

# MAINE STATE LEGISLATURE

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# ALERT

SEPTEMBER 1975

## CRIMINAL DIVISION

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



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

In this month's ALERT we again present some of the significant criminal legislation enacted by the Regular Session of the 107th Maine Legislature. Next month's ALERT will narrow the scope of its discussion of recent legislation and will deal exclusively with P.L. 1975, c. 430, AN ACT to Implement the Recommendations of the Maine Traffic Court Advisory Committee. (Effective date: October 1, 1975). The provisions of that Act effect sweeping changes in the Motor Vehicle laws and have great practical significance for all state, county, and municipal law enforcement officers involved in the enforcement of those laws.

I would also like to announce that the Criminal Code Revision Commission and the Maine Attorney General's Office are presently working to develop a coordinated approach to educate Maine's law enforcement officers in the new Criminal Code. Each department will be notified once the details for this educational plan have been established.

JOSEPH E. BRENNAN  
Attorney General

## FROM THE LEGISLATURE

### Important Legislation II

The following is a continuation of the 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).

Notwithstanding any inconsistent provisions of any public or private and special law, any person who voluntarily, without the expectation of monetary or other compensation, renders first aid, emergency treatment or rescue assistance to a person who is unconscious, ill, injured or in need of rescue assistance, shall not be liable for damages for injuries alleged to have been sustained by such person nor for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid, emergency treatment or rescue assistance, unless it is established that such injuries or such death were caused willfully, wantonly or recklessly or by gross negligence on the part of such person. This section shall not be construed to require a person who is ill or injured to be administered first aid or emergency treatment if such person objects thereto on religious grounds. This section shall not apply if such first aid or emergency treatment or assistance is rendered on the premises of a hospital or clinic.

*COMMENT: A person rendering voluntary first aid, emergency treatment, or rescue assistance to another who is unconscious, ill, injured or in need of assistance is immune from civil liability if the treated person sustains injuries as a result of any treatment given. Without this law, people, especially doctors and nurses, were reluctant to give emergency assistance because of the possibility of civil liability. Also, volunteer rescue personnel are protected under this statute. However, liability will still attach to willful, wanton or*

C. 452 AN ACT to Provide Immunity to Persons who Voluntarily Render Emergency Care or Rescue Assistance

14 M.R.S.A. §164. Immunity from civil liability

[Continued on page 2]

reckless conduct or to conduct amounting to gross negligence if the assisted person receives additional injuries as a result of the treatment.

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**C. 453 AN ACT Relating to the Transfer of Prisoners When a Jail is Unfit or Insecure**

*COMMENT: This new law allows a Justice of the Superior Court to order the transfer of an inmate to a place other than a jail if the present jail is unfit, insecure or has been destroyed. This law removes any doubt that transfer to places other than county jail is permissible.*

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**C. 505 AN ACT to Make Attendance at a Rehabilitation Program Mandatory for the First Offender Convicted of Operating Under the Influence**

*COMMENT: This act allows a person who has been convicted of operating under the influence and who has lost his license to regain his license after 30 days if the driver has participated in a rehabilitation program and such reinstatement is approved by the Secretary of State.*

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**C. 525 AN ACT Concerning the Registration and Operation of Snowmobiles.**

**12 M.R.S.A. §1975. Vehicles exempt from registration**

No registration shall be required for a snowmobile operated over the snow on land on which the owner lives or on lands on which he is domiciled, provided the snowmobile is not operated elsewhere within the jurisdiction of the State.

No registration shall be required for a snowmobile operated by a commercial ski area for the purpose of packing snow or for rescue operation thereon, unless the snowmobile is required to cross a public way during such operation.

Snowmobiles owned and operated in this State by the Federal Government, the State or political subdivision of the State, shall be exempt from registration fees, but shall be registered and required to display numbers.

**12 M.R.S.A. §1977. Authority under registration**

1. Limitations on operation of snowmobiles. No person shall operate a snowmobile upon controlled access high-

ways or within the right-of-way limits thereof.

No person shall operate a snowmobile upon any plowed private road after having been forbidden to do so by the owner thereof or the owner's agent, either personally or by appropriate notices posted conspicuously on said way.

No person shall operate a snowmobile upon the main traveled portion, the sidewalks or the plowed snowbanks of any other public way.

2. Exceptions. The following are exceptions to the provisions of subsection 1:

A. Controlled access highways. Properly registered snowmobiles may cross controlled access highways by use of bridges over or roads under such highways, or by use of roads crossing controlled access highways at grade. The Commissioner of Transportation may issue special permits for designated crossings of controlled access highways.

B. Other ways. Properly registered snowmobiles may operate on a public way only the distance necessary, but in no case to exceed 300 yards, on the extreme right of the traveled way for the purpose of crossing as directly as possible a public way, sidewalk or culvert and properly registered snowmobiles may operate on a public way only the distance necessary, but in no case to exceed 500 yards, on the extreme right of the traveled way for the sole purpose of crossing as directly as possible a bridge, overpass or underpass, provided that such operation can be made in safety and that it does not interfere with vehicular traffic approaching from either direction on such way. It shall be the responsibility of the operator of the snowmobile to yield the right of way to all vehicular traffic upon any way before crossing same.

Snowmobiles may operate on any portion of public ways when the main traveled portion is unplowed and unused by conventional motor vehicles. If the main traveled portion of a public way is plowed and utilized by conventional motor vehicles, snowmobiles may operate only on that portion of the way not maintained or utilized for the operation of conventional motor vehicles, except that operation on the left side of the way shall be prohibited during the hours from sunset to sunrise on the portion of the way not maintained or utilized for the operation of conventional motor vehicles.

**C. Operation on Public ways.**

[1] Snowmobiles shall be brought to a complete stop before entering the said way.

[2] Snowmobile operators shall yield the right of way to all vehicular traffic on said way.

[3] Snowmobiles, other than for the sole purpose of crossing a public way, shall be

operated on the extreme right of the traveled way.

[4] The Commissioner of Transportation may, following a public hearing, prohibit crossing of an individual bridge, culvert, overpass or underpass, if the commissioner determines such crossing or use of the public way is hazardous. Any bridge, culvert, overpass or underpass closed by the commissioner must be posted by appropriate notices.

**12 M.R.S.A. §1978. Operation**

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**5. Age Restriction for operation.**

No person under the age of 14 years old shall operate a snowmobile when crossing any public way maintained for travel. No operator's license shall be required for the operation of a snowmobile. It shall be unlawful for anyone to permit a child under 10 years of age to operate any snowmobile unless he is accompanied by an adult, except on land which is owned by the parent or guardian or on land where permission for use has been granted to the parent or guardian.

**12 M.R.S.A. §1980. Reciprocity**

Reciprocity shall be allowed to non-residents from all states, provinces, countries or districts which allow similar privileges to residents of this State, providing they are covered by a valid registration from said state, province, country or district. If the snowmobile is owned by a nonresident, but is primarily operated by a Maine resident, it must be registered under section 1972. Nothing in this section shall be construed to authorize the operation of any snowmobile described in any manner contrary to this chapter.

**12 M.R.S.A. §1981. Application**

This chapter shall apply to the operation of snowmobiles in all areas which come within the jurisdiction of the State.

**12 M.R.S.A. §1984. Penalty**

Any person who violates this chapter or any rules or regulations promulgated by the Commissioner of Inland Fisheries and Game shall be subject to the penalties provided in section 3060 for each offense, except that the minimum fine shall be \$50 for violation of any provision of section 1978, subsection 12.

[Continued on page 3]

C. 538 AN ACT Amending Laws Relating to Juvenile and Correctional Institutions and Juvenile Dispositions

15 M.R.S.A. §2608. Custody pending disposition

When any juvenile has been arrested, the arresting officer shall make arrangements for the juvenile's custody or safekeeping until the juvenile is brought before a juvenile court. If the arresting officer reasonably believes the juvenile will not appear at a scheduled hearing, such officer shall take the arrested juvenile before the juvenile court having territorial jurisdiction over the alleged offense for a determination of the place of custody or detention of the juvenile. If it is not during the business day of the district court, the arresting officer shall transport and deliver said juvenile to any place of detention, including a jail designated by the Department of Mental Health and Corrections as a place for the security detention of juveniles, and said juvenile shall be received and held at such place of detention, with or without process. If a juvenile is detained under this section without having been first brought before the juvenile court having territorial jurisdiction over the alleged offense, the arresting officer shall take the juvenile before the juvenile court on the next business day of the district court.

When the juvenile is brought before the juvenile court, the juvenile court shall inform the juvenile of the complaint against him, of his right to retain counsel, of his right to request the assignment of counsel and shall appoint counsel whenever necessary to protect the juvenile's rights and shall admit him to bail in accordance with section 942. If the juvenile is not released, the juvenile court shall order that the juvenile be detained in any juvenile institution or in any jail designated by the Department of Mental Health and Corrections as a place for the security detention of juveniles, provided the juvenile is segregated from criminal offenders.

15 M.R.S.A. §2611, Juvenile Court Power of Disposition

The juvenile court may:

\* \* \* \*

3. Find probable cause. Find probable cause to hold the juvenile for action by the grand jury within and for the same county. Such finding may be made if, and only if, the juvenile court concludes, and so states in its probable cause finding, that, from the totality of the child's circumstances, it appears the child's age, maturity, experience and development are such as to require prosecution under the general law; the nature and seriousness of

the child's conduct constitute a threat to the community; the conduct of the child was committed in a violent manner and there is reasonable likelihood that like future conduct will not be deterred by continuing the child under the care, protection and discipline of the juvenile law processes;

4. Adjudge a juvenile offense committed. Adjudge that the juvenile has committed a juvenile offense in which case the juvenile court may:

B. Commit to the Boys Training Center or the Stevens School, if the juvenile is of the proper age;

C. Commit to the custody of the Department of Health and Welfare;

E. Commit to the care of a family subject to supervision by the Division of Probation and Parole, or by the Department of Health and Welfare;

F. Suspend the imposition of sentence, or continue the case for sentence, or impose sentence and suspend its execution, in each case placing the juvenile on probation;

G. Dismiss the action and refer the juvenile to the Department of Mental Health and Corrections which, through its Bureau of Mental Health or Bureau of Mental Retardation, shall cause the provision of services needed by the juvenile to every extent possible, including, but not limited to, causing application to be made for admission of the juvenile to the Augusta Mental Health Institute or to the Bangor Mental Health Institute pursuant to Title 34, chapter 191, if the juvenile is alleged to be a mentally ill individual or to the Pineland Center under Title 34, section 2152, if the juvenile is alleged to be mentally retarded, provided that the court has received a report as provided in section 2503 that the juvenile is mentally ill or mentally retarded;

H. Make such other disposition of the case, including requiring payment of a fine in an amount within the limits fixed by statute for the offense considered as a criminal offense, as a criminal offense, as may be for the best interests of both the juvenile and the community. A juvenile court shall have no power, under any circumstances, to sentence any juvenile to jail or prison and no juvenile may be committed to jail or prison for failure to pay any fine imposed by a juvenile court;

5. Dispositions after return to a juvenile court. In instances of commitment of a juvenile to the Boys Training Center or to the Stevens School, the superintendent thereof following such commitment may for good cause petition the juvenile court having original jurisdiction in the case for a judicial review of disposition. In all cases in which a juvenile is returned to a juvenile court from

the Boys Training Center or Stevens School, the juvenile court may make any of the dispositions otherwise provided in this section.

The juvenile court shall not commit a juvenile to the Men's Correctional Center, the Women's Correctional Center, the Boys Training Center or the Stevens School if the offense or act committed by the juvenile would not be an offense under the criminal statutes of this State, if committed by a person 18 years of age or over.

15 M.R.S.A. §2661. Review or Appeal

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2. Any juvenile adjudged by the juvenile court to have committed a juvenile offense may, personally or by his parent or parents, his next friend, guardian or attorney, appeal from such judgment or any orders based thereon, to the Superior Court within and for the county wherein the juvenile offense, concerning which the judgment was rendered, is alleged to have been committed, by giving written notice of appeal to the juvenile court within 5 days next after the entry of such judgment or order.

15 M.R.S.A. §2714. Commitment

Only a juvenile as defined in section 2502, subsection 5, who is 11 years of age or older at the time of the court's disposition of the case may be committed to a center pursuant to chapters 401 to 409. All commitments of such children shall be until the age of 21, and discharge from the center shall be in accordance with section 2718; but no child shall be committed who is deaf, mute, blind or a proper subject for the Augusta Mental Health Institute, the Bangor Mental Health Institute or the Pineland Center.

15 M.R.S.A. §2716 Duties of superintendent

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In the event that any child committed to the center shall attain the age of 18 years while still under commitment, the statutory guardianship of the superintendent with respect to any such child shall terminate; however, any such child shall remain subject to the control of the superintendent and staff of the center and rules and regulations thereof until the expiration of the period of commitment or discharge from the center.

15 M.R.S.A. §2718. Discharge

The superintendent shall cause to be discharged all children committed to the center at the age of 21 and shall cause every child committed to the center to be

[Continued on page 4]

discharged therefrom at any time during the period of commitment that it is determined that the child has benefited optimally from services and facilities of the center and may cause any child committed to the center to be discharged therefrom when it is determined that discharge would be in the best interest of the child.

15 M.R.S.A. §2719. Offenses while under commitment

1. Absence without leave. If a child committed to a center absents himself or herself from the center without leave or attempts to do so, he or she may be committed to the center under a new commitment following adjudication of the absence without leave by the juvenile court having territorial jurisdiction where the center is located. Under this subsection "absence without leave" is a juvenile offense. Commitment ordered by the juvenile court following adjudication under this subsection shall be for a fixed term of 6 months to run concurrently with the term of the original commitment and subject to the discharge provisions of section 2718.

2. Assault and battery. In addition to the general applicability of Title 17, section 201, to any child committed to a center, a child committed to a center who, then being of the age of 14 years or more, is alleged to have committed an assault and battery of a high and aggravated nature as defined in Title 17, section 201, upon any member of the staff of the center, shall be subject to a hearing before the juvenile court under section 2611, subsection 3, and the juvenile court shall conduct a probable cause hearing and shall make findings appropriate thereto and decree accordingly.

*COMMENT: The entire text of c. 538 is not reproduced above. Omitted is that portion of c. 538 dealing with correctional institutions. In substance, c. 538 makes uniform the length of confinement and the maximum age of inmates at the Men's and Women's Correctional Centers.*

*The reproduced sections of c. 538 reveal substantial changes in the juvenile law. For example, under both the old and the new 14 M.R.S.A. §2608, a law enforcement officer who arrests a juvenile and who believes the juvenile will not appear before the juvenile court must make overnight arrangements for the juvenile at an approved place of detention if the district court is not in session. However, the new 15 M.R.S.A. §2608 requires the law enforcement officer to bring the juvenile before the juvenile court on the next business day of the district court. Under the old law, no time period was specified.*

*C. 538 also makes extensive changes in other areas of juvenile law such as the*

*standard for finding probable cause and transferring a juvenile into the adult criminal justice system. Law enforcement officers are encouraged to read c. 538 in conjunction with the February-March 1975 and the April 1975 ALERTs dealing with juvenile law and procedure and make appropriate notations in the articles.*

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C. 543 AN ACT to Provide for the Detention of Shoplifters

17 M.R.S.A. §3521. Detention of shoplifters

A store owner, manager or supervisor may detain on the premises in a reasonable manner and for a period of time not to exceed 1/2 hour any person he has probable cause to believe is unlawfully concealing merchandise. The purposes of such detention shall be: To require the person being detained to identify himself; to verify such identification; to inform a law enforcement officer of the detention and to surrender such person to said officer; and when the detained person is a minor, to inform a law enforcement officer or the parents or guardian of said minor of the detention and to surrender him to the person so informed.

Any sheriff, deputy sheriff, municipal or state police officer, if he has probable cause to believe that a person has unlawfully concealed merchandise, may arrest such person without a warrant, whether or not such concealment was committed in his presence.

*COMMENT: This law authorizes temporary detention of shoplifters by store owners, managers or supervisors. Also, law enforcement officers may arrest suspected shoplifters without a warrant even if the alleged concealment of goods was not committed in their presence provided probable cause exists for such arrest.*

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C. 558 AN ACT Relating to the Disposal of Certain Personal Property by Law Enforcement Agencies

25 M.R.S.A. §3501. Application of chapter

This chapter shall apply to all personal property of which possession is transferred to a police department or other law enforcement agency of the State or any political subdivision thereof, under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen, or otherwise illegally possessed, except

property seized during search and retained and ultimately returned, destroyed or otherwise disposed of pursuant to a court order or some other law hereafter applicable to specific property or circumstance.

25 M.R.S.A. §3502. Custody and return of property believed to be abandoned or stolen

Such property believed to be abandoned, lost or stolen or otherwise illegally possessed, as is covered by this chapter, shall be retained in custody by the chief of police or the principal official of the law enforcement agency, who shall make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof and shall return the property after such person provides reasonable and satisfactory proof of his ownership or right to possession and reimburses the agency and others authorized to incur expenses by the agency for all reasonable expenses of such custody. If the owner of such property or any other person entitled to possession thereof has not been identified within 30 days from the initial date of custody of such property by a law enforcement agency, the principal official of such agency shall cause to be published, at least once in a newspaper of general circulation in the county wherein such official has authority or in the state paper in the case of a state law enforcement agency, a notice of his agency's possession of such property and its inability to ascertain the owner thereof. Such notice shall also contain a brief description of the property and a statement to the effect that, if the owner of such property or any other person entitled to possession thereof has not claimed such property within 5 months of the date of such published notice, such property will either be surrendered to the person who found it, if any, or be sold to the highest bidder at public auction.

25 M.R.S.A. §3503. Sale of unclaimed property

If the identity or location of the owner or other person entitled to possession of the property has not been ascertained within 6 months after the law enforcement agency obtains such possession, or said identity has been determined and such person does not claim possession within this 6-month period, and the finder of such property, if any, has not claimed it pursuant to the provisions of section 3507 within 15 days after expiration of said 6-month period, the principal official thereof shall effectuate the sale of the property for cash to the highest bidder at a public auction, notice of which, including time, place and a brief description of such property, shall be published at least once in a newspaper of general circulation in the

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county wherein such official has authority at least 10 days prior to such auction or in the state paper in the case of a state law enforcement agency. Property offered but not sold at such public auction may be offered and sold at a subsequent public auction without further notice.

**25 M.R.S.A. §3504. Deposit of proceeds**

Proceeds of the sale of the property at public auction, less reimbursement to the law enforcement agency and others authorized of the reasonable expenses of custody thereof, shall be deposited in the State Treasury or the treasury of the appropriate political subdivision thereof to be expended as provided by law.

**25 M.R.S.A. §3503. Recovery of property by owner or person entitled to possession; limitation**

The owner or other person entitled to possession of such property may claim and recover possession of the property at any time before its sale at public auction, upon providing reasonable and satisfactory proof of ownership or right to possession and reimbursing the law enforcement agency and others authorized for all reasonable expenses for custody thereof.

**25 M.R.S.A. §3506. Damages occasioned by acts or omissions**

No person shall be responsible for subsequent damages to another occasioned by an act or omission in compliance with this chapter.

**25 M.R.S.A. §3507. Property returned to finder**

Any person may surrender property which he has found to a law enforcement agency. Such person shall be entitled to have such property surrendered to him if the owner thereof or other person entitled to possession thereof has not properly claimed the property within 6 months of its surrender to the law enforcement agency, provided such person who so surrendered the property reimburses the law enforcement agency and others authorized for reasonable expenses incurred in its custody of such property.

*COMMENT: This law provides police departments and other law enforcement agencies with a procedure for the disposal of personal property which has been abandoned, lost, stolen or otherwise illegally possessed. Provisions are also made for the property to be returned to the finder upon a timely claim if the owner or person entitled to possession has not claimed the property. This law should be carefully studied and referred to if any property falling within the definitions of this law is to be disposed of.*

**OTHER BILLS OF INTEREST**

Because of space limitations, we have been unable to present or discuss all the recent legislation of interest to criminal justice personnel in this issue of ALERT. We have presented only that legislation which we felt was most important or far-reaching. Because value judgments as to importance may differ, however, we are listing here the titles of all other bills of relevance to members of the criminal justice system. Hopefully the titles of the bills will give some insight as to their content.

Any member of the criminal justice community may obtain further information about any bill mentioned in this issue of ALERT by writing the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine 04330.

C. 12 AN ACT to Increase the Penalty for Premeditated Animal Fights. [Emergency]

C. 31 AN ACT Relating to Contraband Cigarettes.

C. 80 AN ACT to Allow Municipalities to Permit the Sale of Malt Liquor in All Restaurants, Restaurants Operating under a Part-time Malt Liquor License, Class A Taverns and Taverns on Sunday.

C. 86 AN ACT Relating to the Sale of Vinous Liquors in Original Containers.

C. 88 AN ACT to Prohibit the Unlawful Piracy and Resale of Recorded Musical Performances.

C. 102 AN ACT to Repeal the Bounty on Bobcats.

C. 106 AN ACT Relating to the Provision of Aftercare Services to Entrusted Juveniles.

C. 110 AN ACT to Provide for the Receipt and Custody of Prisoners of the United States.

C. 129 AN ACT Relating to the Giving Away of Deer.

C. 131 AN ACT to Delete the Requirement that Taverns Serve Men Only.

C. 139 AN ACT Relating to the Transfer of Misdemeanor Proceedings without Trial to the Superior Court. (Emergency)

C. 143 AN ACT Relating to Factors to be Considered Concerning Release on Personal Recognizance or Bail Bond.

C. 150 AN ACT Creating Uniform Standards for Disqualification of Applicants with Prior Criminal Convictions for a License or Permit

to Practice a Trade or Occupation Regulated by the State.

C. 155 AN ACT for Humane Treatment of Animals in Schools, Public and Private.

C. 170 AN ACT Relating to the Disposition of Fines and Penalties Resulting from Criminal Prosecutions by Wardens.

C. 177 AN ACT to Include Pellet Guns within the Definition of Firearm.

C. 182 AN ACT Relating to Exemption of Law Enforcement Agencies and Courts under the Human Rights Act.

C. 205 AN ACT Relating to Fees of Bail Commissioners.

C. 230 AN ACT Relating to the Release of Mentally Disordered Persons.

C. 235 AN ACT Relating to Cruelty to Animals.

C. 237 AN ACT to Change Weights and Related Provisions for Commercial Vehicles.

C. 266 AN ACT Relating to Hunting Bear with Dogs.

C. 274 AN ACT Relating to Compensation of Full-time Deputies in All Counties. [Emergency]

C. 292 AN ACT to Establish Bailiffs for the Maine District Court.

C. 306 AN ACT Prohibiting the Shooting of Hunting or Sporting Dogs.

C. 307 AN ACT Relating to the Game of "Beano" and "Bingo."

C. 308 AN ACT to Restrict Liquor Control Commission Records of Liquor Violations to Violations which are Less than 5 Years Old.

C. 327 AN ACT Relating to License Requirements and Fees for Trapping.

C. 351 AN ACT Relating to Issuing of Fishing and Hunting Licenses.

C. 363 AN ACT to Clarify the Jurisdiction of the Juvenile Court in Matters Arising under the Boating Laws.

C. 393 AN ACT to Prevent Hunting of Bear in Areas Near Dumps in Unorganized Territories.

C. 401 AN ACT to Amend the Fishing Laws of the State of Maine.

C. 408 AN ACT to Implement the Recommendations of the Trial Court Revision Commission.

C. 410 AN ACT Amending Certain Laws Relating to Games of Chance.

C. 424 AN ACT to Allow Certain Non-profit, Volunteer and Educational

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Organizations to Operate a Raffle without a License from the Maine State Police. [Emergency]

- C. 425 AN ACT Relating to the Maine Law Enforcement Planning and Assistance Agency. [Emergency]
- C. 430 AN ACT to Implement Recommendations of the Maine Traffic Court Advisory Committee.
- C. 437 AN ACT to Increase Protection under the Uninsured Motorist Law.
- C. 499 AN ACT Creating the Maine Criminal Code.
- C. 506 AN ACT to Clarify the Laws Relating to Superior Court Commitment of Mentally Disordered Persons.
- C. 516 AN ACT to Revise the Fish and Game Laws.
- C. 536 AN ACT to Repeal Obsolete Statutes Concerning Certain Crimes.
- C. 553 AN ACT to Provide Minimum Standards for the Protection of the Rights of Residents of Public Institutions.
- C. 557 AN ACT Concerning Continuing Jurisdiction over Juvenile Offenses. [Emergency]
- C. 569 AN ACT Concerning Vehicles Left on the Premises of Commercial Garages and Certain other Automobile Businesses for a Period of 6 Months or More.
- C. 611 AN ACT Relating to Hearing for Provisional Motor Vehicle Licensee on Suspension.
- C. 623 AN ACT to Correct Errors and Inconsistencies in the Public Laws.

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## IMPORTANT RECENT DECISIONS

### CONFESSIONS:

B § 1.3 Miranda

### CONFESSIONS:

B § 2.3 Procedure—Use for Impeachment

### WITNESSES:

E § 2.1 Impeachment

Defendant was convicted of first degree burglary and appealed. He was arrested for stealing bicycles from residential garages. The arresting officer gave defendant the Miranda warnings and later, while in the patrol car, defendant stated that he would like to call a lawyer. The officer told him that this could not be done until they reached the station. Defendant then made inculpatory statements and pointed out the location of one of the bicycles.

The trial court ruled that the statements made by defendant after he said he wanted to call his attorney and his identification of the location of the bicycle were not admissible. Defendant later took the stand and testified contrary to the information presented in the prosecution's case in chief. The prosecution called in rebuttal the arresting officer, who testified on the information provided by the defendant after he said he wanted to call a lawyer. The trial court instructed the jury to consider the rebuttal testimony only as it bears on the credibility of the defendant as a witness when he testified on the witness stand. The Oregon Court of Appeals reversed defendant's conviction on the ground that the defendant's statements were improperly used to impeach his testimony. The Supreme Court of Oregon affirmed.

The U.S. Supreme Court held that the rebuttal testimony of the arresting officer was admissible for purposes of impeaching defendant's credibility as a witness. The Court applied the principles of *Harris v. New York*, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed. 2d 1 (1971), to this case, finding that there was no valid distinction between the two cases. In both cases the trustworthiness of the evidence satisfied legal standards and the impeaching material provided valuable aid to the jury. Also the Court felt that there is sufficient deterrence to law enforcement officers when the evidence in question is made unavailable to the prosecution in its case in chief, and that the shield provided by Miranda should not be perverted to a license to testify inconsistently, or even perjurally,

free from the risk of confrontation with prior inconsistent utterances. *Oregon v. Hass*, 43 U.S.L.W. 4417 U.S. Supreme Court, March 1975)

*COMMENT: Officers should not read this case as an opportunity to get around the requirements of the Miranda case. An admission or confession obtained in compliance with Miranda is of great value to the prosecution for use in its case in chief. An officer's avoiding the minor inconvenience of compliance with Miranda is not worth having an admission or confession declared inadmissible in the prosecution's case in chief. Therefore, officers are strongly urged to continue to follow the guidelines set out in Section IV-A of the Law Enforcement Officer's Manual and in the May 1971 and June 1971 issues of ALERT.*

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*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.*

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## 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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