

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

DEPARTMENT TOTAL -		
ALL FUNDS	\$0	\$25,000

See title page for effective date.

CHAPTER 658

H.P. 1340 - L.D. 1899

An Act To Require the Display of POW-MIA Flags at Courthouses

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

Sec. 1. 1 MRSA §206-A, as enacted by PL 1999, c. 302, §2, is amended to read:

§206-A. Prisoner of war - missing in action flag

1. Required. The prisoner of war - missing in action flag must be flown in the following places until all those individuals designated as prisoners of war or missing in action are released or accounted for:

- A. Above the State House; ~~and~~
- B. At each National Guard facility; ~~and~~
- C. At each courthouse owned by the State on Former Prisoner of War Recognition Day as designated by section 131 and the following national holidays:
 - (1) Armed Forces Day, the 3rd Saturday in May;
 - (2) Memorial Day, the last Monday in May;
 - (3) Flag Day, June 14th;
 - (4) Independence Day, July 4th;
 - (5) National POW/MIA Recognition Day, the 3rd Friday in September; and
 - (6) Veterans Day, November 11th.

2. Optional. A municipality may display the prisoner of war - missing in action flag on a flag pole located at the main office building of the municipality whenever the flag of the United States is flown. A courthouse owned by the State may display the prisoner of war - missing in action flag on any day in addition to those required by subsection 1.

See title page for effective date.

CHAPTER 659

H.P. 1348 - L.D. 1907

An Act To Amend the Law Governing DNA Testing

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

Sec. 1. 15 MRSA §2137, as enacted by PL 2001, c. 469, §1, is repealed and the following enacted in its place:

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

1. Motion. A person who has been convicted of and sentenced for a crime under the laws of this State that carries the potential punishment of imprisonment of at least one year and for which the person is in actual execution of either a pre-Maine Criminal Code sentence of imprisonment, including parole, or a sentencing alternative pursuant to Title 17-A, section 1152, subsection 2 that includes a term 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. For criminal proceedings in which DNA testing was conducted before September 1, 2006, the person may file a written postjudgment of conviction motion in the underlying criminal proceeding moving the court for a new trial based on the results of the DNA testing already conducted using the standard set forth in this chapter if the DNA test results show that the person is not the source of the evidence.

2. Time for filing. A motion under this section must be filed by the later of:

- A. September 1, 2008, including a motion pertaining to criminal proceedings in which DNA testing was conducted before September 1, 2006;
- B. Two years after the date of conviction; and
- C. In cases in which the request for analysis is based on the existence of new technology with respect to DNA analysis that is capable of providing new material information, within 2 years from the time that the technology became commonly known and available.

Sec. 2. 15 MRSA §2138, sub-§4, as enacted by PL 2001, c. 469, §1, is repealed.

Sec. 3. 15 MRSA §2138, sub-§4-A is enacted to read:

4-A. Standard for ordering DNA analysis. The court shall order DNA analysis if a person authorized under section 2137 presents prima facie evidence that:

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

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

C. 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;

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

E. The evidence sought to be analyzed, or the additional information that the new technology is capable of providing regarding evidence sought to be reanalyzed, is material to the issue of whether the person is the perpetrator of, or accomplice to, the crime that resulted in the conviction.

Sec. 4. 15 MRSA §2138, sub-§8, ¶B, as enacted by PL 2001, c. 469, §1, is amended to read:

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: pursuant to subsection 10.

~~(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.~~

Sec. 5. 15 MRSA §2138, sub-§10, as enacted by PL 2001, c. 469, §1, is repealed and the following enacted in its place:

10. Standard for granting new trial; court's findings; new trial granted or denied. If the results of the DNA testing under this section show that the person is not the source of the evidence, the person authorized in section 2137 must show by clear and convincing evidence that:

A. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person show that the person is actually innocent. If the court finds that the person authorized in section 2137 has met the evidentiary burden of this paragraph, the court shall grant a new trial;

B. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial; or

C. All of the prerequisites for obtaining a new trial based on newly discovered evidence are met as follows:

(1) The DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial;

(2) The proffered DNA test results have been discovered by the person since the trial;

(3) The proffered DNA test results could not have been obtained by the person prior to trial by the exercise of due diligence;

(4) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are material to the issue as to who is responsible for the crime for which the person was convicted; and

(5) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are not merely cumulative or impeaching, unless it is clear that such impeachment would have resulted in a different verdict.

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. If the court finds that the person authorized in section 2137 has met the evidentiary burden of paragraph A, the court shall grant a new trial.

For purposes of this subsection, "all the other evidence in the case, old and new," means the evidence admitted at trial; evidence admitted in any hearing on a motion for new trial pursuant to Rule 33 of the Maine Rules of Criminal Procedure; evidence admitted at any collateral proceeding, state or federal; evidence admitted at the hearing conducted under this section relevant to the DNA testing and analysis conducted on the sample; and evidence relevant to the identity of the source of the DNA sample.

Sec. 6. Effective date. This Act takes effect September 1, 2006.

Effective September 1, 2006.

CHAPTER 660

S.P. 706 - L.D. 1789

An Act To Amend the Crime of Aggravated Criminal Mischief

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

Sec. 1. 17-A MRSA §805, sub-§1, as amended by PL 1997, c. 482, §§1 to 3, is further amended to read:

1. A person is guilty of aggravated criminal mischief if that person ~~intentionally, knowingly or recklessly:~~

A. ~~Damages Intentionally, knowingly or recklessly damages~~ or destroys property of another in an amount exceeding \$2,000 in value, having no reasonable ground to believe that the person has a right to do so;

B. ~~Damages Intentionally, knowingly or recklessly damages~~ or destroys property in an amount exceeding \$2,000 in value, to enable any person to collect insurance proceeds for the loss caused;

C. ~~Damages Intentionally, knowingly or recklessly damages~~, destroys or tampers with the property of a law enforcement agency, fire department or supplier of gas, electric, steam, water, transportation, sanitation or communication services to the public, having no reasonable ground to believe that the person has a right to do so, and thereby causes a substantial interruption or impairment of service rendered to the public;

D. ~~Damages Intentionally, knowingly or recklessly damages~~, destroys or tampers with property of another and thereby recklessly endangers human life; ~~or~~

E. ~~Damages Intentionally, knowingly or recklessly damages~~ or destroys property of another by fire, having no reasonable ground to believe that the person has a right to do so, and the property damaged or destroyed is neither a dwelling place as defined in section 2, subsection 10 nor a structure as defined in section 2, subsection 24; ~~or~~

F. ~~Intentionally damages, destroys or tampers with the property of another, having no reasonable ground to believe that the person has a right to do so, for the purpose of causing substantial harm to the health, safety, business, calling, career, financial condition, reputation or personal relationships of the person with the property interest or any other person.~~

See title page for effective date.

CHAPTER 661

H.P. 1308 - L.D. 1868

An Act To Eliminate Administrative Preliminary Hearings for Probationers

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

Sec. 1. 17-A MRSA §1205, sub-§4, as amended by PL 1999, c. 246, §1, is further amended to read:

4. A person arrested pursuant to subsection 1, with or without a warrant, must be afforded a ~~preliminary probable cause~~ hearing as soon as reasonably possible, but not later than on the ~~3rd~~ 5th day after arrest, excluding Saturdays, Sundays and holidays, ~~in accordance with the procedures set forth in section 1205-A.~~ A ~~preliminary probable cause~~ hearing may not be afforded if, within the ~~3-day~~ 5-day period, the person is released ~~on bail~~ from custody or is afforded an opportunity for a court hearing on the alleged