

MAINE STATE LEGISLATURE

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ALERT

AUGUST 1975

CRIMINAL DIVISION



**MESSAGE FROM THE
ATTORNEY GENERAL
JOSEPH E. BRENNAN**

This month's and next month's issues of **ALERT** will be devoted primarily to criminal legislation enacted by the Regular Session of the 107th Maine Legislature. Bills which were enacted as emergency measures went into effect the date they were approved. Other bills will not go into effect until 90 days after the adjournment of the Legislature—October 1, 1975. The designation (Emergency) will appear after the title of each bill that has already gone into effect as an emergency enactment.

The Maine Criminal Code and the Act implementing the recommendations of the Maine Traffic Court Advisory Committee will not be presented in the August or September **ALERT**s. Because of the significance of these bills they will be treated separately in future issues of **ALERT**. It should be noted that the provisions of the Maine Criminal Code do not become effective until March 1, 1976.

There will, of course, be some difficulty in interpreting and enforcing these new laws. I encourage all criminal justice personnel to write or call the Law Enforcement Education Section as problems of enforcement arise. The number of the Law Enforcement Education Section is 289-2146.

**JOSEPH E. BRENNAN
Attorney General**

FROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE

FROM THE LEGISLATURE

Important Legislation I

The following is a presentation and discussion of some of the important legislation passed by the Regular Session of the 107th Maine Legislature. Some bills create new law and others merely amend previously existing legislation. If the entire law is new, the entire bill will be set in **bold** print. Otherwise, only the amended portion of the existing law will be printed in **bold**. Those statutes which were amended by **deleting** some of their wording will be presented in regular print as they now stand **after the deletion**. The placement of four asterisks within a particular law means that one or more paragraphs of the law have been omitted to conserve space but still exist even after statutory change.

Self-explanatory bills will be quoted without comment. Bills that need clarification as to purpose, impact, or meaning and bills which are too long for quotation will be followed by a brief italicized comment. The number appearing before the title of each bill is the chapter number of the Public Laws of 1975. The chapter number is included for everyone's convenience in referring to specific bills. The titles of those bills which were enacted as emergency measures will be followed by the designation (Emergency).

officials, loaded firearms shall not be brought onto public school grounds, nor discharged by any person within 500 feet of any public school property. Any person who violates this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$500.

C. 46 AN ACT to Clarify the Powers of Coastal Wardens
12 M.R.S.A. §3652

5. Coastal wardens same powers as sheriffs. In addition to their specified duties and powers, the coastal wardens are vested with the same powers and duties throughout the several counties of the State as sheriffs have in their respective counties.

C. 55 AN ACT to Allow Juveniles at the Training Centers and Inmates at the County Jails to Participate in Halfway House Programs

34 M.R.S.A. §528. Halfway house; school tuition

The bureau is authorized to establish a Halfway House Program, so called, said program to provide an environment of community living and control pursuant to rules and regulations adopted by the department. Inmates, juveniles and prisoners at any of the correctional, penal or juvenile institutions or any county jail may be paroled, furloughed or entrusted to participate in the Halfway House Program

C. 38 AN ACT Restricting Use of Weapons at Public Schools

20 M.R.S.A. §1015. Weapons

Except as used in any supervised educational program or by law enforcement

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in accordance with applicable provisions of law.

A participant in the Halfway House Program may attend a public school when enrolled by the superintendent as provided in Title 20, section 1391.

COMMENT: The purpose of this bill is to make clear that the Halfway House provisions of this section apply to juvenile offenders and persons serving sentences in county jails.

C. 62 AN ACT to Provide Continuing Jurisdiction over Juvenile Offenses (Emergency)

COMMENT: Before this bill was enacted, juveniles who committed offenses just before their 18th birthday would escape the jurisdiction of the juvenile court because they would have become 18 years old by the time a petition could be brought or a hearing had in the juvenile court. This bill insures that individuals who commit offenses before their 18th birthday can be tried by the juvenile court after they turn 18. It also provides that juveniles who are placed on probation or committed to the Boys Training Center or Stevens School by the juvenile court may be kept on probation or kept at one of the two juvenile institutions until they are 21 years old. The bill became effective March 18, 1975.

C. 70 AN ACT Relating to Animal Welfare

17 M.R.S.A. §1212. Prevention of cruelty

The commissioner or any person authorized to make arrests may lawfully interfere to prevent the perpetration of any act of cruelty upon an animal in his presence.

17 M.R.S.A. §1213-A. Impeding the performance of an officer

Any person who assaults, resists, opposes, impedes, intimidates or interferes with any person while engaged in or on account of the performance of his official duties under this chapter is guilty of a misdemeanor.

COMMENT: The purpose of this bill is to clarify the authority of state humane agents in the enforcement of the statutes relating to cruelty to animals.

C. 81 AN ACT Relating to the Use of Leg Hold Traps under the Inland Fish and Game Law

12 M.R.S.A. §2403. Trap restrictions

It shall be unlawful for any person to use auxiliary teeth on any leg hold trap set on land.

C. 84 AN ACT Relating to Use of Studded Tires on Motor Vehicles

29 M.R.S.A. §1375. Studded tires

It shall be unlawful to operate a motor vehicle or combination of vehicles, except for fire department vehicles, with tires having any metal studs, wires or spikes protruding from the tire tread or any other metal protuberance from the tire tread upon any public highway during the period from the first day of May to the first day of October. The Department of Transportation may extend the lawful use of studded tires. Notice of such extension shall be as determined by the Commissioner of Transportation.

The Commissioner of Transportation may, in special cases, grant permits, covering stated periods of time and upon proper application in writing, to permit the use of studded tires other than during the period of lawful use. The fee for such permits shall be not less than \$3, nor more than \$15, to be determined by the commissioner. The permit shall always be carried on the person of the operator or occupant, or in some easily accessible place in or about the vehicle therein described.

COMMENT: This bill is designed to decrease pavement wear on Maine highways by prohibiting the use of studded tires during those months when the highways are relatively free of ice and snow. The bill also deleted the reference to studded tires in 29 M.R.S.A. §1702 (Permits for certain vehicles on roads and bridges).

C.85 AN ACT Relating to Change in Location or Status Concerning Vehicle Registrations

29 M.R.S.A. §259. Change of location or status; motor vehicle

Whenever any person, firm or corporation, after applying for and receiving a registration for any motor vehicle, trailer or semitrailer, shall move from the address named in such application or in the registration issued, or when the name of the holder of such registration is changed by marriage or otherwise, such person, firm or corporation shall within 30 days thereafter notify the Secretary of State, in writing, of the old and new address or of such former and new names and of the number of

registrations then held by such person, firm or corporation.

C. 95 AN ACT Relating to the Filing of Criminal Cases

4 M.R.S.A. §173. Costs and fees; criminal

The following provisions shall apply to the District Court:

1. Definitions and limitations. This section applies only to costs and fees arising from the criminal proceedings in the District Court. When any criminal case is appealed from such court to the Superior Court, the latter may tax and impose costs from its proceedings which may not include any fees or costs arising from the proceedings or arrest in the lower court.

Nothing in this section shall be interpreted to prohibit a court from filing a case upon payment of costs without a conviction; provided, however, that upon motion at any time by either party, the court shall bring a filed case forward and proceed to a disposition of the pending complaint.

Nothing in this section shall be interpreted to deprive a law enforcement officer of compensation for his services and expenses, but this section may shift the responsibility for providing such compensation.

The term "law enforcement officer" shall include a state police officer, inland fish and game warden, forest ranger, state liquor inspector, sheriff, deputy sheriff, municipal police officer, constable, authorized representative of the Environmental Improvement Commission and any person whose duty it is to enforce any criminal law of this State by making arrests.

COMMENT: Pursuant to this bill, after a criminal complaint has been filed, either the State or the defendant may, at any time, move that the case be brought forward for hearing and disposition. When such motion is made, the court is required to bring the case forward.

C. 100 AN ACT Relating to Possession of Intoxicating Liquor by Persons under 18 Years of Age in On-Sale Premises

28 M.R.S.A. §303 Credit sales; sales to certain persons restricted

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Any person under the age of 18 years who purchases any intoxicating liquor or any
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his own without the consent of the owner of such trap in violation of the prohibition of the last paragraph of section 2451 shall be punished by a fine of not less than \$200 nor more than \$500.

C. 315 AN ACT to Clarify the Power of the Commissioner of Transportation and the Chief of the Maine State Police to Regulate Speed Limits

COMMENT: This section now allows the Commissioner of Transportation, with the consent and approval of the Chief of the State Police, to restrict the maximum rate of speed when such an adjustment will conserve motor fuel or is in response to changes in federal laws. The Commissioner also has the power to adjust speed limits to minimize the danger of accidents and to promote the free flow of traffic, with the consent and approval of the Chief of the State Police.

C. 337 AN ACT Relating to Venue in the Superior Court

COMMENT: Pursuant to this bill the criminal prosecution of an offense may, with the consent of the defendant, be tried at a place other than where the offense was committed. Also, this new law allows the Supreme Judicial Court of Maine to prescribe by rule or order the selection of juries from regions. These regions may be single counties or reasonably compact groups of counties and the juries so selected may hear criminal and civil cases in the Superior Court.

C. 369 AN ACT Concerning Off-Duty Court Appearances by Law Enforcement Officers

COMMENT: Law Enforcement Officers appearing in District or Superior Court at times other than their regular working hours; at the order of a prosecuting official, will be compensated on an hourly basis equal to that established by the State for their range and step level. The officer will be paid whether or not he actually testifies.

C. 398 AN ACT to Provide for the Identification of Past Offenders

15 M.R.S.A. §1702-A. Fingerprints required on certain sentences

All persons convicted of a crime for which

the possible penalty is a sentence of one year or more and all persons actually sentenced to the Men's Correctional Center or the Women's Correctional Center, whether or not such sentence is suspended, shall be required by the court to imprint the impressions of their fingers on the judgment of conviction.

The Supreme Judicial Court shall by rule provide for implementation of the above section and for appropriate judgment of conviction forms.

COMMENT: Fingerprints on the judgment of convictions will assist law enforcement officers, prosecutors and police in identifying past offenders and will assure that no person is mistaken for another prior offender.

C. 411 AN ACT to Provide for the Appointment of Deputy District Attorneys

COMMENT: This bill allows the district attorneys to designate one full-time assistant district attorney as a deputy. The deputy, in the absence of the district attorney, shall have the same authority, duty and responsibility as the district attorney.

C. 414 AN ACT Concerning the Mounting of Red Lights on Vehicles Operated by Volunteer Firemen

29 M.R.S.A. §1368. Spot, fog or auxiliary lights; fire and emergency vehicles

* * * *

1. Ambulances, fire department vehicles. Lights used on ambulances, fire department vehicles, vehicles operated by city and town fire inspectors, forestry department vehicles used for forest fire control purposes, and by vehicles operated by chiefs and officers of fire departments shall emit a red beam of light. When authorized by the municipal officers of a municipality and countersigned by the fire chief, a red blinker or flashing red signal light, not more than 5 inches in diameter and shielded from the driver of the vehicle so that the light will not interfere with his vision, shall be mounted on the dashboard of a motor vehicle operated by a member of a volunteer fire department. Such light may be displayed but shall not be in operation except while such vehicle is in use for fire or other emergency service. No volunteer fireman shall operate a red blinker or flashing red signal light upon such motor vehicle, except while actually enroute to the scene of a fire or other emergency requiring his services and unless he shall be an active

member of such department. Nothing herein shall limit the use of lights showing a red beam of light to the front of school buses provided said lights are of a type approved by the Commissioner of Educational and Cultural Services as stated in section 2011 of this title.

C. 415 AN ACT to Authorize any Alleged Rape Victim to Obtain a Physical Examination at the Expense of the County in Which the Alleged Rape Took Place

30 M.R.S.A. §507. Physical examination of rape victims

All expenses for a physical examination of the victim of an alleged rape for the purposes of obtaining evidence for the prosecution shall be paid by the office of the district attorney of the county in which the alleged rape took place.

COMMENT: A physical examination of an alleged rape victim for the purpose of obtaining evidence is essential to a successful prosecution and conviction in a rape case. This new statute specifies who shall bear the expense of such an examination.

C. 419 AN ACT to Clarify the Definition of Watch, Guard or Patrol Agency

32 M.R.S.A. §3803. Definitions

* * * *

4. "Watch, guard or patrol agency" means the business of watch, guard or patrol agency, including the furnishing, for hire or reward, of watchmen, guards, private patrolmen or other persons to protect persons or property, to prevent the theft or the unlawful taking of goods, wares or merchandise, or the misappropriation or concealment thereof of money, bonds, stocks, notes or other valuable documents, papers or articles of value, or to procure the return thereof, whether or not other functions or services are also performed for hire or reward, or other persons are employed to assist therein.

The phrase "business of" as used in this section shall not be interpreted to require the obtaining of a license in compliance with this chapter by any state, county or local law enforcement officer who is bonded in accordance with this chapter and who engages in that type of activity regulated by this chapter on a part-time, off-duty basis.

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COMMENT: This new statutory provision allows all state, county and local law enforcement officers to engage in the business of watch, guard, or patrol on a part-time, off-duty basis without acquiring a license to do so. However, law enforcement officers still must be bonded in accordance with the private detective statutes.

C. 449 AN ACT to Require the Carrying of a Concealed Weapons License.

25 M.R.S.A. §2031. Threatening display of or carrying concealed weapons, licenses

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Every licensee shall have his license in his immediate possession at all times when carrying a concealed weapon and shall display the same upon demand of any law enforcement officer. No person charged with failure to have his license in his immediate possession while carrying a concealed weapon shall be convicted if he produces in court the license theretofore issued to him and valid at the time of the issuance of a court summons. If the person so charged shall exhibit to a law enforcement officer designated by the summoning officer such license not later than 24 hours before the time set for the court appearance, then the complaint shall not be issued. Whoever violates any of the provisions of this section shall be punished by a fine of not more than \$250 or by imprisonment for not more than 90 days, or by both.

FORUM

This column is designed to provide information on the various aspects of law enforcement that do not readily lend themselves to treatment in an extensive article. Included will be comments from the Attorney General's staff, short bits of legal and non-legal advice, announcements, and questions and answers. Each law enforcement officer is encouraged to send in any questions, problems, advice or anything else that he thinks is worth sharing with the rest of the criminal justice community.

Authority of Undercover Officers Working Outside their Jurisdictions

QUESTION: County and municipal law enforcement officers are frequently assigned to the State Police to assist in the performance of undercover operations. In the course of their undercover work, these assigned officers often engage in operations outside of their own jurisdictions. Do county and municipal law enforcement officers who are assigned to the State Police to perform undercover work have the authority to make arrests, use firearms, and take similar police action outside of their own county or municipality?

DISCUSSION: The powers of municipal law enforcement officers are established by statute and the jurisdiction of municipal officers is defined by statute. Pursuant to 30 M.R.S.A. §2361(2), the authority of a municipal police officer terminates once he goes beyond the limits of his municipality. Exceptions to this general rule apply when the officer has gone into another municipality (1) for the purpose of retaking a prisoner whom he has arrested and who has escaped; (2) for the purpose of taking a person before the District Court; (3) for the purpose of pursuing a person who has gone into another municipality and for whose arrest a police officer has a warrant; or (4) in cases of fresh pursuit.

Likewise, the authority of the sheriff (and his deputies) in criminal matters has historically been limited to his county. 30 M.R.S.A. §1004 does, however, create an exception to this rule in cases of fresh pursuit.

Therefore, except in cases of fresh pursuit originating from the officer's own jurisdiction and unless one of the 30 M.R.S.A. §2361(2) exceptions applies in cases involving municipal officers, county and municipal law enforcement officers assigned to the State Police for undercover work have authority no greater than that of a private citizen to make arrests or take similar police action outside their own jurisdiction. Because an officer's authority to use firearms incident to his law enforcement duties is limited to his own county or municipality, a county or municipal officer who is working outside his own jurisdiction is subject to the same rules as an ordinary citizen respecting use of firearms. It should be noted, however, that if an officer is cloaked with legal authority (i.e., if he is "sworn-in" or "deputized") by the municipality or the sheriff in the county in which he is conducting undercover operations, the officer will have the authority to make arrests, use firearms, and take other police action in that municipality or county.

Juvenile Fingerprinting

QUESTION: When an officer arrests a juvenile for the commission of a juvenile offense, may the officer fingerprint and photograph the juvenile?

DISCUSSION: Although for many years officers have been fingerprinting and photographing juveniles charged with juvenile offenses, the Attorney General has recently indicated that this practice is improper because it is not authorized by 25 M.R.S.A. §1542. That statutory section authorizes the fingerprinting and photographing of persons in custody who are "charged with the commission of a crime." Because a juvenile offense is not a crime, the statute provides no authority for the fingerprinting and photographing of juveniles detained for juvenile offenses. Therefore, until such time as this situation is changed by legislation, departments should no longer fingerprint or photograph juveniles who are detained for juvenile offenses. Moreover, any such fingerprints or photographs which may already have been taken should no longer be forwarded to the State Bureau of Identification. It should be noted, however, that if a juvenile is bound over to Superior Court to be tried as an adult, at that point he may be fingerprinted and photographed since at that point he is charged with a crime.

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

ALERT

The matter contained in this bulletin is intended for the use and information of all those involved in the criminal justice system. Nothing contained herein is to be construed as an official opinion or expression of policy by the Attorney General or any other law enforcement official of the State of Maine unless expressly so indicated.

Any change in personnel or change in address of present personnel should be reported to this office immediately.

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