

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION

July 29, 2005

SECOND REGULAR SESSION

January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR

SECOND SPECIAL SESSION

NON-EMERGENCY LAWS IS

OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR

SECOND REGULAR SESSION

NON-EMERGENCY LAWS IS

AUGUST 23, 2006

**PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.**

Penmor Lithographers

Lewiston, Maine

2006

Sec. 10. 34-A MRSA §3047, sub-§2, ¶A, as amended by PL 1991, c. 314, §52, is further amended to read:

A. Has, within the 6 months prior to the date of parole or discharge, transferred from the ~~clients'~~ department's general client account to any person more than \$500, excluding any money transferred for the support of dependents; or

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

Effective March 24, 2006.

CHAPTER 507

S.P. 688 - L.D. 1771

An Act To Amend the Maine Criminal Code and Various Provisions Related to Juveniles

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

Sec. 1. 12 MRSA §6004, as amended by PL 2005, c. 328, §1, is further amended to read:

§6004. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment but may be ~~committed~~ ordered to serve a period of confinement in a Department of Corrections juvenile correctional facility ~~for a period of detention~~ that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of ~~detention~~ confinement; or

3. History. The record or previous history of the defendant warrants a period of ~~detention~~ confinement.

The court is not required to impose a period of ~~detention~~ confinement notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of ~~detention~~ confinement must be served concurrently with any other period of ~~detention~~ confinement previously imposed and not fully discharged or imposed on the same date. Any period of ~~detention~~ confinement is subject to Title 17-A, section 1253, subsection 2, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not to Title 17-A, section 1253, subsection 2, paragraph A or subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of ~~detention~~ confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

Sec. 2. 12 MRSA §8004, as amended by PL 2005, c. 328, §2, is further amended to read:

§8004. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment but may be ~~committed~~ ordered to serve a period of confinement in a Department of Corrections juvenile correctional facility ~~for a period of detention~~ that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of ~~detention~~ confinement; or

3. History. The record or previous history of the defendant warrants a period of ~~detention~~ confinement.

The court is not required to impose a period of ~~detention~~ confinement notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of ~~detention~~ confinement must be served concurrently with any other period of ~~detention~~ confinement previously imposed and not fully discharged or imposed on the same date. Any period of ~~detention~~ confinement is subject to Title 17-A, section 1253, subsection 2, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not

to Title 17-A, section 1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of ~~detention~~ confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

Sec. 3. 12 MRSA §10608, as amended by PL 2005, c. 328, §3, is further amended to read:

§10608. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment but may be ~~committed~~ ordered to serve a period of confinement in a Department of Corrections juvenile correctional facility ~~for a period of detention~~ that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of ~~detention~~ confinement; or

3. History. The record or previous history of the defendant warrants a period of ~~detention~~ confinement.

The court is not required to impose a period of ~~detention~~ confinement notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of ~~detention~~ confinement must be served concurrently with any other period of ~~detention~~ confinement previously imposed and not fully discharged or imposed on the same date. Any period of ~~detention~~ confinement is subject to Title 17-A, section 1253, subsection 2, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not to Title 17-A, section 1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of ~~detention~~ confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

Sec. 4. 15 MRSA §1004, as amended by PL 2003, c. 711, Pt. A, §3, is further amended to read:

§1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229 or post-conviction review proceedings under sections 2121 to 2132, probation revocation proceedings under Title 17-A, sections 1205 to 1207, supervised release revocation proceedings under Title 17-A, section 1233 or administrative release revocation proceedings under Title 17-A, sections 1349 to 1349-F, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively. This chapter does not apply to a person under 18 years of age who is arrested for a crime defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section 3103.

Sec. 5. 15 MRSA §3203-A, sub-§7, ¶A, as amended by PL 1991, c. 493, §10, is further amended to read:

A. A juvenile may be detained in a jail or other secure detention facility intended for use or primarily used for the detention of adults only when the serving facility:

- (1) Contains an area where juveniles are under direct staff observation at all times, in a separate section for juveniles that complies with mandatory sight and sound separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208;
- (2) Provides for no regular contact between the juveniles with the adult detainees or inmates; and
- (3) Has an adequate staff to provide direct observation and supervise the juvenile's activities at all times during emergency detention.

Juveniles detained in adult-serving facilities may be placed only in the separate juvenile sections that comply with mandatory separation standards

established by the Department of Corrections pursuant to Title 34-A, section 1208, unless the detainee must be detained with adults as a result of having attained 21 years of age or unless the court orders that the person be detained with adults for any period of detention occurring after the detainee has attained ~~the age of~~ 18 years of age or unless the juvenile is bound over as an adult and held in an adult section of a facility pursuant to court order.

Sec. 6. 15 MRSA §3205, sub-§1, as amended by PL 1999, c. 624, Pt. A, §6, is further amended to read:

1. Generally. A juvenile may not be committed to or detained or confined in a jail or other secure detention facility intended or primarily used for the detention of adults, except when bound over as an adult or as provided in section 3203-A, subsection 1, paragraph B-1 or section 3203-A, subsection 7. A juvenile who is detained in a jail or other secure detention facility intended or primarily used for the detention of adults may be detained only in a section of a facility that meets the requirements of section 3203-A, subsection 7, paragraph A, unless bound over as an adult and held in an adult section of a facility pursuant to court order.

Sec. 7. 15 MRSA §3205, sub-§2, as amended by PL 1999, c. 624, Pt. A, §6, is further amended to read:

2. Exception. Subsection 1 applies to any person who is considered a juvenile by virtue of section 3101, subsection 2, paragraph D except that if the person has attained ~~the age of~~ 18 years of age, any detention pursuant to section 3203-A and any ~~commitment~~ confinement pursuant to section 3314, subsection 1, paragraph H may be, upon the order of a court, in an adult section of a jail or other secure detention facility intended or primarily used for the detention of adults and may extend beyond the time limits set out in section 3203-A and, except that if the person has attained 21 years of age, any detention pursuant to section 3203-A and any confinement pursuant to section 3314, subsection 1, paragraph H must be in an adult section of a jail or other secure detention facility intended or primarily used for the detention of adults and may extend beyond the time limits set out in section 3203-A.

Sec. 8. 15 MRSA §3206, first ¶, as enacted by PL 2003, c. 180, §7, is amended to read:

A person under 18 years of age who is arrested for a crime defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section 3103 is not subject to chapter 105-A and may not be detained unless a juvenile community corrections officer has

been notified within 2 hours after the person's arrest and has approved the detention. Section 3203-A, subsection 7, paragraphs A and B governing the facilities in which juveniles may be detained apply to any detention of such a juvenile following arrest.

Sec. 9. 15 MRSA §3301, sub-§7, as amended by PL 1999, c. 624, Pt. B, §12, is further amended to read:

7. Nonapplication of section. The Except for subsection 6-A, the provisions of this section do not apply to a juvenile charged with either of the juvenile crimes defined in section 3103, subsection 1, paragraph E or F, and a petition may be filed without recommendation by a juvenile community corrections officer. The provisions of section 3203-A apply in the case of a juvenile charged with either of the juvenile crimes defined in section 3103, subsection 1, paragraph E or F.

Sec. 10. 15 MRSA §3314, sub-§1, ¶E, as amended by PL 2003, c. 239, §1, is further amended to read:

E. The court may require the juvenile to make restitution for any damage to the victim or other authorized claimant as compensation for economic loss upon reasonable conditions that the court determines appropriate. For the purposes of this paragraph, the definitions in Title 17-A, section 1322 and the provisions of Title 17-A, sections 1324, 1326-B, 1326-E, 1328-A and 1329 apply, except that section 1329, subsection 3, paragraph A does not apply.

Sec. 11. 15 MRSA §3314, sub-§1, ¶G, as amended by PL 1999, c. 367, §1, is further amended to read:

G. Except for a violation of section 3103, subsection 1, paragraph D or H, the court may impose a fine, subject to Title 17-A, sections 1301 to 1304, except that there is no mandatory minimum fine amount. For the purpose of this section, juvenile offenses defined in section 3103, subsection 1, paragraphs B and C are deemed Class E crimes.

Sec. 12. 15 MRSA §3314, sub-§1, ¶H, as amended by PL 2005, c. 328, §12, is further amended to read:

H. The court may commit the juvenile to a Department of Corrections juvenile correctional facility and order that the disposition be suspended or may ~~commit~~ order the juvenile for to serve a period of detention confinement that may not exceed 30 days, with or without an underlying suspended disposition of commitment to a Department of Corrections juvenile correctional

facility, which ~~detention~~ confinement must be served concurrently with any other period of ~~detention~~ confinement previously imposed and not fully discharged or imposed on the same date but may be served intermittently as the court may order and must be ordered served in a ~~detention~~ facility approved or operated by the Department of Corrections exclusively for juveniles. The court may order such a disposition to be served as a part of and with a period of probation that is subject to such provisions of Title 17-A, section 1204 as the court may order and that must be administered pursuant to Title 34-A, chapter 5, subchapter 4. Revocation of probation is governed by the procedure contained in subsection 2. Any disposition under this paragraph is subject to Title 17-A, section 1253, subsection 2 except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not to Title 17-A, section 1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10. For purposes of calculating the commencement of the period of ~~detention~~ confinement, credit is accorded only for the portion of the first day for which the juvenile is actually ~~detained~~ confined; the juvenile may not be released until the juvenile has served the full term of hours or days imposed by the court. Whenever a juvenile is committed for a period of ~~detention~~ confinement, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that reasonable efforts are not necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders ~~a commitment~~ for a period of ~~detention~~ confinement.

Sec. 13. 15 MRSA §3319, first ¶, as enacted by PL 1997, c. 752, §27, is amended to read:

Immediately after the court orders detention or confinement in or commitment to a juvenile facility, the court shall notify the Commissioner of Corrections or the commissioner's designee and shall inquire as to the juvenile facility to which the juvenile will be transported. The commissioner has complete discretion to make this determination. The commissioner or the commissioner's designee shall immediately inform the court of the location of the juvenile facility to which the juvenile will be transported.

Sec. 14. 17-A MRSA §1206, sub-§7-C, as enacted by PL 1999, c. 246, §7, is amended to read:

7-C. The running of the period of probation is tolled upon either the delivery of the summons, the filing of the written notice with the court that the person can not be located or the arrest of the person. If the motion is dismissed or withdrawn, or if the court finds no violation of probation, the running of the period of probation is deemed not to have been tolled. The conditions of probation continue in effect during the tolling of the running of the period of probation, and any violation of a condition subjects the person to a revocation of probation pursuant to the provisions of this chapter.

Sec. 15. 17-A MRSA §1206, sub-§8, as amended by PL 1983, c. 450, §9, is further amended to read:

8. Whenever a person is detained in any state or county institution pending a probation revocation proceeding, ~~such and not in execution of any other sentence of confinement, that period of detention shall~~ must be deducted from the time the person is required to serve under that portion of the sentence for which the suspension of execution was vacated as a result of the probation revocation. A person who is simultaneously detained for conduct for which the person receives a consecutive term of imprisonment is not entitled to receive a day-for-day deduction from the consecutive term of imprisonment for the period of simultaneous detention except for any period of detention that is longer than the prior term of imprisonment.

Sec. 16. 17-A MRSA §1253, sub-§2, as amended by PL 2003, c. 706, Pt. A, §6 and c. 711, Pt. A, §15, is further amended to read:

2. Each person sentenced to imprisonment who has previously been detained for the conduct for which the sentence is imposed in any state facility or county institution or facility or in any local lockup awaiting trial, during trial, post-trial awaiting sentencing or post-sentencing prior to the date on which the sentence commenced to run either to await transportation to the place of imprisonment specified, or pursuant to court order, and not in execution of any other sentence of confinement, is entitled to receive a day-for-day deduction from the total term of imprisonment required under that sentence. Each person is entitled to receive the same deduction for any such period of detention in any federal, state or county institution, local lockup or similar facility in another jurisdiction, including any detention resulting from being a fugitive from justice, as defined by Title 15, section 201, subsection 4, unless the person ~~is~~ has simultaneously being been detained for non-Maine conduct. A person who has been simultaneously detained for conduct for which the person is sentenced to a consecutive sentence is not entitled to receive a day-for-day deduction from the consecutive sentence for the period

of simultaneous detention except for any period of detention that is longer than the total term of imprisonment required under the prior sentence.

For the purpose of calculating the day-for-day deduction specified by this subsection, a "day" means 24 hours.

The total term required under the sentence of imprisonment is reduced by the total deduction of this subsection prior to applying any of the other deductions specified in this section or in Title 30-A, section 1606.

The sheriff or other person upon whom the legal duty is imposed to deliver a sentenced person who has been detained as specified in this subsection shall, within 30 days of delivery, furnish to the custodian a statement showing the length of that detention. In addition, the transporter shall furnish to the attorney for the State the same statement. The custodian shall use the statement furnished to determine the day-for-day deduction to which the person is entitled, if any, unless, within 15 days of its receipt, the attorney for the State furnishes a revised statement to the custodian.

A. For any person who commits a crime on or after August 1, 2004, is subsequently sentenced to a term of imprisonment for that crime and is entitled to receive a day-for-day deduction pursuant to this subsection, up to 2 additional days per calendar month may be credited to that deduction if the person's conduct during that period of detention was such that the credit is determined to be warranted in the discretion of the chief administrative officer of the facility in which the person has previously been detained.

Credits under this paragraph must be calculated as follows for partial calendar months:

Days of partial month	Maximum credit available
1 to 15 days	up to 1
16 to 31 days	up to 2

The sheriff or other person required to furnish a statement showing the length of detention shall also furnish a statement showing the number of days credited pursuant to this paragraph.

Detention awaiting trial, during trial, post-trial awaiting sentencing or post-sentencing prior to the date on which a sentence commences to run is not punishment.

Sec. 17. 29-A MRSA §115, as amended by PL 2005, c. 328, §15, is further amended to read:

§115. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Title that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment but may be ~~committed~~ ordered to serve a period of confinement in a Department of Corrections juvenile correctional facility for a period of detention that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of ~~detention~~ confinement; or

3. History. The record or previous history of the defendant warrants a period of ~~detention~~ confinement.

The court is not required to impose a period of ~~detention~~ confinement notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of ~~detention~~ confinement must be served concurrently with any other period of ~~detention~~ confinement previously imposed and not fully discharged or imposed on the same date. Any period of ~~detention~~ confinement is subject to Title 17-A, section 1253, subsection 2, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not to Title 17-A, section 1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of ~~detention~~ confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

Sec. 18. 34-A MRSA §1001, sub-§11, as amended by PL 2003, c. 410, §11, is further amended to read:

11. Juvenile client. "Juvenile client" means a juvenile committed to a juvenile correctional facility who is either residing at the facility or is on community reintegration status, or ordered confined in a juvenile correctional facility pursuant to Title 12, section 6004, 8004 or 10608; Title 15, section 3314, subsection 1, paragraph H; or Title 29-A, section 115.

Sec. 19. 34-A MRSA §1001, sub-§11-A, as amended by PL 2003, c. 410, §12, is further amended to read:

11-A. Juvenile detainee. "Juvenile detainee" means a juvenile detained at a departmental juvenile facility pending a court proceeding or pursuant to ~~Title 15, section 3314, subsection 1, paragraph H~~ or Title 15, section 3312, subsection 3, paragraph D.

Sec. 20. 34-A MRSA §3802, sub-§1, ¶E, as amended by PL 2005, c. 328, §17, is further amended to read:

E. To confine juveniles ordered ~~detained~~ con-fined pursuant to Title 15, section 3314, subsection 1, paragraph H;

Sec. 21. 34-A MRSA §3802, sub-§1, ¶G, as enacted by PL 2005, c. 328, §19, is amended to read:

G. To confine juveniles ordered ~~detained~~ con-fined pursuant to Title 12, sections 6004, 8004 and 10608 and Title 29-A, section 115.

Sec. 22. 34-A MRSA §3805, sub-§2, as amended by PL 2003, c. 689, Pt. B, §§6 and 7 and c. 706, Pt. A, §10, is further amended to read:

2. Limitations. A person may not be detained ~~at~~ or confined in or committed to the facility if that person is more appropriately a subject for intensive temporary out-of-home treatment services or for in-home treatment services provided by or through the Department of Health and Human Services as agreed upon by the commissioner and the Commissioner of Health and Human Services or their designees.

Sec. 23. 34-A MRSA §3805, sub-§3, as amended by PL 1999, c. 583, §31, is further amended to read:

3. Certification. When a person is detained ~~at~~ or confined in or committed to the facility, the court making the detention, confinement or commitment shall certify on the mittimus the person's birthplace, parentage and legal residence.

Sec. 24. 34-A MRSA §4102-A, sub-§1, ¶E, as enacted by PL 2005, c. 328, §22, is amended to read:

E. To confine juveniles ordered ~~detained~~ con-fined pursuant to Title 15, section 3314, subsection 1, paragraph H;

Sec. 25. 34-A MRSA §4102-A, sub-§1, ¶G, as enacted by PL 2005, c. 328, §22, is amended to read:

G. To confine juveniles ordered ~~detained~~ con-fined pursuant to Title 12, sections 6004, 8004 and 10608 and Title 29-A, section 115.

Sec. 26. 34-A MRSA §4104, sub-§2, as amended by PL 2003, c. 689, Pt. B, §§6 and 7 and c. 706, Pt. A, §12, is further amended to read:

2. Limitations. A person may not be detained ~~at~~ or confined in or committed to the facility if that person is more appropriately a subject for intensive temporary out-of-home treatment services or for in-home treatment services provided by or through the Department of Health and Human Services as agreed upon by the commissioner and the Commissioner of Health and Human Services or their designees.

Sec. 27. 34-A MRSA §4104, sub-§3, as amended by PL 1999, c. 583, §42 and PL 2001, c. 439, Pt. G, §8, is further amended to read:

3. Certification. When a person is detained ~~at~~ or confined in or committed to the Mountain View Youth Development Center, the court ordering the detention or commitment shall certify on the mittimus the person's birthplace, parentage and legal residence.

See title page for effective date.

CHAPTER 508

H.P. 1373 - L.D. 1961

An Act To Create a Tiered Wholesale Seafood Dealer's License

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

Whereas, the 90-day period will end after the period during which shellfish dealer licenses are valid; and

Whereas, unless enacted as an emergency measure, the new category of license authorized in this legislation will be unavailable to holders of commercial shellfish licenses until 2007; 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. 12 MRSA §6851-A is enacted to read: