

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTIETH LEGISLATURE

FIRST REGULAR SESSION
December 2, 2020 to March 30, 2021

FIRST SPECIAL SESSION
April 28, 2021 to July 19, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 18, 2021

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

Augusta, Maine
2021

(1) Obtaining, maintaining or using a facial surveillance system or the results of a search of a facial surveillance system within the Bureau of Motor Vehicles in accordance with Title 29-A, section 1401, subsection 9 or for the purposes of fraud prevention or investigation;

(2) Using facial surveillance technology that analyzes the eye's iris in a regional jail or county jail;

(3) Using evidence that has been generated from a search of a facial surveillance system that is related to an investigation of a specific crime;

(4) Obtaining or possessing for evidentiary purposes an electronic device, including, but not limited to, a cellular telephone, tablet or computer, that performs facial surveillance for the sole purpose of user authentication;

(5) Using social media or communications software or applications for communicating with the public as long as such use does not include the affirmative use of facial surveillance;

(6) Using automated redaction software as long as such software is not capable of performing facial surveillance;

(7) Performing duties required by the National Child Search Assistance Act of 1990, 34 United States Code, Sections 41307 and 41308 (2021); or

(8) Using facial surveillance on an electronic device, including, but not limited to, a cellular telephone, tablet or computer, owned by the public employee or public official for that person's personal use for the sole purpose of user authentication of that person.

E. Facial surveillance data does not, without other evidence, establish probable cause justifying arrest, search or seizure.

F. The State Police and the Bureau of Motor Vehicles shall maintain logs that track all requests for searches of facial surveillance systems received and performed pursuant to paragraph C. De-identified logs containing the date of the search request, the name of the public employee or public official who made the request and the name of the department for which the employee or official works, the databases searched, the statutory offense under investigation and the race and sex of the person under investigation are public records for the purpose of Title 1, chapter 13, subchapter 1. The provisions of Title 16, chapter 9 do not apply to records created or maintained pursuant to this paragraph.

3. Enforcement. The following provisions apply to a violation of this section by a department or a public employee or public official acting in the performance of their official duties.

A. Facial surveillance data collected or derived in violation of this section:

(1) Must be considered unlawfully obtained and, except as otherwise provided by law, must be deleted upon discovery; and

(2) Is inadmissible in evidence in any proceeding in or before any public official, department, regulatory body or authority.

B. A person injured or aggrieved by a violation of this section may bring an action in a court in this State against the department, public employee or public official having possession, custody or control of facial surveillance data in violation of this section and may seek injunctive or declaratory relief or a writ of mandamus.

C. A public employee or public official who, in the performance of their official duties, violates this section may be subject to disciplinary action, including, but not limited to, retraining, suspension or termination, subject to the requirements of due process and of any applicable collective bargaining agreement.

D. Nothing in this subsection limits the rights under state or federal law of a person injured or aggrieved by a violation of this section.

Sec. 2. Effective date. This Act takes effect October 1, 2021.

See title page for effective date.

**CHAPTER 395
H.P. 1201 - L.D. 1612**

**An Act To Facilitate Children's
Testimony in Certain Sex
Crime Cases**

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

Sec. 1. 15 MRSA §1321 is enacted to read:

§1321. Child witnesses in certain sex crime cases

1. Testimony of a child outside the presence of the defendant. Upon motion by the State prior to trial and with reasonable notice to the defendant, a court may allow a child who is 14 years of age or younger to testify outside the presence of the defendant pursuant to this section in a criminal proceeding concerning a crime under Title 17-A, chapter 11 or 12 in which the child is the alleged victim.

2. Requirements for direct testimony outside the presence of the defendant. Direct testimony of a child outside the presence of the defendant under subsection 1 must meet the following requirements:

A. The testimony must be conducted by way of 2-way closed-circuit television or other audiovisual electronic means;

B. The testimony must occur at a recognized children's advocacy center with only a victim or witness advocate present in the room in which the child is testifying;

C. The opportunity for real-time cross-examination of the child must be provided to the defendant's attorney after the child's direct testimony; and

D. The defendant must be able to observe the testimony of the child while the child is testifying and must be able to communicate with the defendant's attorney while the child is testifying.

3. Exception. This section does not apply if the defendant is an attorney pro se or if the positive identification of the defendant is required.

See title page for effective date.

CHAPTER 396

H.P. 1246 - L.D. 1675

An Act To Amend Certain Provisions of Maine's Drug Laws

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

Sec. 1. 17-A MRSA §1101, sub-§17, as amended by PL 2015, c. 346, §1, is further amended to read:

17. "Traffick":

- A. To make, create, manufacture;
- B. To grow or cultivate, except for marijuana;
- C. To sell, barter, trade, exchange or otherwise furnish for consideration; or
- D. To possess with the intent to do any act mentioned in paragraph C;
- ~~E. To possess 2 grams or more of heroin or 90 or more individual bags, folds, packages, envelopes or containers of any kind containing heroin; or~~
- ~~F. To possess 2 grams or more of fentanyl powder or 90 or more individual bags, folds, packages, envelopes or containers of any kind containing fentanyl powder.~~

Sec. 2. 17-A MRSA §1101, sub-§18, as amended by PL 2015, c. 496, §§1 and 2, is further amended to read:

18. "Furnish":

- A. To furnish, give, dispense, administer, prescribe, deliver or otherwise transfer to another; or
- B. To possess with the intent to do any act mentioned in paragraph A;
- ~~C. To possess more than 200 milligrams but less than 2 grams of heroin or at least 45 but fewer than 90 individual bags, folds, packages, envelopes or containers of any kind containing heroin; or~~
- ~~D. To possess more than 200 milligrams but less than 2 grams of fentanyl powder or at least 45 but fewer than 90 individual bags, folds, packages, envelopes or containers of any kind containing fentanyl powder.~~

Sec. 3. 17-A MRSA §1103, sub-§3, as amended by PL 2015, c. 346, §4, is further amended to read:

3. Proof that the person intentionally or knowingly possesses any scheduled drug that is in fact of a quantity, state or concentration as provided in this subsection, gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is unlawfully trafficking in scheduled drugs:

- A. More than one pound of marijuana;
- B. Fourteen grams or more of cocaine ~~or 4 grams or more of cocaine in the form of cocaine base;~~
- C-1. Four grams or more of heroin;
- C-2. Four grams or more of fentanyl powder;
- D. Lysergic acid diethylamide in any of the following quantities, states or concentrations:
 - (1) Any compound, mixture, substance or solution in a liquid state that contains a detectable quantity of lysergic acid diethylamide;
 - (2) Fifty or more squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or
 - (3) Any quantity of any compound, mixture or substance that, in the aggregate, contains 2,500 micrograms or more of lysergic acid diethylamide;
- E. Fourteen grams or more of methamphetamine;
- F. Ninety or more pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin;