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OPLA~Notes

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for the Maine State Legislature*

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Newsletter Greetings

Welcome to this edition of OPLA~Notes. This edition includes an article that provides an overview of the anti-terrorism legislation passed by the 120th Legislature and an article on the Legislature's new automated bill drafting system. This edition of the newsletter also includes an article on two recent Supreme Court decisions related to the Americans with Disabilities Act, as well as useful websites, a listing of interim legislative studies with report dates and 2nd Regular Session bill statistics.



Newly Enacted Laws to Address Terrorism in Maine

Three bills proposed by Governor Angus King and supported by Attorney General Steven Rowe to address possible terrorism in the State were enacted by the Legislature during the Second Session of the 120th Legislature. The bills amended Maine statutes in three ways: made changes to public health laws to address bio-terrorism, amended Freedom of Access Laws to ensure that government security plans are protected from public disclosure and amended the Criminal Code to deal with acts of terrorism. The following are summaries of each of the three enacted laws.

LD 2164, An Act to Provide Government with the Necessary Authority to Respond to a Public Health Emergency Caused by an Act of Bioterrorism Public Law 2001, chapter 694

LD 2164, An Act to Provide Government with the Necessary Authority to Respond to a Public Health Emergency Caused by an Act of Bioterrorism, was presented to the Legislature by Speaker Michael Saxl and was referred jointly to the Joint Standing Committee on the Judiciary and the Joint Standing Committee on Health and Human Services.

The bill was based in part on the Model State Emergency Health Powers Act prepared by Professor Lawrence O. Gostin of the Georgetown University Law Center, with the participation of the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities and the Centers for Disease Control and Prevention. The bill was amended by the Judiciary and Health and Human Services Committees. The enacted law, Public Law 2001, Chapter 694, will take effect July 25, 2002 and will remain in effect until October 31, 2003.

The most significant provisions of Public Law 2001, chapter 694 include the following.

- It authorizes the Governor to declare an extreme public health emergency.
- Upon the declaration of an extreme public health emergency, it authorizes the Department of Human Services (DHS) to obtain health information related to the emergency and to take a person into custody and order prescribed testing or care, subject to a requirement of judicial review as soon as reasonably possible, but no later than 48 hours after being taken into custody.
- It establishes that for a court to order prescribed testing or care, DHS must prove that the person has been exposed to or is at significant risk of transmitting a communicable disease that poses a serious imminent risk to public health or safety and that there are no less restrictive alternatives available to protect the public health and safety. A court order may last up to 30 days and may be renewed upon further review by the court. A court order issued under the extreme public health emergency law may be appealed to the Maine Supreme Judicial Court.
- It requires the Commissioner of Human Services to establish an on-going medical-legal advisory panel of 3 members who have expertise in medicine or public health law. The panel will provide advice on extreme public health emergencies and will be convened, in person or electronically, to advise the Governor if an extreme public health emergency is declared.

**LD 2153, An Act to Amend the
Freedom of Access Laws to Protect Security Plans,
Security Procedures and Risk Assessments
Public Law 2001, chapter 675**

LD 2153, An Act to Amend the Freedom of Access Laws to Protect Security Plans, was presented to the Legislature by Representative Norbert of Portland on behalf of the Governor and was referred to the Joint Standing Committee on Judiciary.

The intent of the bill was to protect information concerning security plans or procedures of agencies of the State Government and local governments. The Criminal History Record Information Act already prohibited dissemination of intelligence and investigative information held by criminal justice agencies if there was a reasonable possibility that public release or inspection would disclose investigative techniques and procedures or security

plans and procedures not generally known by the general public. The bill sought to extend that protection to non-criminal justice agencies as well by exempting such information from the definition of “public record” in the Freedom of Access laws.

Law enforcement, emergency response and other governmental interests explained that the current law would require the disclosure by any non-criminal justice agency of plans to prevent and respond to terrorism. Particular concerns were internal risk assessments, which would identify specific vulnerabilities of State and local infrastructure, such as public water supplies, and response plans that described locations for staging areas for emergency response personnel in the case of a disaster caused by terrorists.

A majority of the Judiciary Committee worked with the Office of the Attorney General and press representatives to craft a compromise, to rewrite the exemption to narrow its application and to require oversight by the Legislature and local officials. The final version, now Public Law 2001, chapter 675, does the following.

- It exempts from the definition of “public records” those “records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism,” but only to the extent that the release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public.
- It defines terrorism as “conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure.” This definition of “terrorism” closely follows the new language adopted by the Legislature in LD 2160, Public Law 2001, chapter 634, defining “terroristic intent.”

**LD 2160, An Act to Amend the Criminal Code
to Address Terrorism
Public Law 2001, chapter 634**

LD 2160, An Act to Amend the Criminal Code to Address Terrorism, was presented to the Legislature by President Richard Bennett on behalf of the Governor and was referred to the Joint Standing Committee on Criminal Justice.

The intent of the bill was to amend the Maine Criminal Code to provide prosecutorial tools to address instances of collective harm, as opposed to individual harm. "Collective harm" in this sense refers to antisocial acts of terrorism or violence aimed at the civilian population, a critical infrastructure or the government, instead of harms aimed primarily against an individual.

As drafted, the bill proposed to amend the statute of limitations provisions as they relate to terrorism; expand the crime of aggravated attempted murder to include murder with terroristic intent; expand the crime of causing a catastrophe; and create the following new crimes with enhanced penalties: terrorism, terroristic murder, criminal possession or use of a weapon of mass destruction and terrorism by threat.

A subcommittee of the Joint Standing Committee on Criminal Justice worked with the Office of the Attorney General, the chair of the Criminal Law Advisory Commission and a representative of the Maine Civil Liberties Union to redraft the bill. The subcommittee's proposal, which was adopted as the committee amendment, built on existing provisions in the Criminal Code. Specifically, Public Law 2001, chapter 634 does the following.

- It adds definitions to the Maine Criminal Code to address scientific advances in the methods that may be used to commit the crime of causing a catastrophe.
- It creates the new definition of "terroristic intent" and defines it as "the intent to cause serious bodily injury or death to multiple persons; cause substantial damage to multiple structures or cause substantial damage to critical infrastructure for the purpose of intimidating or coercing a civilian population or to affect the conduct of government".
- It amends the crime of elevated aggravated assault to include when a person with terroristic intent engages in conduct that in fact causes serious bodily injury to another person.
- It creates the crime of aggravated reckless conduct. A person is guilty of this crime if the person with terroristic intent engages in conduct that in fact creates a substantial risk of serious bodily injury to another person.
- It amends the crime of causing a catastrophe if the person acts with terroristic intent by lowering the threshold for harm to causing death or serious bodily injury to more than one person, substantial damage to 3 or more structures, whether or not occupied, or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure.

Did You Know?.....



Eastport is the only United States owned principal-ity that has been under rule by a foreign government. It was held from 1814 to 1818 by British troops under King George following the conclusion of the War of 1812.



In 1939, Maine's first drive-in theatre opened in Saco, one of the first to open in the United States. At its peak, Maine had 39 outdoor cinemas in operation. Since the heyday of the drive-in theatre, 87% of Maine's drive-ins have been closed or have been demolished. Among those that remain in operation are the Saco Drive-In and the Skowhegan Drive-In.



Automated Legislative Bill Drafting System

The Maine State Legislature's Revisor of Statutes Office currently uses a 1980s Wang technology based automated bill drafting system. Obsolescence of the current bill drafting system has forced the Legislature to replace the existing system. Wang Computer Corporation no longer exists as a provider of computers. Parts for the system, even used, are limited or no longer available. Wang systems operating software is no longer being maintained or updated by vendors.

The Legislative Council approved replacing the existing Wang computer application with a client/server based system in June of 2000. A contract was awarded to Compaq Computer Corporation to design, build, and install a new bill drafting system based on the Legislature's requirements.

At this time, the Revisor's Office and the Legislative Information Services Office in association with Compaq (now Hewlett-Packard) are in the final stages of the project. Installation of the final version of the software will take place during the June and July 2002 time period. User testing of the application will take place during the months of July and August 2002. Final Legislative acceptance of the system by the Executive Director of the Legislative Council will take place following the successful correction of all the issues found during the testing process.

Once the new drafting system is accepted and turned over to the Revisor's Office, a structured training program for legislative staff will commence. The new system is planned to go into "production" status for the start of bill drafting for the 1st Regular Session of the 121st Legislature.

In support of the transition from the Wang system to the new drafting system, a wide-ranging support effort is planned. This will include dedicated support to the Revisor's Office by Office of Information personnel throughout the entire legislative session with continuing support for post-session activities. A 12-month warranty will cover any problems found once the bill drafting system is in production mode. The 12-month warranty will cover one entire legislative session.

The goal in designing the new bill drafting system is to maintain all the good points of the previous system plus to support improvements to the drafting process by taking advantage of the advancement in technology since the 1980s origin of the Wang-based system.

The new bill drafting system has the following features.

- Drafting functions that include, but are not limited to, creating, editing, searching and retrieving, indexing, and printing.
- Creating and tracking functions to manage work assignments for drafting bills, orders and resolutions, fiscal analysis and fiscal notes, engrossed bills and amendments;
- Creation, revision, and printing facilities to maintain the Maine Revised Statutes and the cumulative histories.
- Keyword-based search and retrieval functions for the Maine Revised Statutes;
- Functions for tracking engrossing requirements and print facilities for engrossed bills.
- Creation of camera-ready copy of enacted laws for publication in the "Laws of Maine".
- Creation of management and status reports using a new report writing tool.
- Americans with Disabilities Act compliance.

In addition, the design of the new system simplifies the process of exchanging files and data between different systems. This includes the process of transferring bills and amendments drafted by Legislators, legislative staff and others in Word into the new system.

In conclusion, the next few months will be very busy ones in the Revisor's Office and the Information Systems' Of-

fice. We are looking forward to the challenge of moving this new system into full production.

Recent Legal Issues



U.S. Supreme Court Rules on Two Employment Law Cases

The 1990 Americans with Disabilities Act (ADA) gives disabled persons the right to sue over alleged discrimination in the workplace. A key question that courts have had to decide in ADA cases is what type of employee disabilities qualifies under the ADA as discrimination by an employer. In *Toyota Motor Mfg., Ky. Inc. v. Williams, Ella*, 224 F. 3d. 840, the Supreme Court considered the question of whether repetitive stress injuries, such as carpal tunnel syndrome, qualify as a disability under the ADA. The case centered on an employee of Toyota who was unable to perform certain manual tasks because of carpal tunnel syndrome. The worker was transferred to another job at the plant, but that job was later expanded to include wiping cars with highlight oil as they passed on the assembly line. Williams sued when her job was not returned to the original duties after she complained that her carpal tunnel syndrome prevented her from performing the expanded duties. A federal district court judge dismissed William's suit in 1997. But a Cincinnati federal appeals court sided with Williams, holding that her inability to perform manual tasks on an assembly line constituted a disability under the ADA. Toyota appealed the decision to the Supreme Court.

The ADA defines a disability as a physical or mental impairment that "substantially limits one or more of the major life activities." The Supreme Court ruled unanimously on January 8, 2002 that an impairment must have a substantial effect on a person's daily life to qualify as a disability under the law. Conditions that prevent a worker from performing a specific job-related task are not covered disabilities under the ADA. Writing the opinion, Justice Sandra Day O'Connor said that the key issue in the case is "whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job." Justice O'Connor opined that the appeals court erred in focusing on William's job to determine whether she qualified as disabled under the ADA because manual tasks unique to a particu-

lar job are not necessarily important parts of most people's lives. Further, the appeals court should have considered William's ability to perform other daily manual tasks, such as household chores and bathing, when they decided that Williams was "substantially limited" in performing manual tasks.

Although the Court issued an opinion in the case, the Court did not rule on the merits of the case. The case was sent back to the Circuit Court of Appeals for further proceedings.

On April 29, 2002, the U.S. Supreme Court issued a ruling on another ADA case. This case dealt with the issue of workplace discrimination and seniority policies under the American with Disabilities Act. The legal issue in this case questioned whether the ADA requires an employer to assign a disabled worker to a different position as a "reasonable accommodation" even though another employee is entitled to hold the position under the employer's bona fide and established seniority system.

The court case stemmed from an employee of U.S. Airways with back problems who was seeking to keep a less physically demanding mailroom job. Under the ADA, employers are required to engage in an interactive process with employees in order to identify and implement appropriate "reasonable accommodations" unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business. The employee claimed that the company failed to engage in "an interactive process" with him. US Airways argued that another US Airways worker was entitled to the position that Barnett was seeking under the company's seniority rules.

The 9th Circuit Court of Appeals previously ruled in favor of Barnett, holding that an employer may have to set aside seniority when finding a new job for a qualified disabled worker.

The Supreme Court vacated the lower court's opinion and ruled 5-4 in *U.S. Airways, Inc. v. Barnett*, 228 F.3d 1105, that although employer's showing that a requested accommodation conflicts with seniority rules is ordinarily sufficient to show that "an accommodation is not reasonable," the employee should still be in a position to present evidence of special circumstances that makes a seniority rule exception reasonable in certain cases, such as when an employee has made frequent exceptions to an existing seniority policy for employees.

Internet Intersection

Policy and Government



Fed World: This website provides a comprehensive access point for locating and acquiring Federal government information, including jobs, publications, federal agencies and Supreme Court decisions.

www.fedworld.gov/

National Legal Center for the Public Interest:

The National Legal Center for the Public Interest, created in 1975, contributes to the development of public debate and policy by providing the public and private sectors with timely information on key legal, legislative, regulatory and economic issues of national importance. It does this through its educational publications and educational forums. The website offers access to publications, forums, related links and also provides a Supreme Court Resource Center.

www.nlcpi.org

Law and Legislative Reference Library: Provides access to the URSUS catalog, collections information, reference information, legislative history instructions and interlibrary loan information and lists of Justices for the Maine Supreme Judicial Court and Maine Attorney Generals. The Library's website also includes an in-house index to NCSL Legisbrief, a two-page issue brief published by the National Conference of State Legislatures (NCSL). The website also offers the submittal of research requests via e-mail.

www.state.me.us/legis/lawlib



Science and Technology

American Academy of Arts and Sciences: The American Academy of Arts and Sciences is an international learned society composed of leading scientists, scholars, artist and public leaders. This website provides information on projects, events, news and also provides access to publications.

www.amacad.org/

ResearchBuzz: This website is designed to cover Internet research and provides daily updates on search engines, browsers, Web directories and also offers a weekly electronic newsletter.

www.researchbuzz.com

Reference



EnviroText: A searchable library that provides access to environmental laws, regulations and guides and also provides access to Native America Treaties and Constitutions. This site is sponsored by the United States Department of Energy.

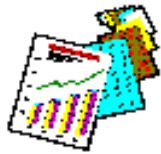
enviro-

text.eh.doe.gov/

Journal Search: This website allows users to search articles and abstracts from professional magazines and journal publications.

www.journalsearch.com/

General Interest



National Safety Council: This website offers research in various areas of safety and safety statistics and also provides access to safety fact sheets.

www.handilinks.com/index.htm

Legislative Studies During the Interim

The following is a listing of legislative studies that are authorized to be conducted during the interim between the 120th Legislature's Second Regular Session and First Regular Session of the 121st Legislature. For more information on a particular study, please contact OPLA at 287-1670 or the agency listed as staff.

Study	Staff	Reporting Date
Blue Ribbon Commission to Address Financing of Long-term Care	OPLA	November 5, 2003
Commission to Address the Unfunded Liability	OPLA	December 19, 2001

Study	Staff	Reporting Date
		December 19, 2001

Study	Staff	Reporting Date
Commission to Continue the Study of Benefits and Costs for Increasing Access to Family and Medical Leave for Maine	OPLA	November 6, 2002
Commission to Recognize Veterans of World War II and the Korean War in the State House Hall of Flags	OPLA	November 1, 2002
Commission to Study the Impact of a Maine-based Casino on the Economy, Transportation, Infrastructure, State Revenue and Job Market	OPLA	November 6, 2002
Commission to Study the Needs and Opportunities Associated with the Production of Salmonid Sport Fish in Maine	OPLA	October 31, 2002
Committee to Develop a Living Memorial in Capitol Park in Honor of the Victims and Heroes of the September 11, 2001 Tragedy	Capitol Park Commission	November 6, 2002
Committee to Review Transition to a New School Funding Formula Based on Essential Programs and Services Model	Department of Education	January 15, 2003
Committee to Study Reimbursement Rates for Maine's Bottle Redemption Businesses and Other Issues Related to the Handling and Collection of Re-	State Planning Office	November 6, 2002

turnable Containers		
Fatherhood Issues Study Commission	OPLA	November 6, 2002
Health Care System and Health Security Board	OPLA	December 1, 2002

on the OPLA website at the following address:
<http://www.state.me.us/legis/opla/reports2.htm>

120th Second Regular Session Bill Statistics

A total of 510 bills, including 122 carry overs, were considered in the Second Regular Session of the 120th Legislature. The table below summarizes statistical information about the bills.

Study	Staff	Reporting Date
MCJUSTIS Board	OPLA drafting assistance	December 15, 2002
Legislative Youth Advisory Council	OPLA	Ongoing, annual report by February 15
Recodification of Title 12, Inland Fisheries and Wildlife Laws	OPLA	January 1, 2003
Study of the County Jail Population, Cost and Reimbursement by the State	OPLA	November 6, 2002
Task Force on Rail Transportation	OPLA	November 6, 2002

	Number of Bills	Percent of Total
Bills Considered	510	100%
Bills Enacted or Finally Passed	331	66.1%
■ Public Laws	242	48.3%
■ Private & Special Laws	31	6.2%
■ Resolves	57	11.4%
■ Constitutional Resolutions	1	0.2%
■ Bills Vetoed or held by the Governor	6 (1 overridden)	1.2%



OPLA Publications

- **Enacted Law Digest:** A brief summary of all public laws, private and special laws, resolves and certain joint orders enacted or passed by the 120th Legislature, Second Regular Session. The summary of each enacted or passed legislative document includes the chapter number, title, LD number or House or Senate Paper number, a summary of the enacted bill, resolve or order and the effective date of any emergency legislation. The digest is produced in conjunction with the Office of Fiscal and Program Review.
- **Study Reports -** A listing of study reports of legislative committees and commissions categorized by year beginning in 1973 is available from OPLA. For printed copies of any of these reports, please contact the Office of Policy and Legal Analysis. The first copy of a report is free; additional copies are available at a nominal cost. In addition, many of the recent legislative studies staffed by OPLA are available

Committee Actions

	Number of Bills	Percent of Total
Total bills referred to committees	351	92.7%
Bills carried over	122	23.9%
■ Total bills reported out	501	100%
Unanimous Committee Reports	368	73.5%
■ Ought to Pass	52	10.4%
■ Ought to Pass as Amended	199	39.7%
■ Ought to Pass in New Draft	0	0%
■ Ought Not to Pass	117	23.4%
Divided Reports	133	26.5%
Major Substantive Rules Reviewed	18	100%
■ Authorized Without Changes	8	44.4%
■ Authorized With Changes	8	44.4%

■ Not Authorized	2	11.1%
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A Word About OPLA

The Office of Policy and Legal Analysis (OPLA) is one of several nonpartisan offices of the Maine State Legislature. It operates under the auspices of the Legislative Council. The office provides professional staff assistance to the joint standing and select committees and study commissions, including providing policy and legal research and analysis, coordinating the committee process, drafting bills and amendments, analyzing budget bills in cooperation with the Office of Fiscal and Program Review and preparing legislative proposals, reports and recommendations.

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Interim Director: Patrick Norton

Editor: Darlene Shores Lynch, Senior
Legislative Researcher

Article Contributors: Jane Orbeton, Sr. Analyst,
Marion Hylan Barr, Legislative Analyst, Margaret
Reinsch, Principal Analyst, Paul Mayotte, Director,
Legislative Information Systems, Darlene
Shores Lynch, Sr. Legislative Researcher

We welcome your comments and suggestions.

Contact the Office of Policy and Legal Analysis by writing to 13 State House Station, Augusta, Maine 04333; calling 287-1670; or stopping by Room 215 of the Cross Office Building. The newsletter is available on the Internet at: www.state.me.us/legis/opla/newslet.htm

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