MAINE STATE LEGISLATURE

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SEPTEMBER-OCTOBER 1977

ALERT

CRIMINAL DIVISION

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

MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

As you may recall, in the July-August issue of the ALERT I indicated that this Office was examining ways of furnishing law enforcement officers with copies of the 1977 Criminal Code pamphlet. I am pleased to announce that copies of the Criminal Code have been ordered and should be available for distribution to law enforcement officers by the time this issue of the ALERT reaches you.

This Office will not be involved in the distribution of the Code pamphlets. Rather, copies of the Code may be purchased from the Maine Criminal Justice Planning and Assistance Agency. Since it is anticipated that the Codes will be ordered by each law enforcement department, any officer who has not received his copy should contact the executive officer of his department. Further inquiries may be directed to Mr. Ted Trott, Executive Director, Maine Criminal Justice Planning and Assistance Agency, 11 Parkwood Drive, Augusta, Maine 04330 (289-3361).

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

MAJOR AMENDMENTS TO LAWS OUTSIDE THE CODE

In the July-August 1977 issue of the ALERT, recent Legislative amendments to the Criminal Code (Title 17-A) were discussed. This issue of the ALERT will examine selected amendments to other statutes of interest to law enforcement officers. Unless otherwise stated, these amendments took effect October 24, 1977.

MOTOR VEHICLE AMENDMENTS

I. New Penalties for Operating Under the Influence

29 M.R.S.A. §1312(10), providing penalties for the offense of operating under the influence, is amended by chapter 498 of the Public Laws of 1977. The new penalties are as follows:

For a **first** conviction, a person may be punished by a fine of not more than $1000 or imprisonment for not more than 90 days, or both. The Secretary of State shall suspend the person's license to operate for a minimum of 30 days and the person must satisfactorily complete a special program conducted by the Department of Human Services. Refusal to take the course or failure to complete the course will result in a license suspension of four months.

For a **second** conviction of operating under the influence, a person may be fined not less than $250 nor more than $2000. Moreover, a person convicted of a second violation may be punished by imprisonment for not less than 24 consecutive hours but not more than six months. This minimum sentence may be suspended only upon a showing of exceptional circumstances. The license suspension is for a period of one year, but the Secretary of State may reinstate the license after six months if the person has satisfactorily completed the special program conducted by the Department of Human Services.

For a **third** or subsequent violation, a person may be punished by a fine of not less than $2000 or by imprisonment for not more than six months, or both. The person's license to operate a motor vehicle is suspended permanently. The license may be reinstated after two years, however, if the person can demonstrate that he has satisfactorily completed an alcohol treatment program and that he has abstained from intoxicating liquor or drugs for two years.

It should be noted that the penalty provisions for operating under the influence are expressly declared to be exempted from the conversion provisions of the Criminal Code. Therefore, section 4-A of the Code, as discussed in the July-August issue of the ALERT, does not affect the penalties in the O.U.I. statute.

A new provision enacted this legislative session requires the law enforcement officer who makes an

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arrest for operating under the influence to find out whether the person arrested has any prior convictions under the statute. The law specifically **requires** the arresting officer to make any necessary inquiries of the Secretary of State.

Finally, it should be noted that during the past legislative session, 29 M.R.S.A. §1312(10)(B) was repealed. This provision authorized law enforcement officers to make a warrantless arrest of any person involved in a motor vehicle accident if the officer had probable cause to believe that the person had been operating under the influence. Effective October 24, 1977, law enforcement officers are not authorized to make warrantless arrests in such circumstances unless the offense of operating under the influence occurred **in their presence,** Emergency legislation is now being prepared to restore this warrantless arrest power.

II. New Penalties for Leaving the Scene of an Accident

Chapter 312 of the Public Laws amends 29 M.R.S.A. §893, dealing with a driver's duty to stop when he is involved in an accident causing death or personal injury. The new law raises the penalty for failure to stop immediately and furnish name, address, and registration number to a Class D crime, punishable by a maximum fine of $1000 and/or imprisonment for a period of less than one year.

29 M.R.S.A. § 894, dealing with the duty of a motorist to stop at the scene of an accident involving property damage only, has also been amended. Violation of section 894 is now a Class E crime, carrying a maximum fine of $500 and/or imprisonment of not more than six months.

III Inspection Stickers

29 M.R.S.A. §2123(2), as amended, now provides that if a vehicle is being operated with an expired inspection sticker "during the first month immediately after the expiration of the inspection sticker" a summons to court shall not be issued. Rather, officers stopping a motorist for operating a vehicle with an expired inspection sticker during this one month period should issue a warning in a form designated by the Chief of the State Police. The new law states:

> "This warning shall state that the owner or operator shall within 2 business days therefrom cause the vehicle to be inspected in accordance with this chapter and that the person inspecting the vehicle shall sign the warning notice and forward it to the Chief of the State Police. Failure to comply with the provisions of a warning issued pursuant to this subsection shall constitute a violation of this section punishable in accordance with subsection 1.

It should also be noted that the penalty provision of this statute, a fine of not less than $10 nor more than $100, and/or imprisonment for not more than 90 days, is expressly exempted from the conversion provision of the Criminal Code.

IV. Right Turn on Red Light

Effective May 1, 1978 drivers may make a right turn on a red signal after stopping. The full text of the new law, 29 M.R.S.A. §947(3)(C), is reproduced below:

> "C. All vehicular traffic facing a steady circular red signal at an intersection may cautiously enter the intersection to make a right turn as required by paragraph A, unless such a turn is prohibited by an appropriate sign such as **'NO RIGHT TURN ON RED.'** The local community and the Department of Transportation in determining whether or not to prohibit a right turn on red shall consider at least the following factors: Proximity of schools; proximity of fire stations; proximity of residences or institutions for the blind; number of pedestrians using the intersection and the complexity of the intersection. All vehicular traffic executing such a turn shall yield the right-of-way to pedestrians upon a crosswalk adjacent to the intersection and to all traffic moving on the lanes having the green or "go" signal at the intersection."

If a community does prohibit a right turn on a red light, a violation of such an ordinance will be a traffic infraction.

V. Certificate of the Secretary of State

In prosecutions for operating a motor vehicle after suspension, it is common practice to submit a certificate from the Secretary of State showing the fact of suspension, pursuant to 29 M.R.S.A. §58. Recently, however, a district court judge ruled the certificate inadmissible under the new Maine Rules of Evidence. The effect of this ruling was to require a member of the Secretary of State's office to appear in court and testify regarding the suspension or revocation of the defendant's license. The legislature has resolved this problem by amending 29 M.R.S.A. §58 to read:

> "Notwithstanding any other provision of law or rule of evidence, the certificate of the Secretary of State or his deputy, under seal of the State, shall be received in any court in this state as prima facie evidence of the issuance, suspension or revocation of any operator's license or any certificate of registration of any vehicle."

This statute took effect May 20, 1977.

VI. Motorcycle Laws

Although the Supreme Judicial Court of Maine has upheld the constitutionality of Maine's helmet law, *see State v. Quinnam,* 367 A.2d 1032 (Me. 1977), this law is now repealed as of October 24, 1977. It should be noted, however, that the legislature did **not** repeal the requirement that motorcycles "be operated on the highway with a lighted headlamp on when in motion." 29 M.R.S.A. §999.

One other amendment to the motorcycle laws relates to the height of the handlebars. The second paragraph of 29 M.R.S.A. §999 has been changed to read:

> "No person shall operate on the highway any motorcycle or motor driven cycle equipped with handlebars whose handgrips are higher than the shoulder level of the driver of the motorcycle."

Prior to this amendment the handlebar height could not be higher than 15 inches above the seat while the driver is seated.

VII. Vehicle Identification Numbers and Certificates of Title

29 M.R.S.A. §103 has been amended to provide that it is a misdemeanor for any person "to sell, exchange, offer to sell or exchange, give away or use a manufacturer's vehicle identification or serial number plate which has been removed from the vehicle to which originally attached." It need not be proven that the person who sells, exchanges, or gives away the VIN plate is also the person who removed it from the vehicle to which it was orginally attached. All that is required for a conviction under this law is proof of one of the acts specified in the statute.

Another new statute in this area, 29 M.R.S.A. §2442(1), makes it a Class C crime for any person to sell or exchange, offer to sell or exchange or give away any certificate of title or any manufacturer's vehicle identification number plate of any vehicle.

Unlike 29 M.R.S.A. §103, under this provision it must be shown that the defendant committed the acts specified in the statute with **fraudulent intent.**

VIII. The Moped Law

Chapter 402 of the Public Laws of 1977, regulating the operation of mopeds, became effective on June 29, 1977. This law has already generated some confusion among law enforcement officers, and this portion of the ALERT will attempt to clarify certain provisions of this law. A moped is defined in 29 M.R.S.A. §1 (5-A) as

> " . . . a motor drive cycle with 2 or 3 wheels that may have foot pedals to permit muscular propulsion, and has a power source to provide up to a maximum of 2 brake horsepower, a motor with a cylinder capacity not exceeding 50 cubic centimeters which will propel the vehicle unassisted at a speed not to exceed 30 miles per hour on a level road surface, and is equipped with a power drive system that functions directly or automatically only and which does not require clutching or shifting by the operator after the drive system is engaged."

Although a moped is defined as a "motor driven cycle," it is treated as a bicycle for certain purposes. On the other hand, because a moped is motor driven, it is subject to many of the rules and regulations governing motorcycles.

Like bicycles, mopeds may not be operated on interstate highways. They may be operated in single file only and must be driven as far to the right side of the roadway as practicable, except when making a left turn. See 29 M.R.S.A. §1961.

Like motorcycles and other motor driven cycles, mopeds are subject to various inspection requirements. A moped must be equipped with:

(1) a two-beam headlight which shows for 200 feet;
(2) brakes which will stop a two wheel vehicle within a distance of 30 feet at 20 m.p.h.;
(3) a horn;
(4) a rear view mirror;
(5) an exhaust system;
(6) a tail light, including a brake light;
(7) a rear plate light;
(8) a speedometer and an odometer.

A helmet is not required for the operation of a moped. With the enactment of Chapter 564 (§106-A) of the Public Laws of 1977, the Legislature granted moped operators an immediate exemption from the helmet requirement (effective July 23, 1977). Helmets were required of operators of motorcycles and other types of motor driven cycles, such as motor scooters, up until October 24, 1977. 29 M.R.S.A. §999 requires that motorcycles and motor driven cycles be operated with a lighted headlamp whenever in motion, and this requirement applies to the operation of mopeds as well.

The new law provides that a moped may be operated by any person who possesses a valid operator's license of **any** class, or by a person who has a specially endorsed license to operate a motorcycle or a motor driven cycle. Operation of a moped on a learner's permit is prohibited. 29 M.R.S.A. §531.

The new law specifically requires registration of mopeds. The registration fee is $5.00. See 29 M.R.S.A. §249.

OTHER LEGISLATION

I. Increasing the Penalties for Littering

Chapter 93 of the Public Laws of 1977 amends the penalty provisions of the Litter Control Law, found in

17 M.R.S.A. §2261, et. seq. A violation of any of the provisions of the Litter Control Law is a civil violation, carrying a forfeiture of $25 to $200 for a first offense and $100 to $500 for a second or subsequent offense.

II. Amendments to the Liquor Laws

During the regular session of the 108th Legislature, several amendments to the laws regulating the purchase, sale, consumption and transportation of alcoholic beverages were enacted. Perhaps the one amendment that generated the most publicity is the one which raised the drinking age from 18 to 20. The change in the drinking age applies not only to those who wish to purchase and consume alcoholic beverages but also to those who apply for a license to sell it. Present licensees under the age of 20 are exempted from the provisions of the new law and do not lose their licenses. See 29 M.R.S.A. §201(1).

Although the legislation increasing the drinking age is relatively straightforward, there has been some confusion about the effect of the conversion provision (§4-A) of the Criminal Code on the drinking age statutes. It is important to keep in mind that 17-A M.R.S.A. §4-A(4) converts those criminal statutes outside the Code which do

Section of T. 28	Offense	Status
§303 (2nd ¶)	Sale or furnishing of intoxicating liquor to a minor by a licensee or his agent.	Handled by the Administrative Court
§303 (3rd ¶)	Purchase of intoxicating liquor or consumption or possession in on-sale premises by a minor.	Converted to a civil violation
§303 (3rd ¶)	Presenting false evidence of age for purpose of buying intoxicating liquor by a minor; possession by a minor in a public place or automobile.	Converted to a civil violation
§1001	Transportation of intoxicating liquor in a motor vehicle by a minor.	Traffic infraction
§1058	Furnishing, other than by licensee or agent, of intoxicating liquor to a minor.	Converted to Class E crime
§1060	Misrepresentation of age to procure adult identification card; possession of false card or use to procure liquor; loan or transfer of card to another for use to procure liquor.	Converted to Class E crime
§1061 (new)	Transportation of alcoholic beverages onto or off of premises of a licensee licensed for sale of liquor to be consumed on premises.	Class E crime

not have imprisonment penalties into civil violations. Since many of the liquor offenses dealing with minors are not punishable by imprisonment, they fall within this category. Accordingly, those offenses became civil violations on October 24, 1977.

It is imperative that law enforcement officers recognize that they may not make arrests for liquor offenses which are converted into civil violations. Under section 17 of the Criminal Code, a suspected civil violator is to be given a citation directing him to appear in District Court to answer the charge. In short, an arrest is not permissible in these cases.

Criminal penalties have now been established for

> "(a)ny person who transports alcoholic beverages onto or off of the premises of a licensee licensed for the sale of spiritous, vinous or malt liquor . . . to be consumed on the premises . . ."

A violation of this provision is a Class E crime. However, it is a defense to a charge of violating this law that the transportation was authorized by the licensee, his agent or employee.

The chart on the preceeding page indicates the status of liquor offenses which were the subject of legislation during the past session. As used in these statutes, a "minor" means a person who has not attained his 20th birthday.

III. Possession of Firearms by Persons Convicted of Certain Crimes

A new and comprehensive statute governing the possession of firearms by persons convicted of serious crimes was enacted this past legislative session. 15 M.R.S.A. §393 provides that

> "No person who has been convicted of any crime under the laws of the United States, the State of Maine or any other state, which is punishable by one year or more imprisonment or any other crime which was committed with the use of a dangerous weapon or of a firearm against a person . . . shall own, have in his possession or under his control any firearm, unless such a person has obtained a permit under this section."

A violation of this provision is a Class C crime. A person subject to this prohibition may not apply for a permit until 5 years "from the date that the person is finally discharged from any and all sentences imposed as a result of the conviction. . ." Under no circumstances shall such a person be licensed to carry a concealed firearm.

The statute sets out the information which must appear in the application for a permit. The application must be filed with the Commissioner of Public Safety who is required to notify the judge who originally sentenced the applicant, the Attorney General, the district attorney for the county where the applicant resides, the district attorney for the county where the conviction occurred, the law enforcement agency which investigated the crime, the chief of police and the sheriff in the municipality and county where the crime occurred and the chief of police and the sheriff in the county and municipality where the applicant now resides. If an objection is made by **any** of these persons, the Commissioner of Public Safety cannot issue a permit to the applicant. If no objection is made, the Commissioner may either grant or deny the application in his discretion. The applicant who has been denied a permit has the right to appeal the Commissioner's decision to the Superior Court of Kennebec County. However, it is specifically stated that

> "(t)he decision of the Commissioner may not be overturned unless the court shall find that the applicant's request is reasonable and that the denial of the Commissioner was arbitrary, capricious or discriminatory."

IV. Obscenity Laws

Two statutes in the area of obscenity where enacted in 1977. Both of them deal with the dissemination and display of obscene matter to minors. Chapter 410 of the Public Laws of 1977 repeals 17 M.R.S.A. §§2901-2905 and makes it a Class D crime for any person to knowingly distribute or exhibit or offer to distribute or exhibit to a minor

> " . . . any obscene matter declared obscene, in an action to which he was a party, pursuant to subsection 3." 17 M.R.S.A. §2911(2).

The term "obscene matter" is defined in the statute as matter which

> **"(1) to the average individual, applying contemporary community standards, with respect to what is suitable material for minors, considered as a whole, appeals to the prurient interest;**
>
> **(2) Depicts or describes, in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals; and**
>
> **(3) Considered as a whole, lacks serious literary, artistic, political or scientific value."**

Motion pictures are expressly excluded from coverage under the new law. It is a defense to prosecution under this statute that the defendant is the parent or guardian of the minor or that the material was distributed or exhibited non-commercially and for a purely educational purpose by a library, art gallery, museum or institution of learning.

It is important for law enforcement officers to understand the specific procedures which must be followed in order to obtain a conviction under this law. If the

Attorney General or district attorney reasonably believes that a person is disseminating obscene matter to a minor, he may petition the Superior Court in a civil action to declare the matter obscene. At this proceeding, the issue of obscenity is tried by a jury. If the civil jury finds the matter to be obscene under the statute quoted above, the prosecutor may then initiate criminal proceedings at which the issue of obscenity is relitigated. Thus, under this new law, the issue of obscenity must be determined by two different juries. A person convicted pursuant to this procedure may receive a fine of up to $1000 and/or a jail term of less than a year. In any case, law enforcement officers may not arrest persons on the belief that the person is distributing obscene matter to minors, but must request the prosecutor to instigate appropriate proceedings as described above.

The second new law dealing with obscenity, 17 M.R.S.A. §2906, provides that:

> "No book, magazine or newspaper containing obscene material on its cover and offered for sale shall be displayed in a location accessible to minors unless the cover of that book, magazine or newspaper is covered with an opaque material sufficient to prevent the obscene material from being visible."

A violation of this statute is a civil violation carrying a forfeiture of not more than $250. Although the law contains a definition of what constitutes "obscene material," it does not set forth a procedure for adjudicating obscenity as does 17 M.R.S.A. §2911, discussed above. (Dissemination of Obscene Matter to Minors). In enforcing the provisions of this statute, law enforcement officer will be required to make several preliminary determinations. First, is the cover of the book, magazine or newspaper obscene? In making this determination, the officer must refer to the statutory definition of "obscene material" found in 17 M.R.S.A. §2906(2)(B). Ultimately, however, as in all obscenity cases, what is obscene under the statue and what is not obscene is for the fact finder to decide. Secondly, are the books, magazines or newspapers displayed in a location which is accessible to minors? Finally, are the books, magazines or newspapers sufficiently covered?

OTHER LEGISLATION OF INTEREST

The following are titles of other legislation of relevance to members of the criminal justice system. Hopefully, the titles of the bills will give some insight as to their content. Unless otherwise noted, the legislation listed here became effective October 24, 1977.

Any member of the criminal justice community may obtain further information about any bill mentioned in this issue of the ALERT by writing the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, Augusta, Maine, 04333.

C. 30 An Act to Clarify the Laws Governing Vehicles Overtaking and Passing.

C. 37 An Act to Authorize the Commissioner of Public Safety to Empower Local and County Law Enforcement Officials with Statewide Jurisdiction (eff. 3/22/77).

C. 49 An Act Relating to Powers of District Court Judges to Order Persons Produced for Trial.

C. 63 An Act to Clarify Authorization for Payment of Witness Fees for State Witnesses in Criminal Prosecutions.

C. 66 An Act to Clarify the Responsibility for Payment of Expenses on Rendition of Prisoners.

C. 73 An Act Relating to Vehicle Sizes and Weights (eff. 4/13/77).

C. 78 (§168) An Act Regulating the Overtaking and Passing of School Buses (eff. 5/1/77).

C. 86 An Act to Empower Liquor Inspectors With Limited Powers of Arrest.

C. 88 An Act Relating to the Display of Live Animals.

C. 99 An Act Relating to Payment of Expenses for Examination of Crime Victims.

C. 114 An Act to Revise the Laws Relating to State Financing of the Expenses of the Superior and Supreme Judicial Courts.

C. 116 An Act Prohibiting the Hiring of Illegal Aliens.

C. 138 An Act to Transfer Regulations Regarding the Security of Certain Parks, Grounds, Buildings and Appurtenances Maintained by the State from the Department of Finance and Administration to the Department of Public Safety.

C. 201 An Act to Authorize the District Court to Order Psychiatric Evaluation in Criminal Cases.

C. 203 An Act Concerning the Definition of Full-Time Local Law Enforcement Officer.

C. 209 An Act Authorizing the Commissioner of Public Safety to Appoint and Commission Railroad Policemen and Providing Regulations Pertaining Thereto.

C. 311 An Act to Assist in the Determination of the Mental Condition of Criminal Defendants.

C. 350 An Act Relating to the Regulation of Games of Chance.

C. 392 An Act to Expedite Court Handling of Fish and Wildlife Violations of a Misdemeanor Nature by a System of Convenient Payment.

C. 431 An Act to Clarify and Reform the Laws Relating to County Law Enforcement.

C. 449 An Act Concerning Solicitation by Law Enforcement Officers.

C. 508 An Act to Reform the Regulation of Watch, Guard and Patrol Agencies and of Private Detectives.

C. 532 An Act to Clarify the Statutory Provisions Concerning the Legal Capacity of a School Bus.

C. 561 An Act to Continue the Division of Special Investigations Within the Department of Public Safety.

MAINE COURT DECISIONS

SELF-INCRIMINATION:
B § 3.1(a) Identification

The defendant was convicted by a jury of assault with intent to rape (17 M.R.S.A. § 3153). On appeal he asserts four assignments of error, all of which the Court rejected.

The defendant complained that the pre-trial line-up violated his constitutional rights because only four (including himself) of the six participants in the line-up had moustaches and because there was a disparity in the height of the participants.

The Court followed the test enunciated in *Stovall v. Denno*, 388 U.S. 293 (1967), that an identification line-up is improper and therefore inadmissible if it is unnecessarily suggestive and gives rise to a substantial likelihood of misidentification. The Court held that the line-up procedure employed in this case, far from being unnecessarily suggestive, was exemplary. Specifically, the Court stated that failure of all participants in the line-up to resemble each other closely did not render the line-up improper. To rule otherwise would impose an impossible burden on the state. *State v. Boucher,* 376 A.2d 478 (Me. 1977).

ARREST AND DETENTION:
A § 1.1 Reasonable Grounds
A. § 1.4 Detention: "Stop and Frisk"
SEARCH AND SEIZURE:
A § 2.6 Consent
CONFESSIONS:
B § 1.1 Voluntariness
DEFENSES:
D § 3.5 Intoxication

The defendant was indicted for burglary and after a Justice of the Superior Court suppressed certain items of evidence at trial, the state appealed.

The Law Court held that the presiding Justice had committed error in granting defendant's motion to suppress. Briefly stated, the presiding Justice found that the defendant had been subjected to an illegal arrest which tainted his subsequent consent to search and his confession. Alternatively, the justice found that even if there had been no arrest, the defendant's consent to search was involuntary because he was intoxicated. He therefore concluded that the defendant's confession was tainted and inadmissible despite the fact that he found that the confession itself had been made voluntarily.

The Law Court held that the presiding justice had misapplied established legal principles in arriving at his decision. First, the Court disagreed with the test used by the presiding Justice in determining whether the defendant had been arrested. The trial judge perceived the test to be whether the "average reasonable person in the **position of the defendant**" would have believed he was free to leave. The Law Court stated that the test is **not** what the police intended, or what the defendant believed, but rather what "the outside observer who views the entirety of the situation" would have believed.

Secondly, the Law Court concluded that the presiding Justice misapplied the law of intoxication as it relates to the voluntariness of a waiver of constitutional rights. By finding that the defendant voluntarily waived his 4th Amendment rights, but was too intoxicated to waive his 5th Amendment rights, the presiding justice obviously applied two different tests of intoxication. The Law Court emphatically stated that the ultimate issue is the same; that is, whether the defendant was competent to waive a constitutional privilege. The Court stated that a person who is "aware and able to comprehend and to communicate with coherence and rationality" is not so intoxicated as to be incapable of waiving his constitutional rights. *State v. Kelly,* 376 A.2d 840 (Me. 1977).

CRIMES/OFFENSES:
C § 6.2 Driving While Intoxicated—Blood Test

Defendant was arrested for operating a motor vehicle under the influence of intoxicating liquor. He was taken to the county jail and advised of the so-called "implied consent law." Defendant initially agreed to submit to a breath test, but because he had been smoking,

the arresting officer decided to wait 15 minutes before administering the test. As the officer began to administer the breath test, the defendant refused to submit to it. To avoid possible misunderstanding, the officer again advised the defendant of the terms of the "implied consent law." Again, the defendant refused to submit to the test.

Shortly thereafter, the defendant advised the officer that he desired to submit to a blood test. The officer declined to become further involved.

On appeal, the defendant argued that he was denied a reasonable opportunity to have a blood test taken. The Court disagreed, stating that although due process may require that a police officer not interfere with a defendant's opportunity to take a blood test, it does not mandate that the officer affirmatively assist the defendant in obtaining the test. Here, the defendant's own uncooperative conduct caused most of the delay. Moreover, the defendant consulted an attorney while he still had an opportunity to arrange for a test, but he took no steps to do so.

The defendant also sought reversal of his conviction on the ground that he was not adequately informed by the arresting officer of the penalty for refusing to submit to an alcohol level test. The Court did not decide whether the defendant was adequately informed. Rather, the Court held that even if the terms of the implied consent statute were not satisfied, this would only mean that "the test results shall not be admissible in evidence." Here, no test was taken and no test results were admitted at trial. Therefore, any non-compliance with the implied consent law was immaterial to the outcome of the defendant's trial. *State v. Allen,* 377 A.2d 472 (Me. 1977).

NEWS FROM THE ACADEMY

Upcoming In-Service Police Schools

Those officers desiring to attend any session should contact Laura Carey at 289-2788.

The following is a list of upcoming specialized in-service training police programs and their locations. Those dates marked with an asterisk are tentative.

Investigation of Rapes—1 day
November 29, 1977—Academy
January 17, 1978—Bangor Area
February 21, 1978—Portland Area

Criminal Investigation—3 weeks
February 6-17, 1978—Academy

***Antique Thefts**—2 days
January 25, 26, 1978—Portland Area
February 22, 23, 1978—Academy
March 29, 30, 1978—Bangor Area

Drug Investigators School—2 weeks
March 6-17, 1978—Academy

Patrol Services School—1 week
March 13-17, 1978—Academy

2nd Management Training Institute—1 week
December 5-9, 1977—Academy
Commissioned S.P. Officers Only

3rd Management Training Institute—1 week
January 1978—Academy
Chiefs, Sheriffs and Command Personnel

Child Abuse Reporting—2 days
November 1977—Portland
December 1977—Academy
January 1978—Bangor

Kidnap-Hostage Negotiation—2 days
November 1977—Auburn

Regional In-Service Training

Regional In-Service programs are designed for full-time law enforcement personnel in all levels of law enforcement. Generally, programs are of two or three hours duration and cover areas in which recent changes have occurred.

Farmington Area
Offered Wednesdays—9:00-4:00
December 7 & 14
Farmington P.D.

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, Room 507 - State Office Building. Augusta, Maine 04333.

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.

Joseph E. Brennan — Attorney General
Richard S. Cohen — Deputy Attorney General In Charge of Law Enforcement
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Janet T. Mills — Ass't Attorney General

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