

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 6, 2006 to June 21, 2007**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 20, 2007**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2007**

ity. The Joint Standing Committee on Natural Resources may submit legislation on these issues to the Second Regular Session of the 123rd Legislature.

See title page for effective date.

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## CHAPTER 96

### H.P. 399 - L.D. 521

#### An Act To Amend the Laws Relating to Juveniles

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

**Sec. 1. 15 MRSA §3103, sub-§2**, as amended by PL 1997, c. 752, §6, is further amended to read:

**2. Dispositional powers.** All of the dispositional powers of the Juvenile Court provided in section 3314 apply to a juvenile who is adjudicated to have committed a juvenile crime, except that no commitment to a Department of Corrections juvenile correctional facility or ~~other detention period of confinement~~ may be imposed for conduct described in subsection 1, paragraphs B and C.

**Sec. 2. 15 MRSA §3203-A, sub-§7-B** is enacted to read:

**7-B. Separate nonsecure custody; detention.**  
When a juvenile who is being held in nonsecure custody or is being detained pursuant to this section is transported to or from court or to or from a juvenile facility or is being held in a court holding area awaiting court proceedings, the juvenile must be separated by sight and sound from any adult detainee.

**Sec. 3. 15 MRSA §3301, sub-§5-A**, as amended by PL 1999, c. 624, Pt. B, §10, is repealed.

**Sec. 4. 15 MRSA §3312, sub-§3, ¶D**, as amended by PL 1999, c. 624, Pt. B, §20, is further amended to read:

D. If the court finds, after opportunity for hearing, that a juvenile released with a condition of participation in a juvenile drug treatment court program has intentionally or knowingly violated that condition, the court may impose a sanction of up to 7 days' ~~detention confinement~~ in a ~~detention~~ facility approved or operated by the Department of Corrections exclusively for juveniles. Nothing in this paragraph restricts the ability of the court to impose sanctions other than ~~detention confinement~~ for the violation of a condition of participation in a juvenile drug treatment court program or the ability of the court to enter any dispositional order allowed under section 3314 on final disposition.

**Sec. 5. 15 MRSA §3314, sub-§1, ¶H**, as amended by PL 2005, c. 507, §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 order the juvenile to serve a period of 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 confinement must be served concurrently with any other period of 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 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 confinement, credit is accorded only for the portion of the first day for which the juvenile is actually confined; the juvenile may not be released until the juvenile has served the full term of hours or days imposed by the court. ~~Whenever~~ When a juvenile is committed for a period of 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 period of confinement.

**Sec. 6. 15 MRSA §3314, sub-§2**, as amended by PL 2003, c. 503, §2, is further amended to read:

**2. Suspended disposition.** The court may impose any of the dispositional alternatives provided in subsection 1 and may suspend its disposition and place the juvenile on a specified period of probation that is subject to such provisions of Title 17-A, section 1204 as the court may order and that is administered pursuant to the provisions of Title 34-A, chapter 5, sub-

chapter 4, except that the court may not impose the condition set out in Title 17-A, section 1204, subsection 1-A. The court may impose as a condition of probation that a juvenile must reside outside the juvenile's home in a setting satisfactory to the juvenile community corrections officer if the court determines that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and that continuation in the juvenile's home would be contrary to the welfare of the juvenile. Imposition of such a condition does not affect the legal custody of the juvenile.

Modification of probation is governed by the procedures contained in Title 17-A, section 1202, subsection 2. Termination of probation is governed by the procedures contained in Title 17-A, section 1202, subsection 3. Revocation of probation is governed by the procedures contained in Title 17-A, sections 1205, 1205-B, 1205-C and 1206, except that ~~the provisions of those sections requiring a preliminary hearing do not apply~~ this subsection governs the court's determinations concerning probable cause and continued detention and those provisions of Title 17-A, section 1206, subsection 7-A allowing a vacating of part of the suspension of execution apply only to a ~~disposition suspended fine~~ under subsection 1, paragraph G or a suspended period of confinement under paragraph H; ~~however, a disposition suspended commitment~~ under subsection 1, paragraph F may be modified to a disposition under subsection 1, paragraph H. Whenever ~~When~~ a revocation of probation results in the imposition of a disposition under subsection 1, paragraph F or a period of detention confinement under subsection 1, paragraph H, 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 no reasonable efforts are 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 particular disposition upon a revocation of probation. If the juvenile is being detained for an alleged violation of probation, the court shall review within 48 hours following the detention, excluding Saturdays, Sundays and legal holidays, the decision to detain the juvenile. Following that review, the court shall order the juvenile's release unless the court finds that there is probable cause to believe that the juvenile has violated a condition of probation and finds, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention under section 3203-A, subsection 4, paragraph C. ~~Whenever~~ When ~~a court orders continued detention, 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 no reasonable efforts are 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 continued detention.

**Sec. 7. 17-A MRSA §303**, as amended by PL 1981, c. 669, §§1 to 3, is further amended to read:

**§303. Criminal restraint by parent**

1. A person is guilty of criminal restraint by a parent if, being the parent of a child ~~under the age of 16~~, and knowing ~~he the person~~ he the person has no legal right to do so, ~~he the person takes, retains or entices the child:~~

A. ~~Takes, retains or entices the child~~ Who has not in fact attained 16 years of age, from the custody of his the child's other parent, guardian or other lawful custodian with the intent to remove the child from the State or to secrete him the child and hold him the child in a place where he the child is not likely to be found; or. Violation of this paragraph is a Class C crime;

B. ~~Takes, retains or entices the child~~ Who resides in another state and who has not in fact attained 16 years of age, from the custody of his the child's other parent, guardian or other lawful custodian, whose custodial authority was established by a court of this State, in the state in which the child is residing with his legal custodian with the intent to remove the child from that state or to secrete him the child and hold him the child in a place where he the child is not likely to be found. Violation of this paragraph is a Class C crime; or

C. Who is either 16 or 17 years of age, from the custody of the Department of Corrections or the Department of Health and Human Services with the intent to remove the child from the State or to secrete the child and hold the child in a place where the child is not likely to be found. Violation of this paragraph is a Class D crime.

2. Consent by the ~~person~~ child taken, enticed or retained is not a defense under this section.

3. A law enforcement officer ~~shall~~ may not be held liable for taking physical custody of a child ~~whom he who the officer~~ whom he who the officer reasonably believes has been taken, retained or enticed in violation of this section and for delivering the child to a person ~~whom he who the officer~~ whom he who the officer reasonably believes is the child's lawful custodian or to any other suitable person.

For purposes of this subsection, "reasonable belief a child has been taken, retained or enticed in violation of this section" includes, but is not limited to, a determination by a law enforcement officer, based on ~~his the officer's~~ his the officer's review of the terms of a certified copy of the

most recent court decree granting custody of the child, that the parent who is exercising control over the child is not the person authorized to have custody under terms of the decree.

4. A law enforcement officer may arrest without a warrant any person who ~~he~~ the officer has probable cause to believe has violated or is violating this section.

~~5. Criminal restraint by parent is a Class C crime.~~

See title page for effective date.

**CHAPTER 97**

**H.P. 613 - L.D. 813**

**An Act To Provide an Energy Allowance to At-home Patients Using Ventilators**

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

**Sec. 1. 35-A MRSA §3214, sub-§5, ¶A**, as enacted by PL 2005, c. 132, §1, is amended to read:

A. The equitable-treatment program must be available to any person who:

(1) Is eligible for benefits under the transmission and distribution utility's low-income assistance program established in accordance with subsection 2; and

(2) Provides documentation from a doctor that the person for health reasons needs an oxygen pump or ventilator at least 8 hours each day.

**Sec. 2. 35-A MRSA §3214, sub-§5, ¶B**, as enacted by PL 2005, c. 132, §1, is amended to read:

B. The equitable-treatment program must be designed to ensure that the low-income assistance benefits provided under this section to persons who qualify under paragraph A mitigate, to an extent that is reasonably equivalent in each transmission and distribution utility territory, electric charges associated with the operation of an oxygen pump or ventilator. The commission may not reduce any assistance provided under any low-income assistance program established under subsection 2 in order to satisfy the requirements of this paragraph.

**Sec. 3. 35-A MRSA §3214, sub-§6** is enacted to read:

**6. Annual report.** The commission shall report by November 1st of each year to the joint standing committee of the Legislature having jurisdiction over

utilities and energy matters on low-income assistance programs established or approved under subsection 2 or 3 and any equitable-treatment program established pursuant to subsection 5. The report must, at a minimum, include:

A. For each month of the program year, the number of participants enrolled in low-income assistance programs, the number receiving oxygen pump benefits and the number receiving ventilator benefits;

B. For each month of the program year, the dollar amount of low-income assistance program benefits, the dollar amount of oxygen pump benefits and the dollar amount of ventilator benefits; and

C. An assessment of the effectiveness of the oxygen pump benefit and the ventilator benefit with regard to covering only those electric charges directly related to use of an oxygen pump or ventilator by the program participant.

**Sec. 4. Report; medical devices under equitable-treatment program.** The Public Utilities Commission shall examine medical devices that may be appropriate for inclusion in the equitable-treatment program established pursuant to the Maine Revised Statutes, Title 35-A, section 3214. For each medical device examined, the commission shall assess its electricity requirements and typical usage patterns and gather data on the number of residential electricity customers and low-income program participants currently using the device. The commission shall report its findings to the Joint Standing Committee on Utilities and Energy no later than January 15, 2008.

See title page for effective date.

**CHAPTER 98**

**H.P. 691 - L.D. 916**

**An Act To Permit the Sale of Certain Used Mercury-added Products**

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

**Sec. 1. 38 MRSA §1661-C, sub-§10** is enacted to read:

**10. Sale of used products.** Subsections 6 and 7 do not apply to the sale of used products.

See title page for effective date.