

MAINE STATE LEGISLATURE

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ALERT

JUNE - JULY 1976

CRIMINAL DIVISION

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

The 1976 Maine Criminal Code pamphlets (Title 17-A of the Revised Statutes) have now been distributed to almost all full-time law enforcement officers. If there are any full-time officers who have not received a copy, they should notify their department. The department should in turn contact Assistant Attorney General Stephen Diamond of the Law Enforcement Education Section (289-2146).

Officers are reminded that the Codes are departmental property (or municipal property in the case of constables) and not their own personal property. Accordingly, an officer who terminates his employment should return his Code to the department. Since the 1975 pamphlets are now obsolete, officers should be extremely careful not to use them in performing their duties. (Please note that the current edition has the words "1976 Pamphlet" printed on the top of the front cover. Any copy of Title 17-A without these words should not be used.)

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

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

FROM THE LEGISLATURE

Important Legislation

The following is a presentation and discussion of some of the important legislation passed by the First Special 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 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). Finally, it should be noted that the bill amending the Maine Criminal Code (P.L. 1975, c. 740) is not presented in this issue of ALERT. That bill was discussed in the April-May 1976 ALERT.

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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 chief officers such as assistant chiefs, deputy chiefs and district chiefs 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 may be mounted as near as practicable above the registration plate on the front of a motor vehicle or mounted on the dashboard so that the light will be shielded from the driver so as not to interfere with his vision, while operated by a member of a municipal or 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 or municipal firefighter 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 or rear of school buses, provided those lights are of a type approved by the Commissioner of Educational and Cultural Services as stated in section 2012.

* * * *

C. 653 AN ACT Relating to Emergency Lights for Vehicles
29 M.R.S.A. §1368(1) Spot, fog or auxiliary lights; fire and emergency vehicles

COMMENT: For the last few years, there has been considerable confusion over who may have blinking or flashing red lights in
[Continued on page 2]

or on their cars and when such lights could be operated. This new act amended the existing law in a number of ways to help resolve this confusion. First, the new act provides examples of the type of chief fire department officers whose vehicles must have a red light on them. They include, but are not limited to, assistant chiefs, deputy chiefs and district chiefs. Secondly, the act specifically allows for the mounting of appropriate red lights over the regulation plate on the front of a motor vehicle, as well as on the dashboard. Third, members of municipal fire departments may now have these lights on their vehicles. Finally, the lights may be displayed while not in operation.

C. 668 AN ACT Concerning the Identification by Fingerprints of Past Offenders

COMMENT: Prior law required persons convicted of crimes involving possible imprisonment for a period greater than one year and persons actually sentenced to a correctional center, to place their fingerprints on the judgment of conviction. The prior law was designed to simplify the method by which certain prior convictions could be proved at trial. The Legislature apparently decided that method presented too many problems and repealed the law entirely by this act.

C. 674 AN ACT Concerning the Administration of Medicine to Inmates of County Jails

34 M.R.S.A. §812 Administration of Medicine to Inmates of County Jails

1. Administration of medication by sheriff or deputy. The sheriff of any county may administer to any prisoner in his custody and charge, any oral or topical medication as prescribed by a licensed physician or dentist, or if requested by a prisoner, any nonprescription medication in accordance with the directions on its container. The sheriff may delegate this authority to administer medication to his deputy who is in charge of the county jail or to the master or keeper of the county jail.

2. Limitations on administration of medication. The sheriff or his delegate shall not administer any prescription or nonprescription medication to any prisoner who has been incarcerated in the county jail for less than 24 hours, unless the sheriff or his delegate has consulted and received permission to administer such medication from a licensed physician.

3. Insulin injections. No provisions under this section shall prevent any prisoner from self-administering insulin injections providing:

A. A duly licensed physician has authorized such self-administration; and

B. Such self-administration takes place in the presence of the sheriff or his delegate.

4. Statement by prisoner. Before administering any nonprescription medication to any prisoner who has been incarcerated in the county jail for 24 hours or longer, the sheriff or his delegate shall secure a written statement signed by the prisoner, which states that the prisoner has requested such medication and had no previous adverse allergic reaction to such medication.

5. Records of medication administered. Every sheriff or his delegate shall maintain for at least 2 years a record which shall include a description of each prescription and nonprescription medication administered in the county jail and the identity of each person to whom such medication is administered.

6. Administration of medication not a violation. The administration of medication to prisoners as provided in this section shall not be a violation of Title 32, section 2102, subsection 2, paragraph D or Title 32, section 3270 or any other law.

COMMENT: Prior to the enactment of this law, keepers of county jails were prohibited from administering to prisoners in their charge any kind of medication, including nonprescription drugs, such as aspirin and cough medicine. In addition, high and unnecessary expenses were incurred by county jails because prisoners had to be transported to qualified persons to have prescription medication administered to them even when the label on such medication clearly directed how it should be administered. Under this law, a prisoner who has been incarcerated for more than 24 hours in a county jail may be administered prescription drugs which have been properly prescribed by a licensed physician or dentist. Properly prescribed prescription drugs may only be administered to a prisoner incarcerated in the county jail less than 24 hours if the sheriff or his delegate has consulted with and received permission to do so from a licensed physician. Non-prescription drugs may be administered to a prisoner in a county jail who has been incarcerated over 24 hours therein only after a written request for such nonprescription medication and an acknowledgement that the prisoner has had no previous adverse allergic reaction to such medication. Records of all drugs administered to prisoners must be kept for two years.

C. 677 AN ACT to Prohibit Embalming When an Autopsy has been Authorized

32 M.R.S.A. §1404-A No embalming when autopsy authorized

The next of kin or legal representative of a person who has died may authorize an autopsy. If an autopsy is authorized, no person shall inject into or remove from any artery, vein, or cavity of the body of the person who had died any fluid, gas or other substance except by or with the permission of a pathologist, medical examiner or licensed physician in attendance.

On completion of the autopsy, the body shall be released for normal handling.

The provisions of this section do not apply to deaths within the jurisdiction of medical examiners or autopsies as authorized in Title 22, chapter 711.

A violation of this section is a Class E crime.

COMMENT: When a person dies and an autopsy is not required under the Medical Examiner Act, the body is customarily embalmed. In one case, the next of kin requested that an autopsy be done although there was no indication of foul play. Inadvertently, the body was embalmed prior to the autopsy, possibly destroying any evidence that the death was from other than natural causes. This act attempts to avoid that result by prohibiting embalming in such cases without the permission of a pathologist, medical examiner or licensed physician in attendance.

C. 678 AN ACT to Amend the Mandatory Reporting Law on Child Abuse and Neglect

§3853. Persons mandated to report suspected child abuse or neglect

When any physician, resident, intern, medical examiner, dentist, osteopath, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, teacher, school official, social worker, psychologist, child care personnel, mental health professional or law enforcement official knows or has reasonable cause to suspect that a child has been subjected to abuse or neglect or observes the child being subjected to conditions or circumstances which would reasonably result in abuse, when such individual is acting in his professional capacity, he shall immediately report or cause a report to be made to the department. Whenever such person is required to report under this chapter in his capacity as a member of the staff of a medical or public or private institution, school, facility or other agency, he shall immediately notify the person in charge of

[Continued on page 3]

the institution, school facility or other agency or his designated agent, who shall then become responsible for making a report or cause such report to be made. However, any person may make a report if such person knows or has reasonable cause to suspect that a child has been abused or neglected. **This section does not require any person to report when the factual basis for knowing or suspecting child abuse or neglect came from treatment of the individual for suspected child abuse or neglect, the treatment was sought by the individual for a problem relating to child abuse or neglect and in the opinion of the person required to report the child's life or health is not immediately threatened.**

COMMENT: This amendment narrows the exception to the general rule requiring certain persons to report suspected cases of child abuse or neglect. Under the old law, if the suspected person was being treated, no reporting was required. This amendment narrows that considerably by additionally requiring that the suspected person sought treatment for the child abuse or neglect problem and, in the best judgment of the person treating the suspected person, there is no immediate threat to the child's life or health.

C. 715 AN ACT to Increase the Investigation and Prosecution of Fraud Against the State

COMMENT: This act is too long to reproduce here, but it is very important. Prior to the enactment of this law, a Fraud Investigation Division existed within the Department of Audit. The purpose of this Division was to investigate acts of fraud, attempted fraud, and other acts of misconduct relating to state funds. Upon a finding by the Division of a possible violation of law, the matter was referred to the Department of the Attorney General for criminal prosecution. This structure was inadequate to handle the growing number of frauds against the Department of Human Services. In addition, the structure was inefficient in handling other alleged acts of fraud, attempted fraud, etc., against the state because the investigative arm was too far removed from the prosecutorial arm which eventually had to review and decide whether there was sufficient basis to prosecute.

This act creates two separate investigation units, one to handle exclusively frauds, attempted frauds, etc., against the Department of Human Services, and the second to handle the frauds, attempted fraud, etc., against the State, or any department agency or commission thereof. The first is known as the Human Services

Fraud Investigation Unit and the second is called the State Fraud Division. These two units will become operative in the very near future and should facilitate the detection and prosecution of people unlawfully gaining at the State's expense. Suspected acts of fraud, attempted fraud or incidents of commingling or misapplication of funds should be reported to the appropriate unit.

C. 731 AN ACT to Revise the Laws Relating to the Maine Traffic Court

COMMENT: Chapter 731, which became effective May 1, 1976, is designed to correct many of the problems created by the enactment of P.L. 1975, c. 430—the bill which established the "traffic infraction" system in Maine. In addition to clearing up inconsistencies in the motor vehicle laws, the new bill [1] authorizes the Secretary of State to assess demerit points for the commission of traffic infractions, [2] assists in the enforcement of the traffic infraction laws and the collection of fines imposed for traffic infractions, and [3] adds certain offenses to the motor vehicle laws and repeals several existing offenses. Several of the provisions of the bill which affect law enforcement officers are as follows:

1. 4 M.R.S.A. §171-A has been added to allow a citizen who wishes to bring a complaint regarding the commission of a traffic infraction or other civil violation to swear out a complaint before a magistrate.

2. 29 M.R.S.A. §(17-C), the definition of "traffic infractions," is amended to make clear that a traffic infraction is a "civil violation," as the latter term is used and defined in the Criminal Code. One result of this amendment is that the enforcement provisions for civil violations in 17-A M.R.S.A. §17 (4) are now applicable to traffic infractions.

3. 29 M.R.S.A. §102 is amended to allow full-time municipal law enforcement officers to grant permits for the towing of unregistered motor vehicles.

4. 29 M.R.S.A. §900 (using motor vehicle without authority) is repealed. This offense is now covered by 17-A M.R.S.A. §360.

5. 29 M.R.S.A. §1252 is amended to make it a misdemeanor to operate a motor vehicle at a speed which exceeds, by 30 miles an hour or more, speeds posted pursuant to 29 M.R.S.A. §1251 or §1252. Speeding in excess of the posted limit, but less than 30 miles an hour over the limit, remains a traffic infraction.

6. 29 M.R.S.A. §1254 is amended to make clear that radar results are to be accepted as prima facie evidence of speed in traffic

infraction proceedings, as well as in criminal proceedings, involving speed.

7. 29 M.R.S.A. §1313 (vehicular manslaughter) is repealed and replaced. The offense of vehicular manslaughter is now covered by the homicide sections of the Criminal Code. The new 29 M.R.S.A. §1313 establishes the license revocation procedure for persons convicted of unlawful homicides when the operation of a motor vehicle is the cause of death.

8. 29 M.R.S.A. §1314 is amended to make the offense of driving to endanger a misdemeanor. Before the enactment of c. 731 this offense was a traffic infraction.

9. 29 M.R.S.A. §1315 (recklessly causing death) is repealed. This offense is now covered by the homicide sections of the Criminal Code.

10. 29 M.R.S.A. §1316 (death by violation of law) is repealed. Death by violation is not covered by the Criminal Code and is therefore no longer an offense under Maine law.

11. 29 M.R.S.A. §2121 is amended to make the failure or refusal to stop a motor vehicle upon the request of an officer a misdemeanor.

12. 29 M.R.S.A. §2122 is amended to authorize sheriffs, full-time deputy sheriffs and full-time municipal officers to require a driver to take his vehicle to an official inspection station and to submit the vehicle to an inspection when the officer has reasonable grounds to believe that a vehicle is unsafe or not properly equipped.

13. 29 M.R.S.A. §2122-A has been added to make it a traffic infraction for the owner or operator of a vehicle to operate the vehicle or to permit it to be operated without a valid inspection certificate displayed upon it or to fail to produce a valid inspection certificate on the demand of a law enforcement officer. These offenses were formerly punishable under 29 M.R.S.A. §2122 and were formerly misdemeanors.

14. 29 M.R.S.A. §2300(5) has been added to make it a misdemeanor for any person to refuse to sign a Uniform Traffic Ticket and Complaint after having been ordered to do so by a law enforcement officer.

15. 29 M.R.S.A. §2301-A is repealed and replaced. That section now authorizes the Secretary of State to suspend the license of a person who fails to appear in court in response to a Uniform Traffic Ticket and Complaint or who fails to pay a fine within 30 days after he is ordered to pay the fine.

16. 29 M.R.S.A. §§2302-A and 2302-B are repealed. §2302-A had made the commission of three or more traffic infractions within a 12-month period a crime. §2302-B had provided for a criminal

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offense when a person committed a traffic infraction and the infraction resulted in personal injury or property damage. These are no longer offenses, criminal or civil, under Maine law. Consequently, the discussion of these offenses in the October 1975 ALERT, at pp. 5-6, should be disregarded.

17. C. 731 also amends the Private and Special Law relating to violations of the Rules and Regulations of the Maine Turnpike Authority. The amendment provides that violations of the rules of the Maine Turnpike Authority are traffic infractions, with two exceptions: (a) speeding by 30 miles an hour or more over the posted limit and (b) failure or neglect to pay tolls, fares or charges for use of the turnpike. These two violations are misdemeanors.

These and other statutory changes which affect the status of motor vehicle offenses as crimes or traffic infractions were incorporated in the supplement to the April-May 1976 ALERT. This supplement, which lists all of the common motor vehicle offenses and designates them as either infractions, misdemeanors or felonies, replaced the supplement to the October 1975 ALERT. (See page 8 of this issue of ALERT for corrections to the supplement.)

C. 744 AN ACT to Reform the Regulation of Watch, Guard and Patrol Agencies and of Private Detectives

COMMENT: This bill amends the laws relating to the licensing of private detectives and security guards by authorizing such persons, when licensed, to make arrests for violations of 17-A M.R.S.A. §§351-363 and 951-958. The bill also transfers the authority to license private detectives and security guards from the Governor to the Commissioner of Public Safety.

C. 763 AN ACT Repealing the Expungement Law and Providing for the Control of Access to and Disclosure of Criminal History Information.

COMMENT: This act is composed of two parts, both of which are of great significance to law enforcement officers. The first part repeals and replaces the existing expungement laws (15 M.R.S.A. §2161-A and 16 M.R.S.A. §600; these statutes, which were

reproduced in the May 1974 ALERT at pp. 3-4, should be disregarded as of July 29, 1976) and creates new regulations dealing with the control of criminal history record information. The second part of the act amends the laws relating to the State Bureau of Identification and the fingerprinting of offenders. Due to the length of the first part of the act, that part will be discussed and only the second part of the act will be reproduced.

The first part of C. 763 begins by repealing the two statutes which require law enforcement agencies to expunge certain criminal records. The act then establishes new procedures designed to control the access to and the disclosure of criminal history record information retained by law enforcement agencies. (16 M.R.S.A. §§601-607) "Criminal history record information" is defined by the act and includes records of arrests, detentions, complaints, indictments, informations, dispositions and sentencing. It should be noted that the term does not include civil violations. Therefore there are no statutory limitations on the disclosure by law enforcement agencies of information relating to civil violations such as mere possession of marijuana. (It is suggested that agencies maintain separate systems for records of criminal and civil violations.)

Section 602 of the criminal history information subchapter lists certain types of criminal history record information which are not subject to the act's controls on dissemination. These exceptions are: (A) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (B) police blotters; (C) records of court proceedings retained at and by the District Court and Superior Court; (D) written decisions of courts; (E) motor vehicle records maintained by the Secretary of State, with several exceptions; and (F) petitions for and warrants of pardons, commutations, amnesties and reprieves. Because the subchapter does not apply to these excepted types of records, criminal justice agencies may disclose the criminal history record information contained in the excepted records. It should be noted, however, that exception C applies only to the District and Superior Courts.

Section 603(3) provides for two additional situations in which criminal justice agencies may release criminal history record information to any member of the public. When an officer releases information pursuant to the second situation described by §603(3), an additional requirement is placed on the officer. Thus, when an officer releases criminal history record information "in response to a specific inquiry as to whether on a specified date a named person was arrested or had a complaint, information or indictment returned against

him," the officer is required to disclose all criminal history record information in the custody or control of his agency which indicates the final outcome of the arrest, detention, complaint, indictment or information. For example, if a person contacts a police department and asks whether John Doe was indicted for burglary on a specific date, and John Doe was indicted for burglary on that date, the officer, in addition to informing the requesting party that John Doe was indicted, must also inform him of the outcome of the indictment—i.e. that the indictment was dismissed, that Doe was acquitted, or that Doe was convicted—if the outcome is available.

Having established in §602 the general exception to the controls on criminal history record information, the Act, in 16 M.R.S.A. §§603 and 604, specifies under what conditions and to whom the remaining types of criminal history record information may be released. These two sections should be read carefully by all law enforcement officers. Pursuant to §605, an officer who intentionally or knowingly disseminates criminal history record information in violation of §603 or §604 commits a Class E crime.

In 16 M.R.S.A. §606 the Act grants to a citizen, or his attorney, the right to inspect the criminal history record information pertaining to him maintained by a criminal justice agency. Section 606 also indicates under what circumstances citizens may exercise their right of inspection. Additionally, §606 authorizes citizens to seek the correction of criminal history record information which they feel is inaccurate or incomplete.

Finally, §607 of the criminal history record information act makes the provisions of the act retroactive so that it will apply to records made both before and after July 29, 1976.

As noted above, the second part of c. 763 deals with the State Bureau of Identification and the fingerprinting of offenders. Preliminarily, officers should note that this second part of the bill repeals, but does not replace, 25 M.R.S.A. §§1543, 1545 and 1546. In addition, the following new provisions are created by c. 731, either by repealing and replacing old sections or by adding new sections:

25 M.R.S.A. § 1541. Commanding officer

1. Appointment. The Chief of the State Police shall appoint a person who has knowledge of the various standard identification systems and Maine court procedure to be commanding officer of the State Bureau of Identification, heretofore established within the Bureau of State Police.

2. Personnel. The Chief of the State Police may delegate members of the State

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Police to serve in the bureau upon request of the commanding officer. The commanding officer shall have the authority to hire such civilian personnel, subject to the Personnel Law and the approval of the Chief of the State Police, as he may deem necessary.

3. Cooperation with other bureaus. The commanding officer shall cooperate with similar bureaus in other states and with the national bureau in the Department of Justice in Washington, D.C. and he shall develop and carry on an interstate, national and international system of identification.

4. Rules and regulations. The commanding officer shall make and forward to all persons charged with any duty or responsibility under this section and sections 1542, 1544, 1547 and 1549; rules, regulations and forms for the taking, filing, preserving and distributing of fingerprints and other criminal history record information as provided in this chapter. Before becoming effective, such rules, regulations and forms are to be approved by the Attorney General.

5. Apparatus and materials. The Chief of the State Police shall supply such bureau with the necessary apparatus and materials for collecting, filing, preserving and distributing criminal history record information.

25 M.R.S.A. § 1542. Recording of fingerprints; photographs; palm prints

1. Fingerprints. Law enforcement officers or persons in charge of state correctional institutions under the general supervision, management and control of the Department of Mental Health and Corrections shall have the authority to take or cause to be taken and shall take or cause to be taken, the fingerprints of any person:

- A. In custody charged with the commission of a crime;
- B. In custody charged with the commission of a juvenile offense;
- C. In custody and believed to be a fugitive from justice;
- D. Named in a search warrant which directs that such person's fingerprints, palm prints or photograph be taken;
- E. Who dies while confined at a jail, police station or any facility operated by the Bureau of Corrections;
- F. Who may have died by violence or by the action of chemical, thermal or electrical agents, or following abortion, or suddenly when not disabled by recognizable disease, or whose death is unexplained or unattended, if directed to do so by the Attorney General or District Attorney; or

G. The taking of whose fingerprints, palm prints or photograph has been ordered by a court.

2. Photographs. Whenever a law enforcement officer or other individual is authorized, pursuant to subsection 1, paragraphs A, B, C, E or F, to take or cause to be taken the fingerprints of a person, the officer or other individual may take or cause to be taken the photograph or palm prints, or photograph and palm prints, of such person.

3. Fingerprint record forms. Fingerprints taken pursuant to subsection 1, paragraphs A, B, C, D and E shall be taken on a form furnished by the State Bureau of Identification, such form to be known as the Criminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph F, shall be taken on a form furnished by the bureau, such form to be known as the Noncriminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph G, shall be taken upon either the Criminal Fingerprint Record or the Noncriminal Fingerprint Record as the court shall order.

4. Duty to submit. It shall be the duty of the head of the arresting agency, or his designee, to transmit, within 5 days of the date of arrest, to the State Bureau of Identification the criminal fingerprint record of any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C. Law enforcement agencies other than the arresting agency shall not submit to the State Bureau of Identification a criminal fingerprint record for any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C, unless expressly requested to do so by the Commanding Officer of the State Bureau of Identification.

It shall be the duty of the Director of the Bureau of Corrections, or his designee, to transmit, within 5 days of the date of death, to the State Bureau of Identification, the criminal fingerprint record of any deceased person whose fingerprints are taken pursuant to subsection 1, paragraph E.

5. Law enforcement officer. As used in this section, "law enforcement officer" means any person who by virtue of his public employment is vested by law with a duty to prosecute offenders or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

25 M.R.S.A. § 1544. Uniform crime reporting

It shall be the duty of all state, county and municipal law enforcement agencies, including those employees of the University of Maine appointed to act as policemen, to submit to the State Bureau of Identification uniform crime reports, to include such

information as is necessary to establish a Criminal Justice Information System and to enable the commanding officer to comply with section 1541, subsection 3. It shall be the duty of the bureau to prescribe the form, general content, time and manner of submission of such uniform crime reports. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and Legislature annual reports based on such reports. A copy of such annual reports shall be furnished to all law enforcement agencies.

25 M.R.S.A. § 1549. Request for fingerprints; fee

The State Police, the sheriffs and the chiefs of police in each of the cities and towns shall have the authority to take or cause to be taken, and upon payment of a \$1 fee, shall take or cause to be taken, the fingerprints or palm prints, or fingerprints and palm prints, of any person who shall request that his fingerprints or palm prints, or fingerprints and palm prints, be taken.

Such fingerprints and palm prints shall be taken on a form provided by the requesting person, or if the person does not provide a form, upon the Noncriminal Fingerprint Record. Fingerprints or palm prints taken pursuant to this section or copies thereof, shall not be retained by the taker or forwarded to the State Bureau of Identification.

25 M.R.S.A. § 1550. Violations

Any person who fails to comply with the provisions of section 1542, subsections 1 or 3, or with the provisions of section 1542, subsection 4, imposing a duty to transmit criminal fingerprint records to the State Bureau of Identification, or with the provisions of sections 1544, 1547 or 1549 commits a civil violation for which a forfeiture of not more than \$100 may be adjudged.

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

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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.

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.

- C. 630 An Act to Permit the Development by the Secretary of State of a Numerical System of Driver License Control to be Used in Place of Social Security Numbers.
- C. 636 An Act Concerning the Provision of Legal Services by Third-Year Law Students. (Emergency)
- C. 638 An Act Relating to Animal Welfare.
- C. 643 An Act Authorizing the Department of Mental Health and Corrections to Purchase Residential Services.
- C. 649 An Act Delaying the Effective Date of the Maine Criminal Code in Order to Allow Sufficient Time for Necessary Revisions. (Emergency)
- C. 650 An Act to Remove the Maine Criminal Justice Sentencing Institute from the Administrative Supervision of the Judicial Council. (Emergency)
- C. 660 An Act to Revise the Laws Relating to Funding of Public Schools. (Emergency)
- C. 669 An Act Delaying the Effective Date of the Maine Criminal Code in Order to Allow Sufficient Time to Make Certain Necessary Revisions. (Emergency)
- C. 681 An Act to Exempt Emergency Vehicles and School Buses from the Statutory Prohibition of the Use of Studded Tires From May to October. (Emergency)
- C. 706 An Act to Revise Statutory Provisions Relating to Dropouts.
- C. 719 An Act Relating to Community-based Facilities for Children and Adults.
- C. 740 An Act to Revise the Maine Criminal Code as Recommended by the Criminal Law Revision Commission (Emergency) (discussed in the April-May 1976 ALERT).
- C. 741 An Act to Revise the Statutes Concerning Alcoholic Beverages.
- C. 743 An Act to Clarify the Laws Relating to Marine Resources.
- C. 745 An Act Correcting Errors and Inconsistencies in Motor Vehicle Related Laws. (Emergency)
- C. 756 An Act to Reorganize the Bureau of Corrections. (Emergency)
- C. 758 An Act to Revise and Clarify the Freedom of Access Law.
- C. 770 An Act to Correct Errors and Inconsistencies in Laws of Maine.
- C. 772 An Act to Clarify the Fish and Game Laws.

NEWS FROM THE ACADEMY

The following information, items and announcements concern the Maine Criminal Justice Academy in Waterville, which is a bureau of the Department of Public Safety and is the training institution for all law enforcement officers in the State of Maine.

Upcoming In-Service Police Schools

The following is a list of upcoming specialized in-service training police programs and their locations:

Defensive Tactics: August 9-13, 1976 (Academy)

Crime Scene/Evidence Photography: August 16-18, 1976 (Academy)

It should be noted that those enrolled in Defensive Tactics should take time prior to the school to tone up their physical condition. Also, students attending the Crime Scene / Evidence Photography school **must** have attended Basic Photography and Crime Search School. Application material should be submitted no later than ten-days prior to the start of the school.

Information about the above training programs may be obtained through local police agencies or from the Academy. Please contact David H. Dix, In-Service Training Officer, at 873-2651.

Media Resource Center Films

Note to all Users of the MCJA Film Loan Service:

Departments which have an early copy of the film catalog should remove the page entitled "State Police Films". All films within the Department of Public Safety are being consolidated at the Academy. Many of the films listed are old and outdated making the list misleading to many departments. Those films which are still in running order and applicable to present training needs will be listed individually giving all pertinent information available. Please refer to forthcoming list updates for information on these older films and also newly acquired productions.

Recent additions to our film library include:

Perception of Danger: An explanation of how officers must adjust to danger in their work, individually assess each situation and react accordingly. How to accept, admit and handle fear, avoid carelessness and prevent overreaction.

Managing Conflict: This film is directed towards the non-violent solution to a conflict situation. The officer is taught to achieve and maintain an objective third party position and present himself as a neutral authority figure.

Crime: It's a Matter of Time (Personal Fraud): A public relations film showing tips for citizens to help prevent being taken by fraudulent schemes.

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Included are discussions about purse snatching, opening doors to strangers and unescorted females at night.

Crime: It's a Matter of Time (Commercial): Points expanded upon include unlocked vehicle overnight, keeping the same predictable routine of opening and closing, street windows blocked by advertisements, aisles blocked from view concealing shoplifters, poor door locks, open windows and skylights, bad key control and non-support of police assistance programs.

Before It's too Late: Crime prevention for the general community. Gives tips on house surveys, locks, windows, yards, high visibility house numbers.

An Ounce of Protection: Preventive measures for residential burglary. A step-by-step inspection of a residence showing homeowners and tenants exactly how to check and evaluate their houses and apartments for security.

Rip Off: Using actual location shots of a variety of commercial establishments and demonstrating security devices and techniques, the film shows businessmen exactly how to reduce their chances of losing money, merchandise and even their business.

Invitation to Burglary: Preaching burglary prevention, this film tells homeowners and tenants how to make homes and property more secure. This film shows why burglaries happen and how to prevent them.

The following films are not recent acquisitions but have been

previously listed under "State Police Films". It should be noted that they were released in 1971 and should be reviewed prior to showing.

Flowers of Darkness: Traces the history of opium to the present-day use of heroin. Examines Asian usage, looks at the methods and procedures of organized crime trafficking the drugs to the U.S., and portrays its toll on the streets. Addicts in this country talk about their compulsion for drugs and experts describe methods of combating the problem.

Speedscene: The Problem of Amphetamine Abuse: This film offers graphic evidence against use of amphetamines in any form for other than medical reasons.

A Moveable Scene: A serious and dramatic look at some of today's young people and their use of hallucinogenic drugs.

Bridge From Noplace: Examines the present status of treatment for drug addiction, rehabilitation of addicts and promising research projects.

Is it Always Right to be Right? RIGHT TO BE RIGHT? is the perfect tool for expanding the officer's objectivity. A fast-moving parable designed to provoke thought and discussion both within the department and out in the community, it handles the subject of conflicting groups and opinions with humor and insight.

For further information on the Media Resource Center, please write or call Mr. Cleon H. Turner, Maine Criminal Justice Academy, 93 Silver Street, Waterville, Maine 04901 (873-2651).

Investigation of Fire Scenes

Questions:

1. May the State Fire Marshal post "No trespassing" signs at the scene of a fire during the course of the investigation of the fire?

2. If the answer to question #1 is affirmative, by what means may the State Fire Marshal enforce exclusion of persons from the fire scene?

Discussion:

1. 25 M.R.S.A. §2397 provides in pertinent part:

"The Commissioner of Public Safety, the Attorney General, or their designees, shall have authority, at all times of the day or night, in the performance of the duties imposed upon them, to enter upon and examine any building or premises adjoining or near the same. **Persons other than those required to be present by the provisions hereof may be excluded from the place where such investigation is held . . .**"
Emphasis added)

The State Fire Marshal is appointed by the Commissioner of Public Safety and is his "designee" for purposes of §2397. The State Fire Marshal, therefore, is authorized, pursuant to §2397, to exclude persons from the scene of a fire which he is investigating. The posting of "No Trespassing" signs which indicate that persons are being excluded by the Commissioner of Public Safety (or the State Fire Marshal) pursuant to statutory authority vested in him by 25 M.R.S.A. §2397 is a reasonable means of limiting access to the scene of the investigation and preventing destruction or removal of evidence. This is especially true in light of the fact that it is often impractical to cordon off a fire scene with enforcement personnel during the long period of time that the burned premises must cool. Thus, the posting of the "No

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Trespassing" signs for a reasonable time—usually until the completion of the investigation—is a proper exercise of the statutory power to exclude persons from the fire scene.

2. 17-A M.R.S.A. §402(1) and (2) provide:

"1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

A. He enters in any secured premises; or

B. He remains in any place in defiance of a lawful order to leave which was personally communicated to him by the owner or other authorized person.

2. As used in this section, 'secured premises' means any dwelling place, structure that is locked or barred, and a place which persons may lawfully be excluded and which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders." (Emphasis added)

Because the State Fire Marshal may lawfully exclude persons from a fire scene, a fire scene duly posted by the Fire Marshal would be a "secured premises" for purposes of §402. Because unauthorized entry upon the posted premises would constitute a Class E crime under §402, the Fire Marshall may enforce the exclusion of persons from the premises by the application of that section.

Corrections to List of Motor Vehicle Offenses

The following corrections should be made to the list of motor vehicle offenses which appeared as a supplement to the April-May 1976 ALERT:

1. The entry under §534 should

be deleted from the list. The offense of "Operating beyond license restriction" (M) should be entered under §531. This change is due to the enactment of P.L. 1975, c. 731, §32. Thus, an officer who is issuing a copy of the Uniform Traffic Ticket and Complaint for the misdemeanor offense of operating a motor vehicle in violation of a restriction placed upon the use of an instructor's permit or operator's license should cite this offense as "29 M.R.S.A. §531, Operating beyond license restriction."

2. The last seven offenses cited under §783(7) should be cited as §787(7). Only the offense of "Filing false 48-hour accident report" should be listed under §783(7).

Sections Retained in Title 17

The following table lists, by chapter (Ch.) and section (§) number, the statutory provisions which remain in Title 17 after the enactment of the Maine Criminal Code:

Ch.	§	Subject
3	51	Abortion
13-A	311 to 325	Beano or Bingo
14	330 to 346	Games of Chance
17	401	Blacklisting
29	701 to 703	Budget Planning Business
43	1051, 1052, 1055 to 1058	
	1093, 1171 to 1177, 1211 to 1216	Cruelty to Animals
47	1301-A, 1311 to 1316	Discrimination
49	1351 to 1354	Dueling
59	1603, 1608-A, 1609-A, 1610, 1611, 1618, 1661 to 1667, 1701 to 1706, 1751 to 1754	Fraud and False Pretenses
69	2002 to 2004	Intoxication
79	2252, 2253	Littering and Dumping
80	2261 to 2276	Litter Control
81	2304 to 2306	Lotteries
83	2401, 2402, 2497, 2499, 2506, 2509	Malicious Mischief
91	2701 to 2706, 2741 to 2744, 2791 to 2797, 2799 to 2804, 2851 to 2853	Nuisances
93	2901 to 2905	Obscenity
101	3104	Public Offices and Officers
105	3201 to 3209, 3241	Religious Assemblies, Holy Days and Holidays
114	3521	Detention of Shoplifters
117	3601 to 3606	Strikes and Violence Against Utilities, Railroads & Plants
127	3853-A, 3859, 3860	Trespass
131	3956, 3962, 3964, 3966	Miscellaneous Crimes

New Death Investigation Procedures

The Attorney General's Office has recently issued new death investigation procedures for all law enforcement officers in Maine. The procedures are being sent to all law enforcement agencies in Maine. Any officer who has not received a copy of the procedures should contact the executive officer of his agency or the Attorney General's Office at 289-2146.

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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.

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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