

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
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NON-EMERGENCY LAWS IS
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TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

CHAPTER 393

H.P. 300 - L.D. 380

**An Act To Protect Public Safety
Using DNA Data of Juvenile Violent
Offenders**

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

Sec. 1. 25 MRSA §1572, sub-§6, as enacted by PL 1995, c. 457, §1, is amended to read:

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

Sec. 2. 25 MRSA §1572, sub-§7-A is enacted to read:

7-A. Juvenile. "Juvenile" means any person who has not attained 18 years of age.

Sec. 3. 25 MRSA §1574, as amended by PL 2001, c. 325, §§1 to 5, is further amended to read:

§1574. Biological sample required for DNA analysis upon conviction or adjudication

1. Conviction subsequent to effective date. A person convicted, on or after January 1, 1996 and before October 1, 2001, of a crime listed in subsection 4 or a person convicted on or after October 1, 2001, of a crime listed in subsection 5 shall submit to having a DNA sample ~~drawn~~ taken and at the time of sentencing the court shall enter an order directing that the DNA sample be ~~drawn~~ taken. If the convicted person's sentence includes a straight term of imprisonment or a split term of imprisonment, the DNA sample may be ~~drawn~~ taken at any time following the commencement of the straight term or initial unsuspended portion of the term of imprisonment. If the convicted person's sentence includes a period of probation but no immediate imprisonment, the DNA sample may be ~~drawn~~ taken at any time following commencement of the probation period as directed by the probation officer. If the convicted person's sentence includes a period of probation, the court may attach the duty to submit to having a DNA sample ~~drawn~~ taken as a condition of probation.

2. Conviction prior to effective date. A person convicted and incarcerated prior to January 1, 1996, as a result of a conviction for a crime listed in subsection 4, must have a DNA sample ~~drawn~~ taken before release from the corrections system.

3-A. Juveniles. A juvenile adjudicated on or after October 1, 2003 of a juvenile crime that, if committed by an adult, would constitute an offense listed in subsection 6 is subject to the requirements of this section.

4. Applicable offenses for persons convicted after January 1, 1996 and before October 1, 2001. This ~~section~~ subsection applies to a person convicted after January 1, 1996 and before October 1, 2001 of one or more of the following offenses or an attempt of one or more of the following offenses:

- A. Murder or criminal homicide in the first or 2nd degree;
- B. Felony murder;
- C. Manslaughter;
- D. Aggravated assault;
- D-1. Elevated aggravated assault;
- E. Gross sexual assault, including that formerly denominated as gross sexual misconduct;
- E-1. Rape;
- F. Sexual abuse of a minor;
- G. Unlawful sexual contact;
- G-1. Visual sexual aggression against a child;
- G-2. Sexual misconduct with a child under 14 years of age;
- H. Kidnapping;
- I. Criminal restraint;
- J. Burglary;
- K. Robbery;
- L. Arson;
- M. Aggravated criminal mischief; or
- N. Any lesser included offense of any crime identified in paragraphs A to M if the greater offense is initially charged. "Lesser included offense" has the same meaning as in Title 17-A, section 13-A.

5. Applicable offenses for persons convicted on or after October 1, 2001. This ~~section~~ subsection applies to a person convicted on or after October 1, 2001 of one or more of the following offenses or an attempt of one or more of the following offenses:

- A. Murder;

- B. A Class A, B or C crime;
- C. Sexual abuse of a minor;
- D. Unlawful sexual contact;
- E. Visual sexual aggression against a child;
- F. Sexual contact with a child under 14 years of age;
- G. Solicitation of a child by a computer to commit a prohibited act; or
- H. Any lesser included offense of any crime identified in paragraphs A to G if the greater offense is initially charged. "Lesser included offense" has the same meaning as in Title 17-A, section 13-A.

6. Applicable offenses for juveniles adjudicated on or after October 1, 2003. This subsection applies to a juvenile adjudicated on or after October 1, 2003 of committing a juvenile crime that, if committed by an adult, would constitute one or more of the following offenses or an attempt of one or more of the following offenses:

- A. Murder;
- B. Felony murder;
- C. Manslaughter;
- D. Aggravated assault;
- E. Elevated aggravated assault;
- F. Gross sexual assault;
- G. Unlawful sexual contact;
- H. Kidnapping;
- I. Criminal restraint;
- J. Burglary;
- K. Robbery;
- L. Arson;
- M. Aggravated criminal mischief; or
- N. Causing a catastrophe.

Sec. 4. 25 MRSA §1575, as amended by PL 1997, c. 608, §4, is further amended to read:

§1575. Procedure for collection of biological sample for DNA analysis

1. Collection equipment. The crime lab shall provide collection equipment or a kit for the collection

of a ~~blood~~ biological sample required by section 1574 to persons authorized to ~~draw blood~~ collect samples.

2. Person to draw blood sample. Only a duly licensed physician, physician assistant, registered nurse, licensed practical nurse, person certified by the Department of Human Services or person whose occupational license or training allows that person to draw blood samples may draw a blood sample for DNA sample analysis.

2-A. Person to collect biological sample. A person described in subsection 2, a corrections officer, a probation officer or a juvenile community corrections officer may collect a biological sample that is not a blood sample.

3. Liability. A person authorized under this section to draw blood or collect other biological samples is not liable for damages or liable for the act of drawing ~~a~~ blood or collecting another biological sample for DNA analysis when that person exercises due care in drawing blood or collecting the ~~blood~~ biological sample.

4. Crime lab. All ~~blood~~ biological samples collected pursuant to this Act must be forwarded to the crime lab for DNA analysis.

Sec. 5. 25 MRSA §1576, as enacted by PL 1995, c. 457, §1, is amended to read:

§1576. Procedure for collection; conducting DNA analysis

The Chief of the State Police may adopt rules governing the procedures to be used in the collection, submission, identification, analysis and storage of DNA samples and the results of the typing of ~~blood~~ biological samples submitted pursuant to this Act. The ~~DNA~~ biological sample must be securely stored in the state DNA data bank. The results of the typing of the ~~blood~~ biological samples must be securely stored in the state DNA data base.

Sec. 6. 25 MRSA §1577, sub-§2, ¶D, as enacted by PL 1995, c. 457, §1, is amended to read:

D. A person who has been identified and charged with a criminal offense or a juvenile crime as a result of a search of DNA records stored in the state DNA data base. A person who has been identified and charged with a criminal offense or a juvenile crime has access only to that person's records and any other records that person is entitled to under the Maine Rules of Evidence.

Sec. 7. 25 MRSA §1577, sub-§4, as enacted by PL 1995, c. 457, §1, is amended to read:

4. Expungement. A person whose DNA record has been stored in the state DNA data base may petition the Superior Court for expungement on the ground that the conviction or adjudication justifying the inclusion of the DNA record in the state DNA data base has been reversed or dismissed. Upon receipt of an expungement order and a certified copy of the order reversing and dismissing the conviction or adjudication, the Chief of the State Police shall purge from the state DNA data base the DNA record and all identifiable information resulting exclusively from the reversed conviction or adjudication.

See title page for effective date.

CHAPTER 394

H.P. 212 - L.D. 257

An Act To Honor the Intent of Organ Donors

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

Sec. 1. 22 MRSA §2911 is enacted to read:

§2911. Honor intent of organ donors

1. General rule. The intention of a person to make a donation of that person's own body organ or tissue after death must be honored. In the absence of a written statement overriding donor intent in accordance with subsection 2, or revocation or amendment of the donor's execution of the intent to donate under section 2906, Title 18-A, Article 5, Part 8 or Title 29-A, section 1402-A, health care providers licensed in this State and federally designated organ procurement organizations shall act in accordance with the donor's intention and may take appropriate actions to effect the gift.

2. Overriding donor intent. Next of kin to a person who has expressed intent to donate that person's own body organ or tissue after death may override the intention of the donor in accordance with this subsection by executing a written statement, witnessed by a person who is not a relative of the donor. The written statement must indicate that the signer has discussed honoring the intent of the organ donor with a representative of an organ procurement organization and must include:

A. An indication that the donor revoked or altered the statement of intent to donate, as provided in section 2906 or Title 18-A, Article 5, Part 8. Next of kin acting under this paragraph shall provide evidence of revocation or alteration by the donor after the date of the donor's expressing a willingness or intention to donate; or

B. An indication of the decision of the signer to override the expressed intention of the donor.

If more than one person qualifies as next of kin and also qualifies to execute an anatomical gift of all or part of the decedent's body under this chapter or any other provision of law, the document used to override donor intent must show the agreement of a majority of those persons at the level of priority of the signer under Title 18-A, section 5-805 or Title 22, section 2902, subsection 2.

Sec. 2. 29-A MRSA §1301, sub-§8 is enacted to read:

8. Organ and tissue donation. This subsection applies to organ donation under section 1402-A.

A. Before issuing or renewing a driver's license, the Secretary of State shall make available to the applicant a short statement on the opportunity to save a life through organ and tissue donation and shall provide the applicant an opportunity to become an organ or tissue donor. The applicant must be given a form on which to indicate whether the applicant intends to become a donor.

B. Information regarding the opportunity to save a life through organ and tissue donation must be prominently displayed on driver's license information mailed to applicants or distributed at offices of the bureau and must be prominently displayed on posters in offices of the bureau.

Sec. 3. 29-A MRSA §1354, sub-§6, ¶B, as enacted by PL 1995, c. 505, §15 and affected by §22, is amended to read:

B. The Secretary of State shall develop and implement a standardized driver education curriculum that establishes minimum standards for instructional goals and learning objectives. The Secretary of State shall require distribution of information on organ and tissue donation and the possibility of saving lives through organ donation.

Sec. 4. 29-A MRSA §1402-A, sub-§§4 and 5 are enacted to read:

4. Anatomical gift coordination. In order to coordinate the donation of anatomical gifts and the receipt and transplantation of organs and tissues, beginning July 1, 2004, the Secretary of State shall perform the following duties.

A. The Secretary of State shall modify its existing database system to maintain the Maine Organ Donor Registry, referred to in this section as "the registry." The Secretary of State shall include information on donors who indicate their inten-