

MAINE STATE LEGISLATURE

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SEPTEMBER-OCTOBER 1980

MAINE DEPARTMENT OF
THE ATTORNEY GENERALMAINE CRIMINAL
JUSTICE ACADEMY

**MESSAGE FROM THE
ATTORNEY GENERAL
RICHARD S. COHEN**

I am pleased to announce that we are resuming publication of ALERT on a regular basis again. The subscription response to date has been sufficient to enable us to take this important step. Nevertheless, at this writing we have still only received about half the amount we need to put the ALERT on a firm financial footing.

One of the reasons for our falling short in funds is that many of those who indicated their commitment to subscribe to ALERT have not yet honored those commitments. I would like to request that those who intend to subscribe, do so as soon as possible. We will be better able to plan future issues of ALERT if we know our financial situation.

For those ALERT readers who did not receive subscription letters, I would like to restate the subscription rates and procedures. Individual subscriptions are \$10 per person. Group subscriptions are \$7 per group member, but will be honored only if all members of an agency or department subscribe. Subscription requests should be sent to:

ALERT
Maine Criminal Justice Academy
93 Silver Street
Waterville, Maine 04901

I appreciate the sacrifices being made by those who have already subscribed and hope that through an equal sharing of the financial burden, we can continue to provide high quality information to Maine's criminal justice community.

RICHARD S. COHEN
Attorney General

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IMPORTANT RECENT LEGISLATION

This issue of ALERT presents and discusses some of the important legislation enacted by the Second 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 July 3, 1980. The effective dates of emergency acts will be indicated in the COMMENT on those acts.

TITLE 15

C. 677 AN ACT to Clarify the Law Concerning Abuse Between Family or Household Members.

COMMENT: This act creates 15 M.R.S.A. Chapter 12. A complete discussion of this act can be found in the January-February 1980 issue of ALERT.

C. 681 AN ACT Concerning Revisions in Maine's Juvenile Code and other Statutes Relating to Juveniles.

COMMENT: This act makes several changes in the Maine Juvenile Code and in other statutes relating to juveniles. Because of the number of changes, only the more important changes will be mentioned here.

—15 M.R.S.A. §3101(4) is amended in several respects to revise juvenile bindover procedures.

—15 M.R.S.A. §3201 is amended as follows:

15 M.R.S.A. §3201 Warrantless arrests.

1. Warrantless arrests. Arrests without warrants of juveniles for juvenile crimes defined by section 3103, subsection 1, paragraphs A, D and E, by law enforcement officers or private persons shall be made pursuant to the provisions of Title 17-A, sections 15 and 16. For purposes of this section, a juvenile crime defined under section 3103, subsection 1, paragraph D, shall be deemed a Class D or Class E crime.

* * * *

3. Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime, as defined by section 3103, subsection 1, paragraphs B or C, has been committed may request that the juvenile provide the officer with reasonably credible evidence of his name, address and age. The evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer with evidence of his name, address and age and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period the verification is being attempted, the officer may require the juvenile to remain in his presence for a period not to exceed 2 hours.

After informing the juvenile of the provisions of this subsection, the officer may arrest the juvenile for a crime defined in section 3103, subsection 1, paragraph B or C, if the juvenile intentionally refuses to furnish any evidence of his name, address and age, or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of his name, address and age.

These amendments prohibit warrantless arrests of juveniles for the juvenile crimes of possession of a useable amount of marijuana (15 M.R.S.A. §3103 (1) (B)) and offenses involving intoxicating liquor (15 M.R.S.A. §3103 (1) (C)). The newly enacted subsection 3, however, allows law enforcement officers to request evidence of a juvenile's name, address, and age if the officer has probable cause to believe that the juvenile has violated 15 M.R.S.A. §3103(1) (B) or (C). If the officer obtains the necessary information and if, in the officer's judgment, juvenile court proceedings should be commenced against the juvenile, the officer must immediately notify an intake worker. If, however, the juvenile fails to provide reasonably credible evidence of his name, address, and age, the officer may arrest him for a violation of 15 M.R.S.A. §3101(1) (B) or (C).

These amendments reflect the policy of the juvenile code to treat juveniles in a manner similar to adults.

—15 M.R.S.A. §3202 is repealed and the following is enacted in its place:

15 M.R.S.A. §3202. Arrest warrants for juveniles

An arrest warrant for a juvenile shall be issued in the manner provided by Rule 4, Maine District Court Criminal Rules, provided that affidavits alone shall be presented and a petition shall not be necessary. Following arrest, the juvenile shall be subject to the procedures specified in section 3301.

Several other provisions of the Maine Juvenile Code are enacted or amended dealing with court procedures, duties and powers of intake workers, rights of juveniles, and evidence. These provisions will not be discussed here because they do not directly concern law enforcement officers.

TITLE 17-A

C. 578 AN ACT Concerning Abuse Between Family or Household Members

C. 677 AN ACT to Clarify the Law Concerning Abuse Between Family or Household Members.

COMMENT: Chapter 578 amends 17-A M.R.S.A. §15 and enacts 17-A M.R.S.A. Chapter 54-A. Chapter 677 again amends 17-A M.R.S.A. §15 and repeals 17-A M.R.S.A. Chapter 54-A. A complete discussion of these acts can be found in the January-February 1980 issue of ALERT.

C. 701 AN ACT Amending Criminal Laws and Procedures

COMMENT: This act makes the following important changes in Title 17-A:

—17-A M.R.S.A. §108(2) (A) (2) is amended to read:

2. A person is justified in using deadly force upon another person:

A. When he reasonably believes it necessary and he reasonably believes such other person is:

- (1) About to use unlawful, deadly force against himself or a 3rd person; or
- (2) Committing or about to commit a kidnapping, robbery or a violation of section 252, subsection 1, paragraph B, or section 253, subsection 1, paragraph A, against himself or a 3rd person; or

* * * *

This amendment restricts the justification for the use of deadly force to only the most serious sex offenses. State v. Philbrick, 402 A.2d 59 (1979), which interpreted the former law to allow the use of deadly force against a person who was committing a violation of 17-A M.R.S.A. §255 (Unlawful sexual contact), is thereby overruled. A person may still, however, use non-deadly force, under 17-A

M.R.S.A. §108(1), to defend himself from a less serious sex offense committed with nondeadly force.

—17-A M.R.S.A. §402 is repealed and the following enacted in its place.

§402. Criminal trespass

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

A. He enters any dwelling place;

B. He enters any structure that is locked or barred;

C. He enters any place from which he may lawfully be excluded and which is posted in a manner reasonably likely to come to the attention of intruders or which is fenced or otherwise enclosed in a manner designed to exclude intruders;

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

E. He enters any place in defiance of a lawful order not to enter, which was personally communicated to him by the owner or other authorized person.

2. Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B, C, D or E, is a Class E crime.

TITLE 19

C. 578 AN ACT Concerning Abuse Between Family or Household Members.

C. 677 AN ACT to Clarify the Law Concerning Abuse Between Family and Household Members.

COMMENT: Chapter 578 amends 19 M.R.S.A. §§214 and 752 and

enacts 19 M.R.S.A. Chapter 14. Chapter 677 amends, clarifies, and makes various adjustments to 19 M.R.S.A. Chapter 14. A complete discussion of these acts can be found in the January-February issue of ALERT.

TITLE 25

C. 578 AN ACT Concerning Abuse Between Family or Household Members.

COMMENT: This act amends 25 M.R.S.A. §1544. A complete discussion of this act can be found in the January-February 1980 issue of ALERT.

TITLE 29

C. 701 AN ACT Amending Criminal Laws and Procedures

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.

1. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the arrested person that if he revokes his implied consent to a chemical test by refusing to permit

a test at the direction of the law enforcement officer, his license will be suspended for 90 days or more, and the revocation of consent shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

No test results shall be excluded as evidence in any proceeding before any administrative officer or court of this State as a result of the failure of the law enforcement officer to comply with this prerequisite. The only effects of the failure of the officer to comply with this prerequisite shall be as provided in subsections 2 and 8.

2. Hearing. If a person under arrest revokes his implied consent to a chemical test by refusing upon the request of a law enforcement officer to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, none shall be given. The Secretary of State, upon the receipt of a written statement under oath, within 20 days of the date, of the arrest of a person for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that such person had revoked his consent by refusing to submit to a chemical test to determine this blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241, that his license or permit and his privilege to operate have been suspended. Such suspension shall be for a period of 3 months for a first refusal or revocation of consent under this or any prior implied consent provision under Maine law. If such refusal or revocation of consent is a 2nd or subsequent refusal or revocation of consent under this or any prior implied consent provision under Maine law, such suspension shall be for a period of 6 months.

If such person desires to have a hearing, he shall notify the

Secretary of State within 10 days, in writing, of such desire. Any suspension shall remain in effect pending the outcome of such hearing, if requested.

The scope of such a hearing shall cover whether the individual was lawfully placed under arrest and whether he revoked his prior implied consent by refusing to submit to one of the tests upon the request of a law enforcement officer. Any suspension in effect shall be removed if, after hearing, it is determined that the arrested person who refused to permit the test would not have refused but for the failure of the law enforcement officer to give either or both of the warnings required by subsection 1.

If it is determined, after hearing when such is requested, that such person was not arrested or did not revoke his implied consent to permit a chemical test to determine his blood-alcohol level by analysis of his blood or breath, any suspension in effect shall be removed immediately.

3. Review. Any person, whose license, permit or privilege to operate is suspended for revoking his implied consent to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath at the direction of a law enforcement officer after having been arrested for operating or attempting to operate while under the influence of intoxicating liquor, shall have the right to file a petition in the Superior Court in the county where he resides, or in Kennebec County, to review the order of suspension by the Secretary of State by the same procedure as is provided in section 2242.

* * * *

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 revocation of a person's implied consent to a chemical test by refusing to allow the taking of a sample specimen as authorized by this section shall be admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor. If the arresting law enforcement officer fails to give either of the warnings required under subsection 1, the revocation of the person's implied consent by refusing to submit to a chemical test shall not be admissible. If a revocation of consent is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

If a test result is not available for a reason other than revocation of consent, the unavailability and the reason shall be admissible in evidence.

* * * *

COMMENT: This act requires a law enforcement officer, before any chemical test is given to an arrested person under 29 M.R.S.A. §1312, to inform the arrested person:

(1) That if he revokes his implied consent to a chemical test by refusing to permit a test at the direction of the officer, his license will be suspended for 90 days or more; and

(2) That his revocation of consent will be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

The law enforcement officer's failure to give these warnings will not cause the test results to be inadmissible in a proceeding before an administrative officer or court. The officer's failure to give either or both of the warnings will, however, have important effects if the arrested person refuses to permit the test. Such a failure may result in the person's suspension being removed, if it is determined at hearing before the Secretary of State that the person would not have refused to permit the test but for the failure of the officer to give either or both of the warnings. Also, evidence of the person's refusal to permit the test, which would otherwise be admissible on the issue of whether the person was under the influence of intoxicating liquor, will be inadmissible if the arresting officer failed to give either of the warnings. Law enforcement officers are therefore strongly advised to read the warnings set out above to every person arrested for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, before any chemical test is given.

C. 593 AN ACT to Require that Children who are under 15 Years of Age Wear Helmets when they are Passengers on Motorcycles or Operate Off-road Motorcycles or Motor Driven Cycles.

29 M.R.S.A. §1376. Protective headgear for motorcycle riders and motor driven cycle riders who are minors.

Every person under the age of 15 years who rides as a passenger on a motorcycle or motor driven cycle or in a sidecar attached to a motorcycle or motor driven cycle or who operates an off-road motorcycle or motor driven cycle shall wear protective headgear conforming with those minimum standards of construction and performance which the Secretary of State may prescribe.

No operator of a motorcycle or motor driven cycle nor parent nor guardian may allow a passenger under the age of 15 years to ride in violation of this section.

No operator of an off-road motorcycle driven cycle under the age of 15 years may ride in violation of this section.

Violation of this section is a civil violation for which a forfeiture of \$25 for the first violation and \$50 for each subsequent violation shall be adjudged.

COMMENT: This act requires every person under the age of 15 who rides as a passenger on a motorcycle or motor-driven cycle or in an attached sidecar, or who operates an off-road motorcycle or motor driven cycle to wear protective headgear. The purpose of the act is to reduce the large number of head injuries suffered by children and adolescents involved in cycle accidents.

The former motorcycle helmet law, which required headgear protection for all motorcycle operators and passengers, was repealed in 1977 because the legislature believed that the law infringed the right of a motorcycle operator or passenger to make his own choice whether or not to wear a helmet. Minors, however, in most cases do not understand the risks involved in operating or

riding on a cycle while bareheaded and cannot make an informed choice whether or not to wear a helmet. This bill, while preserving an adult's right to take a conscious risk and not wear a helmet, requires a minor to wear a helmet and thus be protected.

It should be noted that a violation of 29 M.R.S.A. §1376 is a civil violation which may be enforced against a person under the age of 15 years riding an off-road cycle or against a cycle operator or parent or guardian of a person under the age of 15 years who allows the person to ride as a passenger on a cycle.

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 titles 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 a copy of any act mentioned in this issue of ALERT by writing the Criminal Division, Department of the Attorney General, State House, Augusta, Maine 04330.

C. 575 AN ACT Pertaining to Solicitation by Law Enforcement Officers.

C. 576 AN ACT to Provide for Licensing of Bottle Clubs.

C. 584 AN ACT to Amend the Law Regarding the Issuance of Registration Permits under the Motor Vehicle Laws.

C. 588 AN ACT Relating to Enforcement of the Truck Weight Requirements under the Motor Vehicle Laws.

C. 607 AN ACT Concerning the Category of Modified Antique Autos under the Motor Vehicle Statutes.

C. 618 AN ACT Relating to Hunter Safety.

C. 620 AN ACT Relating to Suspension on Nonappearance under the Motor Vehicle Laws.

C. 623 AN ACT Providing for Return of Patients to Mental Health Institutions.

C. 626 AN ACT to Amend the Law Regarding the Reporting of Accidents under the Motor Vehicle Laws.

C. 663 AN ACT to Make Corrections of Errors and Inconsistencies in the Laws of Maine. (Emergency)

C. 664 AN ACT to Provide for the Reregistration of a Motor Vehicle when the Previous Registration has Expired for more than 30 Days.

C. 665 AN ACT to Declare the Right of the Public to Attend Certain Pretrial Criminal Proceedings.

C. 673 AN ACT to Revise and Clarify Certain Provisions of the Motor Vehicle Laws.

C. 675 AN ACT to Create a Combination Nonresident Hunting and Fishing License.

C. 685 AN ACT Relating to Requirements for School Bus Operators and to the Inspection of School Buses.

C. 699 AN ACT to Amend the Hazardous Waste Statutes in Order that the State May Respond to Dangers to Public Health, Safety, or Welfare and Allow Delegation of the Federal Program. (Emergency)

C. 701 AN ACT Amending Criminal Laws and Procedures.

C. 707 AN ACT to Authorize Deductions from the Term of Imprisonment of Certain Persons

**Serving a Split Sentence.
(Emergency)**

**C. 723 AN ACT to Clarify the In-
land Fisheries and Wildlife Laws
of Maine.**

**C. 732 AN ACT to Provide for
Implementation of the Settlement
of Claims by Indians in the State
of Maine and to Create the
Passamaquoddy Indian Territory
and Penobscot Indian Territory.**

**C. 736 AN ACT Relating to
Games of Chance at Agricultural
Fairs.**

FORUM

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

Passing Stopped School Buses

Several school bus operators have complained that numerous vehicles pass stopped school buses in violation of 29 M.R.S.A. §2019(2). Section 2019(2) prohibits operators of vehicles *on school property* or *on roadways* from passing stopped school buses which have their red lights flashing. Since national statistics establish that more children are killed or injured in the loading and unloading of school buses than in any other phase of pupil transportation, it is essential that law enforcement officers assist and cooperate with the school bus operators in enforcing §2019(2). Law enforcement officers should familiarize themselves with regular school bus routes and work with school bus operators to identify problem locations and possible violators. Hopefully, the end result will be a reduction in the number of vehicles which pass stopped school buses thereby averting injury or possible loss of life to the children aboard those buses.

Printing Error

Page 8 of the January-February 1980 issue of ALERT, dealing

with Domestic Violence, erroneously listed the phone number of the Spruce Run Association in Bangor as 947-6413. The correct phone number is 947-6143.

Comments directed toward the improvement of this bulletin are welcome. Please contact the 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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