

# MAINE STATE LEGISLATURE

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# ALERT

SEPTEMBER-OCTOBER 1979

MAINE DEPARTMENT OF  
THE ATTORNEY GENERAL

DEC 4 1979

MAINE CRIMINAL  
JUSTICE ACADEMY

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## IMPORTANT RECENT LEGISLATION

### MESSAGE FROM THE ATTORNEY GENERAL

I am pleased to announce the resumption of the publication of ALERT Bulletin on what I hope to be a regular bimonthly basis. The ALERT has not appeared for over a year due to severe budgetary restrictions and the promotion of some Assistant Attorneys General in the Law Enforcement Education Section. Assuming the continuing availability of funding, I intend to utilize the ALERT Bulletin as the primary vehicle of the Attorney General's Office for promoting the continuing education of law enforcement officers on the legal aspects of their daily duties.

I consider the provision of high quality information and guidance to Maine's law enforcement officers one of my highest priorities and I welcome all comments and suggestions toward attaining that goal. I look forward to continued cooperation and open communication between this office and all members of the criminal justice community.

**RICHARD S. COHEN**  
Attorney General

This issue of ALERT presents and discusses some of the important legislation enacted by the First Regular Session of the 109th Maine Legislature. Some acts create new law and others amend existing law. If new law is created, the entire new law will be set in **bold** print. If existing law is amended, only the new material will be set in **bold** print. Statutes 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 law indicates that one or more provisions of the law have been omitted to conserve space, but are still in effect.

Self-explanatory legislation will be reported without comment. Legislation which needs clarification as to purpose, effect, or meaning or which is too long for reproduction will be explained by a brief italicized COMMENT. The number preceded by C. appearing before the title of each act is the chapter number of the Public Laws of 1979, and is included for the reader's convenience in referring to specific acts.

Acts will be presented in order by the Title of the Maine Revised Statutes under which they appear. The titles of emergency acts will be followed by the designation (Emergency). Except for these emergency acts, all acts became effective on September 14, 1979. The effective dates of emergency acts will be indicated in the COMMENT on those acts.

### TITLE 12

**C. 420 AN ACT to Revise the Inland Fisheries and Wildlife Laws.**

**C. 543 AN ACT to Make Corrections and Clarify Provisions of the Inland Fisheries and Wildlife Laws.**

*COMMENT: Chapter 420 completely recodifies the statutes administered by the Department of Inland Fisheries and Wildlife. Its purpose is to reorganize and standardize the department's statutes which have been so substantially amended over the past few decades as to make it very difficult for anyone — courts, law enforcement officers, administrators, or citizens — to deal with them.*

*The major improvement which this act seeks to accomplish is a new scheme of organization for the statutes which, it is hoped, will make it easier for any person to find the law relating to specific subjects. The breakdown of the new scheme of 12 M.R.S.A. Part 10 is as follows:*

1. Chapter 701 contains an expanded list of standardized definitions of words used throughout these statutes.
2. Chapter 703 gathers all the powers of the commissioner in one place.
3. Chapter 705 gathers all the powers of the game wardens and other law enforce-

ment officers in one place and standardizes these powers.

4. Chapter 707 brings together for the first time all provisions relating to the eligibility for and issuance of all licenses and permits which the commissioner is responsible for issuing, and arranges these licenses and permits by subject matter.

5. Chapter 709 contains all provisions relating to the conduct of hunting and trapping. An important feature of this chapter is a comprehensive list of all prohibited acts, so that the hunter or trapper may easily determine what practices are prohibited.

6. Chapter 711 contains all provisions relating to the conduct of fishing, including a comprehensive list of all prohibited acts.

7. Chapter 713 contains all provisions relating to the management of fisheries and wildlife by the department.

8. Chapter 715 contains the statutes empowering the commissioner to regulate watercraft, snowmobiles and commercial whitewater outfitters.

9. Chapter 717 contains the provisions, formerly in Title 7, empowering the commissioner to regulate the training and use of hunting dogs.

10. Chapter 721 establishes, for the first time, a comprehensive list of penalties for the violation of the fisheries and wildlife laws and attempts to standardize the penalties as much as possible. The chapter also collects all provisions relating to court proceedings under those laws.

Chapter 543 corrects errors and inconsistencies in the inland fisheries and wildlife laws and also amends Chapter 420 to incorporate other acts passed this session dealing with inland fisheries and wildlife. A description of some of the more important changes incorporated into Chapter 420 follows:

— The fees for most of the licenses regulated by the inland fisheries wildlife laws have been increased.

— 12 M.R.S.A. §7071(6) has been enacted to make persons convicted of disturbing traps ineligible to obtain any license issued by the Department of Inland Fisheries and Wildlife and to revoke any licenses in effect at the time of the conviction.

— 12 M.R.S.A. §7102 was repealed and reenacted to raise the age of eligibility for an archery hunting license to 16 and to allow persons between the ages of 12 and 16 who hold valid junior hunting licenses to hunt with a bow and arrow.

— Several provisions change the laws relating to the hunting and transporting of bear to make them similar to the laws

regulating the hunting and transporting of deer.

— 12 M.R.S.A. §7463 and 7464 were repealed and reenacted to establish an experimental moose hunting season in 1980. Many of the provisions of these two sections are similar to provisions regulating the hunting of deer. Some of the provisions unique to moose appear below:

#### 12 M.R.S.A. § 7463. Moose

1. Experimental season established. There shall be a controlled, experimental open firearm's season on moose for the year 1980 within the hunting district described in subsection 3.

2. Open Season. The open season for moose shall be from September 22, 1980, to September 27, 1980.

3. District. There shall be one moose hunting district described as follows: All of the State north of the Canadian Pacific Railroad mainline running from Vanceboro, through Brownville, to the Canadian border, except for those areas of the State closed to hunting described in chapter 713, subchapter I.

4. Hunting permits. The commissioner is authorized to issue not more than 700 moose hunting permits. Permits shall be chosen by public chance drawing. To be eligible for this drawing, a person shall hold a valid Maine resident hunting license and shall submit a written application, accompanied by a \$5 application fee. These applications shall be provided by the commissioner and obtainable from licensing agents. Application fees shall not be refunded. In addition to the application fee, there shall be a fee of \$10 for a moose permit. Each hunter receiving a moose permit may choose another person, hereinafter referred to as the subpermittee, to hunt with him by including his name on the permit application. The subpermittee shall be required to possess a valid Maine hunting license. The hunters shall receive one permit indicating the name of the permittee and subpermittee, if any. This permit shall be carried by the permittee while hunting. The permittee may hunt alone if he chooses, but the subpermittee shall always be accompanied by the permittee. There shall be no additional charge for designating a subpermittee.

5. Bag limit. The bag limit shall be one moose of either sex per permit holder. In the case of a permittee and a select subpermittee, the permit will allow one of them to take one moose.

6. Weapons permitted. Shotguns larger than .410 gauge using rifled slugs only and all other firearms, except handguns and rim fires, shall be considered legal for hunting moose.

\* \* \* \*

8. Closing of moose season. If, during the open season on moose, it shall be the opinion of the commissioner that more moose are being killed in the district indicated than is in the best interest of conserving the species, he shall have the authority to terminate that season at once.

9. Authority of commissioner. The commissioner is authorized to issue applications for moose hunting permits, issue permits and make all rules and regulations pertaining thereto. The commissioner is authorized to make all other rules and regulations which he deems necessary for the protection of the moose resource. The commissioner shall use at least ½, or \$85,000, whichever is smaller, of the revenue generated by moose permits and application fees for moose research and management.

10. Questionnaires. Each permittee and subpermittee shall complete a questionnaire, to be provided by the commissioner and return this questionnaire to the commissioner within a period of 10 days after the close of the moose hunting season.

\* \* \* \*

— Several provisions regulate the registration and operation of airmobiles and are incorporated into 12 M.R.S.A. Chapter 715, Subchapter I dealing with watercraft.

— 12 M.R.S.A. Chapter 715, Subchapter III (the former subchapter dealing with airmobiles) was repealed and a new Subchapter III was enacted entitled Commercial Whitewater Outfitters. The new subchapter regulates the licensing of persons in the business of conducting whitewater rafting, dory or bateau trips on rapidly flowing rivers and regulates the conduct of such trips.

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## TITLE 15

### C. 343 AN ACT Relating to Criminal Appeals and Search Warrants.

15 M.R.S.A. § 55. Search warrants; issuance by district judge or complaint justice

A judge of the District Court or a complaint justice shall issue search warrants for any place in the State for such purposes as the Constitution of the United States and the Constitution of Maine permit. The evidence presented to the magistrate in support of the search warrant may consist of affidavits and other evidence under oath or affirmation which is capable of being reduced to a record for purposes of review. The Supreme Judicial Court shall by rule

provide the procedure of the application for and issuance of search warrants; provided, that where no procedure is specified, the judge or complaint justice shall proceed in any reasonable manner which will allow the issuance of a search warrant for any constitutional purpose.

*COMMENT: This act repeals and replaces prior §55. The new §55 authorizes a District Court Judge or complaint justice sitting in one judicial division to issue a search warrant for property located in another division. Law enforcement officers may now obtain a search warrant from any District Court Judge or complaint justice regardless of where the property to be searched for is located. The act also clarifies what information may be considered by the magistrate and requires the Supreme Judicial Court to provide by rule the procedure for application and issuance of search warrants.*

#### 15 M.R.S.A. §2115-A. Appeals by the State

1. Appeals prior to trial. An appeal may be taken by the State in criminal cases on questions of law from the District Court and from the Superior Court to the Supreme Judicial Court: from an order of the court prior to trial which suppresses any evidence, including, but not limited to, physical or identification or evidence of a confession or admission; from an order which prevents the prosecution from obtaining evidence; from a pretrial dismissal of an indictment, information or complaint; or from any other order of the court prior to trial which, either under the particular circumstances of the case or generally for the type of order in question, has a reasonable likelihood of causing either serious impairment to or termination of the prosecution.

2. Appeals after trial. An appeal may be taken by the State from the Superior Court or the District Court to the Supreme Judicial Court after trial and after a finding of guilty by a jury or the court from the granting of a motion for a new trial, from arrest of judgment, from dismissal or from other orders requiring a new trial or resulting in termination of the prosecution in favor of the accused, when an appeal of the order would be permitted by the double jeopardy provisions of the Constitution of the United States and the Constitution of Maine.

3. When defendant appeals. When the defendant appeals from a judgment of conviction, it is not necessary for the State to appeal. It may argue that error in the proceedings at the trial in fact supports the judgment. The State may also establish that error harmful to it was committed in the trial resulting in the conviction from which the defendant has appealed which should be corrected in the event that the Supreme

Judicial Court reverses on a claim of error by the defendant and remands the case for a new trial. If the case is so reversed and remanded, the Supreme Judicial Court shall also order correction of the error established by the State.

4. Time. An appeal taken pursuant to subsections 1 or 2 shall be taken within 20 days after the entry of the order, and an appeal taken pursuant to subsection 1 shall also be taken before the defendant has been placed in jeopardy. An appeal taken pursuant to this subsection shall be diligently prosecuted.

5. Approval of Attorney General. In any appeal taken pursuant to subsections 1 or 2, the written approval of the Attorney General shall be required; provided that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted, the written approval may be filed at a later date.

6. Liberal construction. The provisions of this section shall be liberally construed to effectuate its purpose or purposes of insuring that the State is able to proceed to trial with all the evidence it is legally entitled to introduce, in view of the limited ability of the State to have error reviewed after trial.

7. Rules. The Supreme Judicial Court may provide for implementation of this section by rule.

8. Fees and costs. The Supreme Judicial Court shall allow reasonable counsel fees and costs for the defense of appeals under this section.

#### C. 274 AN ACT to Amend the Uniform Criminal Extradition Act and the Uniform Interstate Compact on Juveniles.

*COMMENT: This act makes minor changes in the Maine Uniform Criminal Extradition Act and the Uniform Interstate Compact on Juveniles. The effect of these changes is to:*

1. Make it clear that any person who is a "fugitive from justice," as that term is defined in 15 M.R.S.A. §201(4), is extraditable.

2. Expand the class of fugitives who are not eligible for bail to include persons who are charged with or have been convicted of the crime of escape in the demanding state and persons whose extradition is being sought on the ground that they have been convicted of a crime in the demanding state and:

- A. Have escaped from confinement; or
- B. Are under sentence of imprisonment, having been released on bail

*pending appeal or other review which has been denied;*

3. Establish that when a judicial determination of probable cause has been made in the demanding state, the Maine courts should not make an independent determination of probable cause; and

4. Make it clear that a person who is charged as an adult in the demanding state is treated as an adult for the purpose of extradition despite his status as a minor under Maine law.

#### C. 303 AN ACT Enabling the State to Enter into an Interstate Compact on the Emotionally Disordered Offender.

*COMMENT: This act creates 15 M.R.S.A. Chapter 311 enabling the Department of Mental Health and Corrections to enter into contracts with other states to improve by common action their programs for the care and treatment of mentally disordered offenders. The main thrust of the act is to allow for the transfer of mentally disordered offenders from one state to facilities or programs in another state or states where they can receive better treatment, care, or aftercare. A "mentally disordered offender" is defined as "a person who has been determined, by adjudication or other method, legally sufficient for the purpose in the party state where the determination is made, to be mentally ill and:*

A. Is under sentence for the commission of crime; or

B. Who is confined or committed on account of the commission of an offense for which, in the absence of mental illness, said person would be subject to incarceration in a penal or correctional facility."

#### C. 512 AN ACT Concerning Revisions in the Maine Juvenile Code and Maine Criminal Code.

*COMMENT: This act makes several changes in the Maine Juvenile Code and the Maine Criminal Code. Because of the number of changes, only the more important changes will be mentioned here.*

The Maine Juvenile Code was amended as follows:

— 15 M.R.S.A. §3101(4) (G) was enacted to require that any person once bound over and convicted as an adult shall be proceeded against as if he were an adult in all prosecutions for subsequent crimes.

— 15 M.R.S.A. §3203(5) (D) was enacted to prohibit continued detention of a juvenile unless the juvenile court determines that there is probable cause that the juvenile has committed a juvenile crime.

— Other amendments to the Maine Juvenile Code deal with record-keeping, court procedure, commitments to the Department of Mental Health and Corrections, and appeals, and do not directly concern law enforcement officers.

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**C. 233 AN ACT Concerning Restitution under the Juvenile Code.**

**15 M.R.S.A. §3307. Hearings, publicity, record**

**1. Juvenile hearings conducted as they would be for adults.** Hearings under this Part shall be held without a jury but in all other respects shall be conducted as if the juvenile were an adult accused of a crime.

The Maine Rules of Evidence shall apply in such hearings.

**2. Certain hearings public**

**A.** The general public shall not be excluded from adjudicatory hearings on a juvenile crime that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult or from any subsequent dispositional hearings in such cases.

**B.** The general public shall be excluded from all other juvenile hearings and proceedings, except that a juvenile charged with a juvenile crime that would constitute murder or a Class A, Class B or Class C offense and with a juvenile crime that would constitute a Class D or Class E offense or with conduct described in section 3013, subsection 1, paragraphs B, C, D, or E, arising from the same underlying transaction may elect to have all charges adjudicated in one hearing, and, where a juvenile does so elect, the general public shall not be excluded from that hearing.

**C.** Notwithstanding paragraph B, nothing in this section shall be construed to restrict the right of law enforcement personnel, personnel in the Division of Probation and Parole or the court to bring the offender together with the victim in order to assist in mediation for purposes of a restitution contract.

\* \* \* \*

*COMMENT: This addition to section 3307 enables the victim of a juvenile offense to become involved in negotiations to determine appropriate restitution. Because restitution may not always be desirable, however, the arrangement of negotiations is left to the discretion of the appropriate law enforcement, probation and parole, or court officer.*

**15 M.R.S.A. §3314. Disposition**

**1. Dispositional alternatives.** When a juvenile has been adjudicated as having committed a juvenile crime, the court shall enter a dispositional order containing one or more of the following alternatives with special attention to paragraphs B and E:

**A.** The court may allow the juvenile to remain in the legal custody of his parents or a guardian under such conditions as the court may impose.

**B.** The court may require a juvenile to participate in a supervised work or service program. Such a program may provide restitution to the victim by requiring the juvenile to work or provide a service for the victim, or to make monetary restitution to the victim from money earned from such a program. Such a supervised work or service program may be required as a condition of probation if:

(1) The juvenile is not deprived of the schooling which is appropriate to his age, needs and specific rehabilitative goals;

(2) The supervised work program is of a constructive nature designed to promote rehabilitation and is appropriate to the age level and physical ability of the juvenile; and

**A juvenile referred to a supervised work or service program under this paragraph or section 3301, subsection 5, paragraphs A and B, shall not be subject to Title 39, the Workers' Compensation Act.**

**C.** The court may commit a juvenile to the Department of Mental Health and Corrections or the Department of Human Services for placement in a foster home, group care home or halfway house, or for the provision of services to a juvenile in his own house.

**D.** The court may commit a person over the age of 18 years to the Department of Mental Health and Corrections if he is adjudicated as having committed a juvenile crime prior to attaining 18 years of age or upon revocation of probation.

**E.** The court may require the juvenile to make restitution for any damage to persons or property, upon such reasonable conditions as the court deems appropriate.

\* \* \* \*

*COMMENT: These amendments to section 3314 direct the court to give special attention to a supervised work program or to a restitution program when sentencing and exempt juveniles referred to supervised work or service programs from the Worker's Compensation Act, Title 39. This*

*exemption resolves an ambiguity concerning liability for juveniles which has contributed to a reluctance on the part of municipalities and agencies to participate in providing placements in work or service programs, thus limiting the usefulness of these programs.*

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**TITLE 16**

**C. 433 AN ACT to Amend the Laws Relating to Criminal History Record Information.**

*COMMENT: This act repeals 16 M.R.S.A. Chapter 3, Subchapter VII and enacts a new Subchapter VIII, again titled Criminal History Record Information Act. The new Criminal History Record Information Act is too long and involved to be discussed in detail here. A general idea of the act's coverage is best conveyed by listing the titles of the sections of the act.*

**SUBCHAPTER VIII  
CRIMINAL HISTORY  
RECORD INFORMATION ACT**

**16 M.R.S.A. §611 Definitions**

**16 M.R.S.A. §612 Application**

**16 M.R.S.A. §613 Limitations on dissemination of nonconviction data.**

**16 M.R.S.A. §614 Limitation on dissemination of intelligence and investigative information.**

**16 M.R.S.A. §615 Dissemination of conviction data**

**16 M.R.S.A. §616 Inquiries required**

**16 M.R.S.A. §617 Dissemination to non-criminal justice agencies.**

**16 M.R.S.A. §618 Confirming existence or nonexistence of criminal history record information.**

**16 M.R.S.A. §619 Unlawful dissemination**

**16 M.R.S.A. §620 Right to access and review.**

**16 M.R.S.A. §621 Information and records of the Attorney General, State Police, and Bureau of Identification.**

**16 M.R.S.A. §622 Application.**

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**TITLE 17**

**C. 272 AN ACT to Amend the Laws Relating to Beano or Bingo.**

**17 M.R.S.A. §311. Definitions**

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

**1. Beano.** "Beano" shall mean a specific kind of group game of chance, regardless of whether such a game is characterized by another name. Wherever the term "beano" is used, the word

“bingo” or any other word used to characterize such a game may be interchanged. In “beano,” each participant is given or sold one or more tally cards, so-called, each of which contains numbers or letters and may or may not be arranged in vertical or horizontal rows. The participant covers the numbers or letters as objects similarly numbered or lettered are drawn from a receptacle, and the game is won by the person who first covers a previously designated arrangement of numbers or letters on the tally card.

\* \* \* \*

*COMMENT: The purpose of the change in the definition of “beano” is to include all other games of a similar nature within the definition.*

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**C. 317 AN ACT Authorizing the Issuing of Ex Parte Orders by the Courts and Complaint Justices to Allow Humane Agents and Other Authorized Officers to take Possession of Neglected, Mistreated or Injured Animals.**

*COMMENT: This act provides judicial procedures enabling law enforcement officers and other authorized officers to take possession of “any old, maimed, disabled, diseased or injured animal or any animal whose owner has cruelly abandoned or cruelly fails to take care of or provide for” so that the animal may be destroyed or turned over to a suitable person’s care. The act repeals and replaces 17 M.R.S.A. §1211.*

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**TITLE 17-A**

**C. 512 AN ACT Concerning Revisions in the Maine Juvenile Code and Maine Criminal Code.**

*COMMENT: This act makes several changes in the Maine Juvenile Code and the Maine Criminal Code. Because of the number of changes, only the more important changes to law enforcement officers will be mentioned here.*

*The Maine Criminal Code was amended as follows:*

— 17-A M.R.S.A. §7 was amended to include within the territorial applicability of the code conduct or a result of conduct which has a territorial relationship to this State. “Territorial relationship” is defined in a newly enacted subsection 4 as follows:

4. Conduct or a result has a territorial relationship to this State if it is not possible to determine beyond a reasonable doubt that it occurred inside or outside of this State, because a boundary cannot be precisely

located or the location of any person cannot be precisely established in relation to a boundary, and if the court determines that this State has a substantial interest in prohibiting the conduct or result. In determining whether this State has a substantial interest, the court shall consider the following factors:

A. The relationship to this State of the actor or actors and of persons affected by the conduct or result, whether as citizens, residents or visitors;

B. The location of the actor or actors and persons affected by the conduct or result prior to and after the conduct or result;

C. The same place in which other crimes, if any, in the same criminal episode were committed; and

D. The place in which the intent to commit the crime was formed.

— 17-A M.R.S.A. §106(5) was amended to take away the previous statutory right to use deadly force by persons “required by law to enforce rules and regulations, or to maintain decorum or safety, in a vessel, aircraft, vehicle, train, or other carrier, or in a place where others are assembled.”

— 17-A M.R.S.A. §107(5) was amended to give corrections officers or law enforcement officers in confinement facilities the right to use nondeadly force to enforce the rules and regulations of the facility.

— 17-A M.R.S.A. §301 (Kidnapping) was amended, §302 (Criminal restraint) was repealed and replaced, and §303 (Criminal restraint by parent) was newly enacted.

— 17-A M.R.S.A. §907 (Possession or transfer of theft of services devices) was enacted to prohibit the possession or transfer of devices designed or primarily useful for theft of services. An example of such a device is a telephone “black box” used to circumvent telephone long distance toll charges.

— 17-A M.R.S.A. §1108 (Acquiring drugs by deception) was repealed and replaced primarily to increase the penalty for acquiring a schedule W drug by deception to a Class C crime.

Other amendments to Title 17-A of less direct importance to law enforcement officers were made affecting the following sections:

§13(2) (Other offenses) — Repealed.  
§13-A (Included offenses) — Newly enacted.

§451(3) (Perjury) — Amended.  
§452(2) (False swearing) — Amended.  
§902(1) (B) (2) (Defrauding a creditor) — Amended.

§902(2) (Defrauding a creditor) — Repealed and reenacted.

§905(2-A) (Misuse of credit identification) — Newly enacted.

§1112(1) (Analysis of scheduled drugs) — Amended.

§1155 (Multiple sentences of imprisonment) — Repealed and replaced.

§1155-A (Multiple fines) — Newly enacted.

§1156 (Sentence for burglary) — Amended.

§1203(1) (Split sentences) — Amended.

§1203(2) (Split sentences) — Repealed and reenacted.

§1203(3) (Split sentences) — Amended.

§1203-A (Probation after imprisonment) — Newly enacted.

§1206(7) (Court hearing on probation revocation) — Amended.

§1206(7-A) (Court hearing on probation revocation) — Newly enacted.

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**C. 120 AN ACT Concerning Cruelty to Animals.**

**17-A M.R.S.A. §510. Cruelty to animals.**

1. A person is guilty of cruelty to animals if, intentionally, knowingly or recklessly:

\* \* \* \*

B. He overworks, tortures, torments, abandons, gives poison to, cruelly beats or mutilates any animal, or exposes any poison with the intent that it be taken by an animal;

\* \* \* \*

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**C. 129 AN ACT to Prohibit the Possession of Manufactured Items the Serial Numbers of Which Have Been Altered.**

**17-A M.R.S.A. §705. Criminal simulation.**

1. A person is guilty of criminal simulation if:

\* \* \* \*

D. With intent to defraud and to prevent identification:

1. He alters, removes or obscures the manufacturer’s serial number or any other distinguishing identification number, mark or symbol upon any automobile, snowmobile, outboard motor, motorboat, aircraft or any other vehicle or upon any machine, firearm or other object; or
2. He possesses any such object or any such item after that number has been altered, removed or obscured.

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**C. 322 AN ACT to Make Arson a Class A Crime under the Maine Criminal Code.**

*COMMENT: This act repeals 17-A M.R.S.A. §801 (Aggravated arson) and makes all forms of arson Class A crimes.*

**C. 289 AN ACT Concerning the Definition of Criminal Mischief under the Maine Criminal Code.**

**17-A M.R.S.A. §806. Criminal mischief**

1. A person is guilty of criminal mischief if, intentionally or knowingly, he:

A. Damages or destroys the property of another, having no reasonable ground to believe that he has a right to do so; damages or destroys property to enable any person to collect insurance proceeds for the loss caused; or tampers with the property of another, having no reasonable grounds to believe that he has the right to do so, and thereby impairs the use of that property; or

\* \* \* \*

*COMMENT: This act broadens the definition of criminal mischief to include unauthorized tampering with another's property when the tampering impairs the use of the property. Therefore, for example, letting the air out of someone's vehicle's tire would be criminal mischief although no damage is done to the vehicle.*

**C. 55 AN ACT Authorizing the Use of Nondeadly Disabling Chemicals for Self-Defense and for Property Protection in Certain Circumstances.**

**17-A M.R.S.A. §1002. Criminal use of disabling chemicals.**

1. A person is guilty of criminal use of disabling chemicals if he intentionally sprays or otherwise uses upon any other person chemical mace or any similar substance composed of a mixture of gas and chemicals which has or is designed to have a disabling effect upon human beings.

2. Criminal use of disabling chemicals is a Class D crime.

3. This section shall not apply to the use of those disabling chemicals when that use is for the purpose of:

- A. Defending a person under section 108;
- B. Defending premises under section 104; or
- C. Retaking property, preventing that taking or preventing criminal mischief under section 105;

as authorized for the use of nondeadly force.

*COMMENT: This amendment expands the permitted use of disabling chemicals to defense of another person and defense of property under certain circumstances.*

**TITLE 22**

**C. 405 AN ACT Relating to Abortions.**

**22 M.R.S.A. §1598. Abortions**

1. Policy. It is the public policy of the State that an abortion after viability is to be performed only when it is necessary to preserve the life or health of the mother. It is also the public policy that all abortions may only be performed by a physician.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical or by the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus.

B. "Viability" means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

3. Persons who may perform abortions; penalties.

A. Only a person licensed under Title 32, chapter 36 or chapter 48, to practice medicine in Maine as a medical or osteopathic physician, may perform an abortion on another person.

B. Any person not so licensed who knowingly performs an abortion on another person or any person who knowingly assists a nonlicensed person to perform an abortion on another person is guilty of a Class C crime.

4. Abortions after viability; criminal liability. A person who performs an abortion after viability is guilty of a Class D crime if:

- A. He knowingly disregarded the viability of the fetus; and
- B. He knew that the abortion was not necessary for the preservation of the life or health of the mother.

*COMMENT: This act places two limitations on abortions:*

1. It prohibits anyone who is not a licensed medical or osteopathic physician from performing any abortion and makes any person not so licensed who knowingly does so guilty of a Class C crime; and

2. It prohibits an abortion after viability except for the preservation of the life or health of the mother and makes anyone who performs an abortion after viability guilty of a Class D crime if he knowingly disregarded indications of viability and the lack of risk to the mother.

**C. 538 AN ACT to Revise the Medical Examiner system.**

*COMMENT: This act amends several provisions dealing with the Medical Examiner System. The most important of those provisions are duplicated and discussed below:*

**22 M.R.S.A. §3025. Medical examiner case.**

1. Causes of death constituting medical examiner case. A medical examiner case exists when remains are found indicating a human has died and that death is suspected of resulting from:

- A. Violence of any kind;
- B. Any cause where the death occurs suddenly while the person is in apparent good health;
- C. Any cause when there is no attending physician capable of certifying the death as due to natural causes;
- D. Poisoning, either chronic or acute;
- E. Disease, injury or a toxic agent related to employment;
- F. Diagnostic or therapeutic procedures under circumstances indicating gross negligence or unforeseen clearly traumatic causes;
- G. Any cause while the person is in custody or confinement, unless clearly certifiable by an attending physician as due to natural causes;
- H. Disease or pathological process constituting a threat to public health;
- I. Any cause when the death is not known to have been properly certified, including, but not limited to, any body brought into the State without proper certification, and any buried remains uncovered other than under an exhumation order;
- J. In the case of a child under the age of 3 years, any cause, including sudden infant death syndrome, unless the death is clearly due to a specific natural cause; or
- K. Any cause when a body already certified, but not yet buried or cremated, is suspected of having been improperly certified as to the cause or manner of death.

2. Attendance by physician. A medical examiner case exists whether or not the deceased had been attended by a physician or was a patient in a hospital for any time immediately preceding death and regardless of the time between the cause and the death.

3. Transplant operations. No operation for the transplant of an organ or a portion thereof shall take place, when the donor's death occurs under circumstances in-

dicating a medical examiner case, without the approval of a medical examiner. Any doctor performing a transplant operation where the donor has died under these circumstances shall note the condition of the vital organs in the region of surgery and shall include this notation in a written report of the operation and manner in which death was pronounced, the report to be given to the medical examiner upon his request. The medical examiner may choose to be present during the removal of the donated organ.

*This newly enacted section replaces existing law with a more systematic definition of what constitutes a medical examiner case.*

## 22 M.R.S.A. §3026. Reports of death.

1. Persons suspecting medical examiner case. Any person who has become aware of a suspected medical examiner case shall immediately notify a law enforcement officer, medical examiner or the Office of the Chief Medical Examiner.

2. Law enforcement officers suspecting medical examiner case. Any law enforcement officer who has become aware of a suspected medical examiner case shall immediately notify a medical examiner or the Office of the Chief Medical Examiner.

3. Medical examiners suspecting medical examiner case. Any medical examiner who has become aware of a death involving violence, or in which violence is suspected, shall immediately notify the appropriate law enforcement agency. The agency shall notify the district attorney for the district in which the body is located.

4. Cases involving criminal violence. Any law enforcement officer or medical examiner who has become aware of a death involving criminal violence, or in which criminal violence is suspected, other than by motor vehicle, shall immediately notify the Attorney General and the Chief Medical Examiner.

*This newly enacted section establishes a reporting system that eliminates the involvement of town officials and involves medical examiners at an earlier stage of investigation.*

## 22 M.R.S.A. §3027. Procedure at the scene of death.

1. Except as otherwise provided in this section:

A. In any medical examiner case no person shall move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the medical examiner or Office of the Chief Medical Examiner;

B. In any medical examiner case in which noncriminal violence is suspected, or in which any violence by

motor vehicle is suspected, no person shall move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the district attorney for the district in which the body is located or his authorized representative; and

C. In any medical examiner case in which criminal violence other than by motor vehicle is suspected, no person shall move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the Attorney General or his authorized representative.

2. Preservation or removal of body. In any medical examiner case where the body is in danger of being destroyed or lost, or the location of the body renders it a serious threat to the safety or health of others, any person may take whatever steps are reasonably necessary for the retention or preservation of the body prior to the arrival or authorization of the medical examiner or Office of the Chief Medical Examiner, provided that such person shall first, whenever practicable, exactly mark the location and position of the body.

In any medical examiner case where criminal violence other than by motor vehicle is not suspected, and the presence of the body is likely to cause hardship or outrage, and a medical examiner or the Office of the Chief Medical Examiner cannot be reached in a reasonable period of time, the district attorney for the district in which the body is located, or his authorized representative, may authorize removal of the body by the law enforcement officer in charge of the scene, provided that the officer shall first, whenever practicable, exactly mark the location and position of the body.

A. When death occurs in a medical facility such as a hospital or an ambulance, the body may be removed to a mortuary under the following conditions:

(1) The incident causing the death did not occur in the medical facility;

(2) The body is transported to a secure place in the same condition as when death occurred; and

(3) The only alterations are the disconnecting of fixed medical equipment.

3. Procedures. Before removal of the body as provided in subsection 2, the law enforcement officer shall whenever possible arrange for photographs, measurements and a record of the location and position of the body.

Where the death is suspected of involving criminal violence other than by motor vehicle, the procedure in this subsection shall be undertaken with the supervision of an authorized representative of the Attorney General.

In all medical examiner cases in which criminal violence other than by motor vehicle is suspected the procedure in this subsection may be waived concurrently by the Chief Medical Examiner and the Attorney General or his authorized representative.

In all other medical examiner cases the procedure in this subsection may be waived concurrently by the medical examiner and the district attorney for the district in which the body is located or his authorized representative.

*This newly enacted section clarifies the circumstances under which a body may be removed and defines the roles of the Attorney General, the district attorneys, and law enforcement officers at death scenes.*

## 22 M.R.S.A. §3028. Investigation; autopsy

1. Authority to conduct investigation. The medical examiner shall have authority to conduct an investigation of the cause and manner of death in a medical examiner case. He shall immediately proceed to the scene and, subject to the authority of the Attorney General, assume custody of the body for the purposes of the investigation, and shall retain custody until the investigation has been completed or until the Chief Medical Examiner has assumed charge of the case.

2. Investigation by law enforcement officer. Where death is not suspected to be the result of criminal violence, the medical examiner may elect not to proceed to the scene, or the Chief Medical Examiner may elect not to dispatch a medical examiner to the scene. If either so elect, the law enforcement officer in charge of the scene shall investigate the scene and remove the body in accordance with the instructions of the medical examiner or Office of the Chief Medical Examiner. The officer shall make a report of the investigation available to the medical examiner or Office of the Chief Medical Examiner.

3. Assistance of a law enforcement agency. The medical examiner, or the pathologist as described in subsection 9, may request the assistance and use of the facilities of the law enforcement agency having jurisdiction over the case for the purposes of photographing, fingerprinting or otherwise identifying the body. That agency shall provide the medical examiner or pathologist with a written report of the steps taken in providing the assistance.

4. Possession of useful objects. Except as otherwise directed by the Attorney General, his deputies or his assistants, the medical examiner may direct that a law enforcement officer at the scene take possession of all objects which in the medical examiner's opinion may be useful in establishing the cause and manner of death.



5. Requests for objects. Any person having possession of any object or objects, as described in subsection 4, shall at the request of the medical examiner give that object or objects to a law enforcement officer. Original written or recorded material that might express suicidal intent shall be sent to the Office of the Chief Medical Examiner.

6. Examination of body. In all cases except those requiring a report on a body already disposed of and not to be exhumed for examination, the medical examiner shall conduct a thorough examination of the body.

7. Written report. Upon completing his investigation, the medical examiner shall submit a written report of his findings to the Chief Medical Examiner on forms provided for that purpose. The medical examiner shall retain one copy of the report.

8. Autopsy. If, in any medical examiner case, in the opinion of the medical examiner, the Chief Medical Examiner, the district attorney for the district in which the death has occurred or the Attorney General, it is advisable and in the public interest that an autopsy be made, the autopsy shall be conducted by the Chief Medical Examiner or by such pathologist as the Chief Medical Examiner may designate. That person shall make a complete report of the findings of the autopsy and shall transmit the report to the medical examiner and the Office of the Chief Medical Examiner, retaining one copy thereof.

9. Autopsy of child. In the case of a child under the age of 3 years, when the death occurs without medical attendance or, if attended, without a specific natural cause, the medical examiner shall order an autopsy. The autopsy may be waived by the Chief Medical Examiner, provided he includes the reason for the waiver in the record.

10. Chief Medical Examiner; jurisdiction. The Chief Medical Examiner may assume jurisdiction over a medical examiner case, and may recertify the death, when he finds that it is in the public interest for him to do so. He shall include his reasons for so doing in the record.

11. Final release of body. In any medical examiner case the body shall not be finally released for embalming or burial except by order of the medical examiner in charge of the case, or by the Chief Medical Examiner.

*This newly enacted section defines the scope of medical examiner investigations and sets out procedures for autopsies. Several subsections deal with the duties of law enforcement officers and agencies and should be studied carefully.*

22 M.R.S.A. §3029. Body buried without inquiry.

1. Notification of district attorney or Attorney General. If in any medical examiner case:

A. The body is buried:

(1) Without inquiry or examination by the medical examiner;

(2) Before the inquiry or examination has been completed to the satisfaction of the medical examiner; or

(3) Without an autopsy if such was advisable pursuant to section 3028; and

B. The body is required for that inquiry, examination, completion or autopsy, the medical examiner shall notify the district attorney, for the district in which the body was found, or the Attorney General.

2. Petition for order of exhumation. The district attorney or Attorney General may, under the circumstances enumerated in subsection 1, and if he finds it to be in the public interest, petition a Justice of the Superior Court for an order of exhumation.

3. Report of findings. The medical examiner, Chief Medical Examiner or pathologist who completes the inquiry, examination or autopsy shall report his findings to the justice and of the Office of the Chief Medical Examiner.

*This newly enacted section establishes the procedure of obtaining a court order of exhumation when a buried body is required for inquiry, examination, or autopsy.*

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## TITLE 25

C. 261 AN ACT Relating to the Maine Criminal Justice Academy.

*COMMENT: This act effects changes in several sections of 25 M.R.S.A. chapter 341 dealing with the Maine Criminal Justice Academy.*

25 M.R.S.A. §2803. Powers and duties

The board of trustees of the academy shall have the following powers and duties:

\* \* \* \*

9. Certification of instructors. To certify and set standards for certification of law enforcement and criminal justice instructors to be used in all academy basic and inservice training programs as required by the trustees and over which the trustees have statutory control.

*This provision gives the board of trustees of the Criminal Justice Academy the*

*power to certify and set standards for certification for instructors in academy-controlled training programs. The purpose of the provision is to improve the quality of instruction in these programs.*

25 M.R.S.A. §2805. Qualifications.

\* \* \* \*

4. Employment list. Within 30 days of the close of each calendar year, the highest elected official of each political subdivision and the head of each state department and agency employing corrections officers subject to this chapter shall provide the academy board of trustees with a list of the names and dates of employment of all full-time law enforcement and corrections officers covered by this section. The official department and agency head shall further maintain records regarding the basic and inservice training of corrections officers, as provided for in subsections 1 and 3. Whenever a full-time local law enforcement officer or a full-time corrections officer is newly appointed, such highest elected official, or department and agency head shall send notice of appointment within 30 days to the trustees on a form approved for that purpose. The form shall be deemed an application for admission to the academy for any officer who is required to be trained by this chapter.

*This amendment, requiring the reporting to the board of trustees of the Criminal Justice Academy of all new appointments of full-time law enforcement or corrections officers, is designed to enable the academy to monitor more closely the law enforcement training needs of the State. Existing reporting provisions did not allow the academy staff sufficient time to plan training programs to meet these training needs.*

*The remaining provisions of this act merely bring the academy's administrative procedures into harmony with the Administrative Procedure Act and will not be discussed in detail here.*

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C. 311 AN ACT Concerning Reserve officer Standards for Professional Law Enforcement Personnel.

25 M.R.S.A. §2805-A. Standards for reserve and other part-time law enforcement officers.

1. Purpose. The purpose of this section is to establish standards and training programs for reserve and other part-time law enforcement officers and to certify these officers.

2. Powers and duties. The Maine Criminal Justice Academy shall have the following powers and duties.

A. The academy shall establish standards of admission to training for reserve and part-time officers which may include, but are not limited to, standards of work experience and physical and mental condition. The academy may also establish educational standards but shall not establish graduation from high school as a standard.

B. The academy shall approve training programs for the purpose of qualifying reserve and part-time officers, including prescription of curriculum and setting standards for graduation from such programs and for certification as a reserve or part-time officer. In addition, the academy may approve other training programs for reserve and part-time officers.

The academy shall certify in writing any person who, subsequent to the effective date of this section, has satisfied the requirements for certification it has established.

The academy may certify in writing without requiring additional training or testing a person who, prior to the effective date of this section, has completed a training program substantially similar to the training requirement established by the academy and who substantially meets all other requirements for certification at the time of his certification.

The academy may certify in writing by requiring additional training or testing only in selected subjects a person who, prior to the effective date of this section, has completed a training program substantially similar to the training requirement established by the academy, except for training in those selected subjects, and substantially meets all other requirements for certification at the time of his certification. An example of such a person would be one who, in addition to meeting other requirements, completed a training course in another state which is substantially similar to the course required by this section, except for instruction of the criminal and traffic law of the other state.

C. The academy may establish fees to be assessed for testing and certification in order to defray part of the costs of operation of this section and may accept grants from governmental and nongovernmental sources for this purpose.

D. The academy shall maintain a roster of all currently certified reserve and part-time officers. The roster shall be available for inspection during regular working hours by the public at the academy.

3. Standards and training requirements. The standards and training requirements established and approved by the academy

shall not be greater than the standards and training requirements required for full-time law enforcement officers employed in the jurisdiction for which a reserve or part-time officer is training to be employed.

The academy may establish different standards and training requirements for a municipality or classes of municipalities and for a county sheriff's department or classes of sheriff's departments. The academy may establish classes of reserve or part-time officers, which reflect attainment of different levels of standards and training, provided that these levels relate to the different requirements of a municipality or classes of municipalities and a county sheriff's department or classes of county sheriff's departments.

4. Probation. No person may identify himself as a certified Maine law enforcement reserve or part-time officer unless he has been certified by the academy.

*COMMENT: This bill gives the Maine Criminal Justice Academy the authority to establish standards and training programs for reserve and other part-time law enforcement officers and to certify these officers. The bill also provides that no person may identify himself as a certified Maine law enforcement reserve or part-time officer unless he has been certified by the academy.*

## TITLE 28

### C. 432 AN ACT to Permit Performing Arts Centers to Serve Alcoholic Beverages.

*COMMENT: This act allows a performing arts center to serve alcoholic beverages, thus extending to performing arts centers privileges similar to those already granted to civic auditoriums. A performing arts center is defined as follows:*

28 M.R.S.A. §2 Definitions

\* \* \* \*

11-A. Performing arts center. "Performing arts center" shall mean any charitable or nonprofit corporation incorporated as a corporation without capital stock under Title 13, chapter 81, which:

A. Has as its primary purpose the encouragement, promotion, and presentation of the arts for the benefit of the general public;

B. Has been in existence one year prior to first applying for a license under section 252; and

C. Has presented, in the 12 months prior to first applying for a license, a minimum of 24 public performances of theater, music, dance or other performing arts.

\* \* \* \*

## TITLE 29

### C. 86 AN ACT Relating to Fatal Motor Vehicle Accidents

29 M.R.S.A. §891 Reports; accidents.

\* \* \* \*

The driver of any vehicle involved in an accident resulting in injuries to or death of any person or property damage to the apparent amount of \$200 or more, or some person acting for him, or the owner of said vehicle having knowledge of the accident should the operator of same be unknown, shall, immediately by the quickest means of communication, give notice of the accident either to a state police officer, or to the nearest state police field office, or to the sheriff's office or to a deputy sheriff, within the county wherein the accident occurred, or to the office of the police department, or to an officer, of the municipality wherein the accident occurred. The absence of notice having been given to the nearest state police field office or to the sheriff's office within the county wherein the accident occurred or the office of the police department of the municipality wherein the accident occurred shall be deemed prima facie evidence of a violation of this section. Any person failing to comply with the requirements of this paragraph shall be guilty of a misdemeanor. Every such notice received by any such official or department shall be promptly investigated. **If the accident results in serious bodily injury or death of any person, the investigation shall be conducted by an officer who has met the training standards of a full-time police officer.**

*COMMENT: The purpose of this act is to ensure that accidents resulting in serious bodily injury or death will be investigated by properly trained police officers.*

C. 422 AN ACT to Strengthen the Procedures for Prosecuting Operating Under the Influence Cases and Strengthen the Penalties for First Offenses.

29 M.R.S.A. §1312. Implied consent to chemical tests; operation under the influence of intoxicating liquor; penalties.

Any person who operates or attempts to operate a motor vehicle within this State shall be deemed to have given consent to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, if arrested for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor.

He shall be informed by a law enforcement officer of the tests available to him, and said accused shall select and designate one of the tests. At his request he may have a test of his blood administered by a physician of his choice, if reasonably available.

\* \* \* \*

**8. Evidence.** The percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of his blood or breath, shall be admissible in evidence.

When a person, certified under subsection 6, conducts a chemical analysis of blood or breath for the purpose of determining blood-alcohol level, he may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State. It shall be prima facie evidence that the percentage by weight of alcohol in the blood of the defendant was, at the time the blood or breath was taken, as stated in the certificate unless within 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to the results of the chemical analysis.

Transfer of sample specimens to and from a laboratory for purposes of analysis may be by certified or registered mail, and when so made shall be deemed to comply with all requirements regarding the continuity of custody of physical evidence.

The refusal of a person to allow the taking of a sample specimen as authorized by this section shall be admissible in evidence, but only to show that the test was not taken and that no results are available for that reason.

\* \* \* \*

**10. Penalties**

**A.** Notwithstanding the provisions of Title 17-A, section 4-A, any person who, while under the influence of intoxicating liquor or drugs, operates or attempts to operate a motor vehicle within this State shall be punished, on his first conviction, by a fine of not less than \$250 or not more than \$1,000. In addition, the person may be punished by imprisonment for not more than 90 days.

\* \* \* \*

**E.** Except for the purpose specified in paragraph B, it shall not be necessary to comply with the procedures set out in Title 15, section 757, to establish prior convictions under this section. After a conviction, the court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses which are considered to be prior offenses for the purposes of this section. Certified copies of the record of prior conviction or convictions from the Secretary of State or any court of record shall be admissible. On receipt of a copy and being satisfied that the defendant is the person named in that certified copy, the court shall treat the present conviction as a subsequent conviction and sentence the defendant accordingly. **The court may be satisfied of the identity of the defendant with the person named if the name and date of birth are the same.**

**10-A. Suspension of license.**

**A.** On receipt of an attested copy of the court record of a conviction, the Secretary of State shall immediately suspend the person's license or permit and privilege to operate a motor vehicle. The suspension shall be for the following minimum periods from the date of suspension:

- (1) In case of a first conviction, 30 days;
- (1-A) In the case of a first conviction when that operation involved an accident causing personal injury to another person, 6 months;
- (2) In case of a 2nd conviction 6 months; and
- (3) In case of a 3rd or subsequent conviction, 2 years.

**B.** After the minimum suspension period, the Secretary of State may issue a license or permit to the person if:

- (1) In case of a first conviction, the secretary receives written notice that the person has satisfactorily completed the alcohol education program of the Department of Human Services and, if required by the department of Human Services, has also satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department;

\* \* \* \*

*COMMENT: This act makes the following changes in 29 M.R.S.A. §1312.*

- 1. Allows a certificate of analysis for blood or breath tests, issued by a person certified to conduct chemical analysis of blood or breath for the purpose of

*determining blood-alcohol level, to be admissible in evidence in any court of the State.*

- 2. Allows sample specimens for purposes of analysis to be mailed by certified or registered mail.
- 3. Allows the refusal of a person to take a blood or breath test to be admissible in evidence, but only to show that no test results are available.
- 4. Sets a minimum \$250 fine for a first offense.
- 5. Facilitates the court in determining if there have been prior offenses.
- 6. Requires a 6-month suspension of license upon conviction, when the operation involved an accident causing personal injury to another.
- 7. Allows the Department of Human Services to require treatment or rehabilitation after a first offense, prior to restoration of a license. Existing law requires this only after second and subsequent offenses.

**C. 33 AN ACT to Specifically Define what Constitutes a Law Enforcement Officer's Signal to a Motorist to Stop.**

**C. 195. AN ACT to Prohibit an Intentional Attempt to Elude a Police Officer through High-speed Driving.**

**29 M.R.S.A. §2121. Examination of vehicles by police officers.**

\* \* \* \*

It shall be unlawful for the operator of any motor vehicle to fail or refuse to stop such vehicle, upon request or signal of any such officer. Failure to comply with this requirement shall be a Class E crime. For the purposes of this section, the term "signal" may include the use of a hand signal, siren or flashing emergency lights.

Whoever, after being requested or signaled to stop, attempts to elude the officer by driving a vehicle at a reckless rate of speed which results in a high-speed chase between the operator's vehicle and any law enforcement vehicle using a blue light or siren shall be guilty of a Class D crime.

\* \* \* \*

*COMMENT: Some courts have held that the statute requiring drivers to stop upon the signal of a law enforcement officer does not specifically outlaw a motorist's failure or refusal to stop when signaled by means of an officer's siren or flashing emergency lights. Chapter 33 specifically includes the*

use of sirens and flashing emergency lights under the meaning of "signal."

Chapter 195 provides a separate offense and penalty for driving at a reckless rate of speed to elude apprehension. This act is intended to deter this extremely dangerous conduct.

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**C. 10 AN ACT to Strengthen and Streamline the Habitual Offender Law. (Emergency)**

*COMMENT: This act repeals the former Habitual offender law (29 M.R.S.A. chapter 18) and replaces it with a new 29 M.R.S.A. chapter 18-A. The purpose of the act is to reduce costs to the State and to reduce burdens on the courts and on State attorneys by shifting responsibility for habitual offender determinations and license revocations from the Superior Court to the Secretary of State. Under the new law, the Secretary of State is required to revoke, without preliminary hearing, the license, permit or privilege to operate a motor vehicle of any person defined in the law as an habitual offender. The person may request a hearing to challenge the revocation and may appeal to the Superior Court for judicial review of the Secretary of State's determination. Any person found to be an habitual offender who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall have committed a class C crime.*

*This act went into effect on March 2, 1979 as an emergency measure.*

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**C. 464 AN ACT to Incorporate Standards in the Motor Vehicle Inspection Law and to Provide for Legislative Review of Rules Promulgated to Implement the Inspection Program (Emergency).**

*COMMENT: This act repeals 29 M.R.S.A. chapter 13 and replaces it with a new 29 M.R.S.A. chapter 22 titled MOTOR VEHICLE EXAMINATIONS AND INSPECTIONS. The intent of this act is to provide a reasonable motor vehicle inspection program at a cost that the public can afford and a cost that enables the inspector to conduct a comprehensive inspection. According to this act motor vehicle owners will be subject to semi-annual inspection at a cost of \$3.00 per inspection. The act establishes more definite standards by which vehicles will be inspected. The act also removes the requirement that motor vehicle inspection mechanics be reexamined every 5 years. Motor vehicle inspection mechanics will be required to reapply for a*

*certificate every 5 years, but there will be no examination. The purpose of this provision is to maintain a record of the number and location of inspection mechanics in the State.*

*The Chief of the State Police is responsible for administering the motor vehicle inspection program. Any rules promulgated by the Chief of the State Police are subject to review by the Joint Standing Committee on Transportation.*

*This act took effect on July 1, 1979.*

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**TITLE 30**

**C. 115 AN ACT Relating to Constables and Special Police Officers.**

**30 M.R.S.A. §2362. Special police officers.**

Special police officers of limited jurisdiction may be appointed for a term of not more than one year and as provided in section 2361, subsection 1 and shall have all powers of a police officer, except as specifically provided by municipal ordinance or the certificate of appointment. A constable's certificate of appointment shall state whether or not he is allowed to carry a weapon, concealed or unconcealed, and in the performance of his duties. If a constable is restricted in carrying a weapon, this prohibition shall not be affected by any weapon's license the individual may possess.

*COMMENT: This amendment requires municipalities to specifically decide whether a constable should be allowed to carry a weapon in the performance of his duties. Under the prior law municipalities did not need to consider this question and, as a result, some constables automatically received the right to carry a weapon, whether or not their duties required it.*

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**TITLE 32**

**C. 209 AN ACT to Establish Registration of Polygraph Examiners.**

*COMMENT: This act repeals the last two sentences of the first paragraph of 32 M.R.S.A. §6055 which required a person acting as a polygraph expert either to be licensed as a private investigator or to be a police officer carrying out his duties. This act also creates a new 32 M.R.S.A. chapter 87 entitled POLYGRAPH EXAMINERS, which establishes a licensing procedure with the Department of Public Safety "to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation, such as lie detectors, polygraphs, deceptographs, psychological stress*

*evaluators or similar or related devices and instruments without regard to the nomenclature applied thereto." The new chapter 87 also regulates the nature of polygraph examinations and their uses in the context of employment.*

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**OTHER ACTS 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 title of all other acts of relevance to members of the criminal justice system. Hopefully the titles of the acts will give some insight as to their content.

Any member of the criminal justice community may obtain further information about any act 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. 9 AN ACT to Allow Prison Inmates to Attend the Funeral of Brother or Sister.**

**C. 18 AN ACT Concerning Prisoner Participation in Public Works projects.**

**C. 47 AN ACT to Clarify the Law Relating to the Maine Criminal Justice Sentencing Institute.**

**C. 57 AN ACT to Transfer Jury Commissioners' Functions to Clerks of Court and Permit Grand Jury Terms To be Set by Order of the Chief Justice.**

**C. 58 AN ACT Relating to Inspection by the State Fire Marshal.**

**C. 91 AN ACT to Restrict the Placing of Hazardous Objects on Utility Poles.**

**C. 97 AN ACT To Increase the Legally Authorized Length of a Combination Tractor-trailer Operating Upon the Roadways of the State of Maine.**

**C. 104 AN ACT Concerning Dismissal of Municipal Police Chiefs.**

**C. 169 AN ACT to Permit Juvenile Offenders who are Deaf or Mute, or Both, to be Committed to the Maine Youth Center.**

**C. 173 AN ACT to Define the Post of Sheriff as Full Time and to Increase the Salary of that Post.**

**C. 207 AN ACT Relating to the Transfer of Prisoners to Federal Penal Institutions.**

**C. 213 AN ACT Prohibiting any Person from Selling or Offering for Sale or**

- Exchange to a Minor any Product which Seeks to Imitate an Alcoholic Beverage by Looks, Taste and Smell.
- C. 215 AN ACT to Clarify Transfers from County Jails to the Correctional Facilities.
  - C. 217 AN ACT Relating to the Division of Probation and Parole.
  - C. 252 AN ACT to Provide for Ancillary Complaints in Second Offense Operating Under the Influence Cases.
  - C. 257 AN ACT Relating to Appointment of Bail Commissioners and to Lessen the Burden upon Sheriffs and the Court for "Prompt Bail Review."
  - C. 305 AN ACT to Ensure Firefighters May Use a Reasonable Degree of Nondeadly Force to Carry Out their Firefighting Duties.
  - C. 318 AN ACT To Permit Juveniles in the Custody of the Department of Mental Health and Corrections to Receive Services from the Department of Human Services.
  - C. 366 AN ACT to Clarify the Interstate Corrections Compact.
  - C. 370 AN ACT to Monitor the Juvenile Code.
  - C. 373 AN ACT Concerning Detentions, Public Proceedings and Recording Requirements under the Juvenile Code.
  - C. 379 AN ACT to Amend the Split Sentencing Provisions of the Criminal Code.
  - C. 457 AN ACT to Establish a Marijuana Therapeutic Research Program.
  - C. 480 AN ACT to Increase the Dollar Amount of an Accident that Must be Reported to the Secretary of State from \$200 to \$300.
  - C. 492 AN ACT Relating to License Fees for Dogs.
  - C. 559 AN ACT to Restrict the Use of Dealer Plates.

*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 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.

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