

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

(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

violation. A preliminary probable cause hearing is not required if the person is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction.

A. Whenever a person arrested pursuant to subsection 1 is entitled to a probable cause hearing pursuant to this subsection, unless the person waives the right to the hearing, that hearing must be afforded at the initial appearance and may be held by either the District Court or the Superior Court located as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. If it is alleged that the person violated probation because of the commission of a new offense, the probable cause hearing is limited to the issue of identification if probable cause on the new offense has already been found by the District Court or by the Superior Court or the person has been indicted, has waived indictment or has been convicted.

B. Evidence presented to establish probable cause may include affidavits and other reliable hearsay evidence as permitted by the court.

C. If the court determines that there is not probable cause to believe that the person has violated a condition of probation, the court shall order the person's release.

Sec. 2. 17-A MRSA §1205, sub-§6, as amended by PL 1999, c. 246, §1, is further amended to read:

6. Whenever a person is entitled to a preliminary probable cause hearing, the failure to hold the hearing within the time period specified in subsection 4 is grounds for the person's release on personal recognizance pending further proceedings.

Sec. 3. 17-A MRSA §1205-A, as amended by PL 2005, c. 326, §4 and affected by §5, is repealed.

Sec. 4. 17-A MRSA §1205-B, sub-§4, as enacted by PL 1999, c. 246, §3, is amended to read:

4. If the person fails to appear in court after having been served with a summons, the court may issue a warrant for the arrest of the person. After arrest, the person must be afforded a preliminary probable cause hearing as provided in section 1205, subsection 4 and, if retained in custody, an initial appearance as provided in section 1205-C, subsection 3 applies.

Sec. 5. 17-A MRSA §1205-C, sub-§1, as enacted by PL 1999, c. 246, §3, is amended to read:

1. A motion for probation revocation, which first must be approved by the prosecuting attorney, must be

filed within ~~5~~ **3** days, excluding Saturdays, Sundays and holidays, of the arrest of a probationer pursuant to section 1205.

Sec. 6. 17-A MRSA §1205-C, sub-§2, as enacted by PL 1999, c. 246, §3, is amended to read:

2. The motion must set forth the facts underlying the alleged violation and, unless the person is to be afforded a probable cause hearing at the initial appearance as provided in section 1205, must be accompanied by the written statement prepared pursuant to section 1205-A, subsection 3 or by a copy of the summons delivered to the probationer.

Sec. 7. 17-A MRSA §1205-C, sub-§3, as enacted by PL 1999, c. 246, §3, is amended to read:

3. Upon receipt of a motion for revocation of probation with respect to a person arrested pursuant to section 1205 or section 1205-B, subsection 4 who is not sooner released, the court shall provide the person with an initial appearance on the revocation of probation within ~~14~~ **5** days after the arrest, excluding Saturdays, Sundays and holidays. A copy of the motion must be furnished to the probationer prior to or at the initial appearance.

Sec. 8. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior, District and Administrative 0063

Initiative: Appropriates funds for court-appointed attorneys.

GENERAL FUND	2005-06	2006-07
All Other	\$0	\$36,355
GENERAL FUND TOTAL	\$0	\$36,355
JUDICIAL DEPARTMENT		
DEPARTMENT TOTALS		
GENERAL FUND	\$0	\$36,355
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$36,355

CORRECTIONS, DEPARTMENT OF

Adult Community Corrections 0124

Initiative: Deappropriates savings resulting from reduced overtime of probation officers. It also deappropriates savings resulting from the delay in ordering cars.

GENERAL FUND	2005-06	2006-07
Personal Services	\$0	(\$8,332)
All Other	\$0	(\$8,333)
GENERAL FUND TOTAL	\$0	(\$16,665)

County Jail Prisoner Support and Community Corrections
Fund 0888

Initiative: Deappropriates funds to achieve savings.

GENERAL FUND	2005-06	2006-07
All Other	\$0	(\$19,690)
GENERAL FUND TOTAL	\$0	(\$19,690)
CORRECTIONS, DEPARTMENT OF		
DEPARTMENT TOTALS	2005-06	2006-07
GENERAL FUND	\$0	(\$36,355)
DEPARTMENT TOTAL - ALL FUNDS	\$0	(\$36,355)
SECTION TOTALS		
GENERAL FUND	\$0	\$0
SECTION TOTAL - ALL FUNDS	\$0	\$0

Sec. 9. Effective date. This Act takes effect January 1, 2007.

Effective January 1, 2007.

CHAPTER 662

S.P. 689 - L.D. 1772

An Act To Improve Early Childhood Special Education

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

Whereas, there is an immediate need for the Department of Education to begin implementation of the early childhood special education system, including employee salary and benefits administration, fiscal management, data management and service delivery; and

Whereas, failure to begin implementation would result in delays or possible disruption of early intervention and special education and related services to eligible children with disabilities and their families; 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:

PART A

Sec. A-1. 5 MRSA §4602, sub-§2, as amended by PL 1991, c. 99, §28, is further amended to read:

2. Unlawful educational discrimination on the basis of physical or mental disability. It is unlawful educational discrimination in violation of this Act solely on the basis of physical or mental disability to:

A. Exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity any otherwise qualified individual with physical or mental disability;

B. Deny any person equal opportunity in athletic programs, provided that no educational institution may be required under this subsection to provide separate athletic programs to serve persons with physical or mental disability;

C. Deny admission to any institution or program or fail to provide equal access to and information about an institution or program through recruitment; or

D. Deny financial assistance availability and opportunity.

Nothing in this subsection may be construed to cover the rights of ~~exceptional students~~ children with disabilities to special education programs under state or federal law.

Sec. A-2. 5 MRSA §12004-G, sub-§8-A, as reenacted by PL 2001, c. 471, Pt. C, §1 and affected by §10, is repealed.

Sec. A-3. 5 MRSA §19508, as amended by PL 2005, c. 279, §4, is further amended to read:

§19508. Application to residents in children's homes

This chapter also applies to ~~exceptional students~~ children with disabilities in children's homes, emergency shelters, family foster homes, specialized children's homes and residential child care facilities, as defined in Title 22, section 8101, and to other residential educational facilities, including the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and other similar facilities.

Sec. A-4. 20-A MRSA §1, sub-§3-A is enacted to read:

3-A. Child with a disability. "Child with a disability" has the same meaning as in section 7001.