motion to order DNA analysis. An aggrieved person may not appeal as a matter of right from the denial of a motion to order DNA analysis. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule. The State may not appeal from a court order to grant a motion to order DNA analysis.

7. Payment. If the person authorized in section 2137 is able, the person shall pay for the cost of the DNA analysis. If the court finds that the person is indigent, the crime lab shall pay for the cost of DNA analysis ordered under this section.

8. Results. The crime lab shall provide the results of the DNA analysis under this chapter to the court, the person authorized in section 2137 and the attorney for the State. Upon motion by the person or the attorney for the State, the court may order that copies of the analysis protocols, laboratory procedures, laboratory notes and other relevant records compiled by the crime lab be provided to the court and to all parties.

A. If the results of the DNA analysis are inconclusive or show that the person is the source of the evidence, the court shall deny any motion for a new trial. If the DNA analysis results show that the person is the source of the evidence, the defendant's DNA record must be added to the state DNA data base and state DNA data bank.

B. If the results of the DNA analysis show that the person is not the source of the evidence and the person does not have counsel, the court shall appoint counsel if the court finds that the person is indigent. The court shall then hold a hearing at which the person must establish by clear and convincing evidence that:

(1) Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence;

(2) The evidence was collected, handled and preserved by procedures that allow the court to find that the evidence is not contaminated or is not so degraded that the DNA profile of the analyzed sample of the evidence can not be determined to be identical to the DNA sample initially collected during the investigation; and

(3) The person's purported exclusion as the source of the evidence, balanced against the other evidence in the case, is sufficient to justify that the court grant a new trial.

9. Request for reanalysis. Upon motion of the attorney for the State, the court shall order reanalysis of the evidence and shall stay the person's motion for a new trial pending the results of DNA analysis.

10. Court's findings; new trial granted or denied. The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person authorized in section 2137 a new trial under this section.

11. Appeal from a court decision to grant or deny a motion for new trial. An aggrieved person may not appeal from the denial of a new trial as a matter of right. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule. The State may appeal as a matter of right from a court decision to grant the person a new trial to the Supreme Judicial Court, sitting as the Law Court. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule.

12. Exhaustion. A person who has taken a direct appeal from the judgment of conviction is not precluded from utilizing the remedy of this chapter while the appeal is pending, provided that the resolution of the motion is automatically stayed pending final disposition of the direct appeal unless the Supreme Judicial Court, sitting as the Law Court, on motion otherwise directs.

A person who has initiated a collateral attack upon the judgment of conviction under chapter 305-A is not precluded from utilizing the remedy of this chapter while that post-conviction review proceeding is pending, provided that resolution of the motion is automatically stayed pending final disposition of the post-conviction review proceeding unless the assigned justice in the post-conviction review proceeding otherwise directs.

13. Victim notification. When practicable, the attorney for the State shall make a good faith effort to give written notice of a motion under this section to the victim of the person described in subsection 1 or to the victim's family if the victim is deceased. The notice must be by first-class mail to the victim's last known address. Upon the victim's request, the attorney for the State shall give the victim notice of the time and place of any hearing on the motion and shall inform the victim of the court's grant or denial of a new trial to the person.

14. Preservation of biological evidence. Effective October 15, 2001, the investigating law enforcement agency shall preserve any biological evidence identified during the investigation of a crime

or crimes for which any person may file a postjudgment of conviction motion for DNA analysis under this section. The evidence must be preserved for the period of time that any person is incarcerated in connection with that case.

15. Report. Beginning January 2003 and annually thereafter, the Department of Public Safety shall report on post-conviction DNA analysis to the joint standing committee of the Legislature having jurisdiction over criminal justice matters. The report must include the number of postjudgment of conviction analyses completed, costs of the analyses and the results. The report also may include recommendations to improve the postjudgment of conviction analysis process.

See title page for effective date.

CHAPTER 470

H.P. 1352 - L.D. 1809

An Act Concerning the Penalties for Late Filing of Accelerated Campaign Reporting Under the Maine Clean Election Act

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, to ensure the uniform application of the law for calendar year 2001, it is necessary that this Act take effect immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 1 MRSA §1002, sub-§1, ¶F is enacted to read:

F. This subsection is repealed January 1, 2002.

Sec. 2. 1 MRSA §1002, sub-§1-A is enacted to read:

1-A. Membership. The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of 5 members appointed as follows.

A. By December 1, 2001 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives jointly shall establish and advertise a 30-day period to allow members of the public and groups and organizations to propose qualified individuals to be nominated for appointment to the commission.

B. By January 1, 2002 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives each shall present a list of 3 qualified individuals to the Governor for appointment of 4 members to the commission. The appointed leadership from each party in both bodies of the Legislature jointly shall present a list of 3 qualified individuals to the Governor for appointment of a 5th member to the commission.

C. By March 15, 2002, the Governor shall appoint the members of the commission selecting one member from each of the lists of nominees presented in accordance with paragraph A. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature. No more than 2 commission members may be enrolled in the same party.

D. Two initial appointees are appointed for one-year terms, 2 are appointed for 2-year terms and one is appointed for a 3-year term, according to a random lot drawing under the supervision of the Secretary of State. Subsequent appointees are appointed to serve 3-year terms. A person may not serve more than 2 terms.

E. The commission members shall elect one member to serve as chair for at least a 2-year term.

F. Upon a vacancy during an unexpired term, the term must be filled as provided in this paragraph for the unexpired portion of the term only. The nominee must be appointed by the Governor from a list of 3 qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee who created the vacancy. If the vacancy during an unexpired term was created by the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of 3 qualified candidates provided jointly by the leaders of each party of each body of the Legislature.