

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

harbor master for the cost of training under this section.

3. Additional training. Nothing in this section may be construed to prohibit a municipality from requiring a harbor master or deputy harbor master to obtain training beyond that required by this section.

See title page for effective date.

CHAPTER 526

S.P. 627 - L.D. 1682

An Act To Support Sibling Rights in Child Welfare Custody Matters

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

Sec. 1. 22 MRSA §4036, sub-§1, ¶F-2 is enacted to read:

F-2. Visitation between the child and a sibling pursuant to section 4068;

Sec. 2. 22 MRSA §4068 is enacted to read:

§4068. Sibling visitation

1. Visitation. If the court determines that it is reasonable, practicable and in the best interests of the children involved, the court shall order the custodian of the child who is the subject of the child protection proceeding and any party who is the custodian of a sibling of the child to make the children available for visitation with each other. The court may order a schedule and conditions pursuant to which the visits are to occur.

2. Siblings separated through adoption. The department shall make reasonable efforts to establish agreements with prospective adoptive parents that provide for reasonable contact between an adoptive child and the child's siblings when the department believes that the contact will be in the children's best interests.

3. Request of child. In a child protection proceeding, a child may request visitation rights pursuant to subsection 1 with a sibling from whom the child has been separated as a result of the child protection proceeding.

See title page for effective date.

CHAPTER 527

H.P. 1403 - L.D. 2001

An Act To Implement Recommendations of the Criminal Law Advisory Commission

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

Sec. 1. 15 MRSA c. 15, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 15

POSSESSION OF FIREARMS OR CROSSBOWS BY PROHIBITED PERSONS

Sec. 2. 15 MRSA §393, sub-§1, as amended by PL 2005, c. 419, §7 and affected by §12, is further amended to read:

1. Possession prohibited. A person may not own, possess or have under that person's control a firearm or crossbow, unless that person has obtained a permit under this section, if that person:

A-1. ~~Has been convicted of committing or found not criminally responsible by reason of mental disease or defect~~ insanity of committing:

(1) A crime in this State that is punishable by imprisonment for a term of one year or more;

(2) A crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year;

(3) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;

(4) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, does not come within subparagraph (3) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment for one year or more; or

(5) A crime under the laws of the United States, this State or any other state or the

Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the prosecuting authority was required to plead and prove that the person committed the crime with the use of:

- (a) A firearm or crossbow against a person; or
- (b) Any other dangerous weapon;

C. Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction:

- (1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another person was threatened or resulted; or
- (3) Under paragraph A-1, subparagraph (5); or

D. Is subject to an order of a court of the United States or a state, territory, commonwealth or tribe that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18 United States Code, Section 921(a), of that person or a child of the intimate partner of that person, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or the child, except that this paragraph applies only to a court order that was issued after a hearing for which that person received actual notice and at which that person had the opportunity to participate and that:

- (1) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner or a child; or
- (2) By its terms, explicitly prohibits the use, attempted use or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury.

For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of ~~mental disease or defect~~ insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of ~~mental disease or~~

~~defect~~ insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

Sec. 3. 15 MRSA §393, sub-§3, as amended by PL 2005, c. 419, §10 and affected by §12, is further amended to read:

3. Contents. An application under subsection 2 must be on a form prepared by the Commissioner of Public Safety. The application must include the following: the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make, model and serial number of the firearm or crossbow sought to be possessed; date, place and nature of conviction; sentence imposed; place of incarceration; name and address of probation or parole officer; date of discharge or release from prison or jail or termination of probation, supervised release for sex offenders, parole or administrative release; the reason for the request; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the indictment, information or complaint, judgment and commitment and discharge that are the subject of the conviction.

Sec. 4. 15 MRSA §393, sub-§7, ¶B, as enacted by PL 2001, c. 549, §4, is amended to read:

B. "Not criminally responsible by reason of ~~mental disease or defect~~ insanity" has the same meaning as used in ~~Title 17-A, section 39 103~~ and ~~includes the former finding in this State under former provisions of section 103 of "not guilty by reason of mental disease or defect excluding responsibility"~~ as well as any comparable finding under the laws of the United States or any other state.

Sec. 5. 15 MRSA §393, sub-§8, as amended by PL 2001, c. 549, §5, is further amended to read:

8. Penalty. A violation of subsection 1, paragraph A-1 or C is a Class C crime. A violation of subsection 1, paragraph D is a Class D crime. A violation of subsection 1-A by a person at least 18 years of age is a Class C crime.

~~For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or the equivalent in a juvenile case, by a court of competent jurisdiction.~~

Sec. 6. 17-A MRSA §352, sub-§5, ¶D, as amended by PL 2005, c. 199, §3, is further amended to read:

D. If the value of property or services cannot be ascertained beyond a reasonable doubt pursuant to the standards set forth in paragraphs A to C,

the trier of fact may find the value to be not less than a certain amount, and if no such minimum value can be thus ascertained, the value is deemed to be an amount less than \$500. ~~Notwithstanding this provision, for the purposes of this chapter, the value of any audio or visual recording of all or any part of a motion picture that is obtained through the use of any type of recording device in a motion picture theater while a motion picture is being exhibited, without the written consent of the motion picture theater owner, is deemed to be more than \$500 but not more than \$1,000, unless a higher value can be proven.~~

Sec. 7. 17-A MRSA §760, sub-§1, as enacted by PL 2005, c. 329, §3, is amended to read:

1. A person is guilty of failure to report a sexual assault of a person in custody if that person is a member of the staff of a hospital, prison or other institution who and that staff person knows that a person detained in that institution is the victim of a crime of sexual assault that occurred while the detained person was in the institution but and, in fact, that staff person does not report that crime to an appropriate criminal justice agency is guilty of failure to report a sexual assault of a person in custody.

Sec. 8. 17-A MRSA §760, sub-§2-A is enacted to read:

2-A. It is an affirmative defense to prosecution under this section that the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter.

Sec. 9. 17-A MRSA §1058, as enacted by PL 2005, c. 175, §1, is amended to read:

§1058. Unauthorized possession of firearm in courthouse

1. A person may not possess is guilty of unauthorized possession of a firearm in a courthouse if that person in fact possesses a firearm in a courthouse.

2. This section does not apply to:

A. ~~A person who is a law enforcement officer or a corrections officer acting within the course and scope of the officer's employment or a corrections supervisor engaged in the performance of the law enforcement officer's, corrections officer's or corrections supervisor's public duty;~~ or

B. A person possessing a an unloaded firearm for the purpose of offering the firearm as evidence in a civil or criminal proceeding if the presiding judge or justice has ~~provided~~ granted prior

~~written~~ approval in writing to the person and the person possesses a copy of the written approval.

2-A. It is not a defense to a prosecution under this section that the person holds a valid permit to carry a concealed firearm issued under Title 25, chapter 252.

~~3. A person who violates subsection 1 commits~~ Unauthorized possession of a firearm in a courthouse is a Class D crime.

Sec. 10. 17-A MRSA §1111-A, sub-§4, ¶A, as amended by PL 2005, c. 386, Pt. DD, §1, is further amended to read:

A. The person uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of ~~not less than~~ \$300 must be adjudged, none of which may be suspended;

Sec. 11. 17-A MRSA §1111-A, sub-§4, ¶B, as amended by PL 2005, c. 386, Pt. DD, §1, is further amended to read:

B. The person possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of ~~not less than~~ \$300 must be adjudged, none of which may be suspended;

Sec. 12. 17-A MRSA §1152, sub-§2, as amended by PL 2005, c. 265, §§1 to 3, is further amended to read:

2. Every natural person convicted of a crime ~~shall~~ must be sentenced to at least one of the following sentencing alternatives:

A. Unconditional discharge as authorized by chapter 54-D;

B. A split sentence of imprisonment with probation as authorized by chapter 49;

C. A fine, suspended in whole or in part, with, at the court's discretion, probation as authorized by chapter 49;

D. A suspended term of imprisonment with probation as authorized by chapter 49;

E. A split sentence of imprisonment, the initial unsuspended portion of which is served in whole or in part with intensive supervision, followed by probation as authorized by chapter 52;

F. A term of imprisonment as authorized by chapter 51;

G. A fine as authorized by chapter 53. Such a fine may be imposed in addition to the sentencing alternatives in paragraphs B, D, E, F, H, I, L ~~and~~, M ~~and~~ N;

H. A county jail reimbursement fee as authorized by chapter 54-B;

I. A specified number of hours of community service work as authorized by chapter 54-C;

~~J. Deferred disposition as authorized by chapter 54-F;~~

K. A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 54-G;

L. A suspended term of imprisonment with administrative release as authorized by chapter 54-G; ~~or~~

M. A split sentence of imprisonment with administrative release as authorized by chapter 54-G; ~~or~~

N. A term of imprisonment followed by a period of supervised release as authorized by chapter 50.

Sec. 13. 17-A MRSA §1152, sub-§3, as amended by PL 1993, c. 103, §3, is further amended to read:

3. Every organization convicted of a crime ~~shall~~ must be sentenced to at least one of the following sentencing alternatives:

A. Unconditional discharge as authorized by chapter 49;

B. A fine, suspended in whole or in part, with probation as authorized by chapter 49;

C. A fine as authorized by chapter 53. Such a fine may be imposed in addition to the sentencing alternative in paragraph D; ~~or~~

D. A sanction authorized by section 1153. This sanction may be imposed in addition to the sen-

tencing alternatives in paragraphs B ~~and~~, C, ~~and~~ E; ~~or~~

E. A fine, suspended in whole or in part, with administrative release as authorized by chapter 54-G.

Sec. 14. 17-A MRSA §1175, first ¶, as amended by PL 2005, c. 488, §3, is further amended to read:

Upon complying with subsection 1, a victim of a crime of murder or stalking or of a Class A, Class B or Class C crime for which the defendant is committed to the Department of Corrections or to a county jail; or is ~~placed in institutional confinement~~ committed to the custody of the Commissioner of Health and Human Services either under Title 15, section 103 after having been found not criminally responsible by reason of ~~mental disease or defect, insanity~~ or is placed in institutional confinement under Title 15, section 101-B after having been found incompetent to stand trial; must receive notice of the defendant's unconditional release and discharge from institutional confinement upon the expiration of the sentence or upon release from commitment under Title 15, section 101-B or upon discharge under Title 15, section 104-A and must receive notice of any conditional release of the defendant from institutional confinement, including probation, supervised release for sex offenders, parole, furlough, work release, intensive supervision, supervised community confinement, home release monitoring or similar program, administrative release or release under Title 15, section 104-A.

Sec. 15. 17-A MRSA §1175, sub-§3, ¶B, as amended by PL 2005, c. 488, §4, is further amended to read:

B. The nature of the release authorized, whether it is a conditional release, including probation, supervised release for sex offenders, parole, furlough, work release, intensive supervision, supervised community confinement, home release monitoring or a similar program, administrative release or release under Title 15, section 104-A, or an unconditional release and discharge upon release from commitment under Title 15, section 101-B or upon the expiration of a sentence or upon discharge under Title 15, section 104-A;

Sec. 16. 17-A MRSA §1175, sub-§4, ¶A, as enacted by PL 1995, c. 680, §5, is amended to read:

A. Notice has been provided of an unconditional release or discharge upon the expiration of the sentence or upon release under Title 15, section 101-B or upon discharge under Title 15, section 104-A; or

Sec. 17. 17-A MRSA §1252, sub-§4, as amended by PL 1977, c. 510, §78, is further amended to read:

4. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use should be given serious consideration by the court in exercising its sentencing discretion. This subsection ~~shall~~ does not apply to a violation or an attempted violation of section 208, to any other offenses to which use of a dangerous weapon serves as an element or to any offense for which the sentencing class is otherwise increased because the actor or an accomplice to ~~his~~ that actor's or accomplice's knowledge is armed with a firearm or other dangerous weapon.

Sec. 18. 17-A MRSA §1252, sub-§4-A, as amended by PL 2005, c. 447, §1, is further amended to read:

4-A. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 13 or 27; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, the defendant had been convicted of 2 or more crimes violating chapter 9, 11, 13 or 27; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C or essentially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time. This subsection does not apply to section 210-A if the prior convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C or any other offense in which prior convictions have already served to enhance the sentencing class.

Sec. 19. 17-A MRSA §1252, sub-§4-B, ¶B, as enacted by PL 1999, c. 788, §8, is amended to read:

B. "Accompanied by sexual assault" as used with respect to attempted murder, murder and crimes involving substantially similar conduct in other jurisdictions is satisfied if ~~the sentencing court at the time of sentence imposition makes such a finding it was definitionally an element of the crime or was pleaded and proved beyond a reasonable doubt at trial by the State or other jurisdiction.~~

Sec. 20. 17-A MRSA §1252, sub-§9 is enacted to read:

9. Subsections in this section that make the sentencing class for a crime one class higher than it would otherwise be when pled and proved may be applied successively if the subsections to be applied successively contain different class enhancement factors.

Sec. 21. 17-A MRSA §1348, as enacted by PL 2003, c. 711, Pt. A, §19, is amended to read:

§1348. Eligibility for deferred disposition

A person who has pled guilty to a Class C, Class D or Class E crime, ~~except a crime expressly providing that one or more punishment alternatives it authorizes may not be suspended,~~ and who consents to a deferred disposition in writing, is eligible for a deferred disposition.

See title page for effective date.

CHAPTER 528

H.P. 1213 - L.D. 1706

An Act To Prohibit Parking in Access Aisles

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

Whereas, current law is ambiguous on the use of access aisles for disability parking by the disabled; and

Whereas, it is necessary that this ambiguity be eliminated as soon as possible; 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. 29-A MRSA §521, sub-§9-A, as amended by PL 2005, c. 433, §7 and affected by §28, is further amended to read:

9-A. Enforcement of disability parking restrictions. A law enforcement officer may enforce disability parking restrictions. The State Police shall enforce disability parking restrictions at service facilities established on the Maine Turnpike and on the interstate highway system in the State. A person