

MAINE STATE LEGISLATURE

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DEVELOPMENTAL RESEARCH CENTER, INC.

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Proposed Statutory Language
To Implement Certain Final
Commission Recommendations

Chapters 1-3

DRAFT 1

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Chapter 1. General Provisions

Section 101. Purpose...(1) The purposes of this title are:

- (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
- (b) To preserve and strengthen family ties whenever possible, including improvement of home environment;
- (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered;
- (d) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society;
- (e) To protect society more effectively from juveniles who commit serious crimes, are repetitive offenders and are unreached by the Juvenile Justice System;

(f) To provide procedures through which the provisions of the law are executed and enforced which will assure the parties fair hearings at which their rights as citizens are recognized and protected.

(2) To carry out these purposes, the provisions of this title shall be liberally construed.

Section 102. Definitions...As used in the title, unless the context otherwise requires:

(1) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition under section _____ are supported by evidence beyond a reasonable doubt.

(2) "Adult" means a person eighteen years of age or over, except that any minor eighteen years of age or over who is before the court for an alleged delinquent act committed prior to his eighteenth birthday, or who is under the continuing jurisdiction of the court.

(3) "Authorized agent of the Department of _____" means a person assigned by the department to perform duties prescribed in statutes relating to the provision of services to children alleged to be, or adjudicated, delinquent or who are runaways.

(4) "Child" or "juvenile" means any person under the age of eighteen years or any person who is charged with a violation of law occurring prior to the time that person reached the age of eighteen years.

(5) "Commit" means to transfer legal custody.

(6) "Delinquent child" means any child who, regardless of where the violation occurred, has violated:

(a) Any federal state or law;

(b) Any municipal ordinance; or

(c) Any lawful order of the court made under this title.

(7) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

(8) "Diagnostic and evaluation centers" means places for the examination and study of minors operated either by the Department of _____ or by private agencies with whom the department contracts.

(9) "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child adjudicated as delinquent. Such hearing may be part of the proceeding which includes the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.

(10) "Foster Home" or "Group Care Home" means a person or a facility licensed to provide care for small groups of children.

(11) "Halfway houses" means licensed group care facilities for small or large groups of children.

(12) "Intake" means the acceptance of complaints and the screening of them to eliminate those which do not require action by the court, the disposition of the complaint without court action when appropriate, the referral of the child to another public or private agency when appropriate, and the investigation of court action when it is necessary.

(13) "Intake officer" means the authorized agent of the Department of _____ performing the intake function for a child alleged to be delinquent.

(14) "Juvenile court" means the juvenile division of the district court.

(15) "Legal custody" means the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care.

(16) "Parent" means either a natural parent or the adopted parent of a child.

(17) "Probation" means a legal status created by court order in cases involving a delinquent child which permits the child to remain in his own home or other placement designated by an agent of the Department of _____, subject to being returned to the court for violation of any general or special condition, imposed by the court.

(18) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the Department of _____ or other agency designated by the court.

(19) "Shelter" means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.

(20) "Taken into custody" means the status of temporary physical control of a child by a person authorized by this act, pending his release or placement.

(21) "Waiver hearing" means a hearing at which the court determines whether it shall continue to exercise the jurisdiction given it by this act over the child alleged to be delinquent or waive that jurisdiction in order that the state may proceed against the child as it would were he an adult.

Chapter 2. Jurisdiction

Section 201. Jurisdiction...(1) Each district court shall exercise the jurisdiction conferred by this act and while sitting in the exercise of such jurisdiction, shall be known and referred to as the juvenile court.

(2) The juvenile court shall have exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent.

(3) If, during the pendency of any prosecution for a violation of law, in any court in the state against any person presumed to be an adult, it shall be ascertained that the person is a child, or was a child at the time the offense was committed, that court

shall forthwith transfer the case, together with the physical custody of the child and all physical evidence, papers, documents, and testimony, original and duplicate, connected therewith to the appropriate juvenile court for proceeding under this chapter. The juvenile court is exclusively authorized to assume jurisdiction over any child arrested and charged with violating a federal law or a law of the District of Columbia, who is found or living or domiciled in a county for which the juvenile court is established.

(4) (a) Petitions filed under this chapter shall be filed in the county where the cause of action arose, but the juvenile court for that county may, after adjudication, transfer the case to the juvenile court for the county in which is located the domicile or usual residence of the child for disposition. If the child has been detained, he will at this time be transferred to the appropriate group home, shelter, or other placement directed by the receiving court within the county of the child's usual residence.

(b) The jurisdiction to be exercised by the court when a child is taken into custody before the filing of a petition shall be exercised by the juvenile

court for the county in which the child is taken into custody. This court shall control the child and the case in accordance with this act. Upon the filing of a petition in the appropriate court, the court exercising this original jurisdiction shall, if the child has been detained or placed in shelter care, transfer the child to the appropriate group home, shelter, or other placement directed by the receiving court within the county of such court, and thereafter the court in which the petition is filed shall control the child and the case in accordance with this chapter.

(5) When the jurisdiction of any delinquent child shall have been obtained, the court shall retain jurisdiction, unless relinquished by order, until the child reaches 21 years of age, with the same power over the child that the court had prior to the child's becoming an adult. This shall not prevent the exercise of jurisdiction of any other court having jurisdiction in case the child, after becoming an adult, commits a violation of law.

(6) (a) If the judge finds, pursuant this section, that a child will be bound over to the Superior Court, the judge may enter an order waiving jurisdiction and certifying the case for trial as if the

child were an adult, and thereafter the child shall be subject to the jurisdiction of the appropriate court as if the child were an adult.

(b) The judge shall waive jurisdiction and certify the case for trial as if the child were an adult if: the juvenile court concludes and so states in its probable cause finding, that having considered the record and previous history of the child; whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner, greater weight being given to offenses against person than property; and whether there is a reasonable likelihood that like future conduct will not be deterred by continuing the child under the juvenile justice system, the court finds that the maturity of the child as determined by considerations of his home, environment, emotional attitude, and pattern of living, indicates that the child would be more appropriately prosecuted under the general law; and the nature and seriousness of the offense indicate that the protection of the community requires detention of the child in facilities which are more secure than those provided in the juvenile justice system.

(7) Nothing in this chapter shall be deemed to take away from the court any jurisdiction or duties conferred upon the court by general law.

Section 202. Venue...(1) Proceedings in cases brought under the provisions of Section 201 shall be commenced in the county in which the alleged violation of law, ordinance or court order took place. When the court in which proceedings were initiated under Section 201 is in a county other than where the child resides, such court shall immediately notify the court in the county where the child resides of said proceeding and may transfer the case to the county of residence of the child after adjudication but prior to disposition.

(2) A court transferring a case under subsection (1) of this section, shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, which court shall proceed with the case as if the adjudication had been originally made in that court.

Chapter 3. Arrest, Temporary Custody, Shelter
and Detention

Section 301. Warrantless Arrests By Law
Enforcement Officers... (1) Except as otherwise
specifically provided, a law enforcement officer
shall have the authority to arrest without a
warrant:

(a) any juvenile who he has probable
cause to believe has committed or
is committing:

(1) criminal homicide in the first
degree or criminal homicide in
the second degree; or

(2) any class A, class B, or class C
crimes; and

(b) any juvenile who has committed or is
committing a class D or class E crime
in his presence.

(2) For the purposes of subsection (1)(b),
criminal conduct has been committed or is being
committed in the presence of a law enforcement
officer when one or more of the officers present
are aware, from personal knowledge of facts which
are sufficient to warrant the prudent and cautious
law enforcement officer believing that a class D or

class E crime is being or has just been committed and that the person arrested has committed or is committing it. An arrest pursuant to subsection (1)(b) shall be made at the time of the commission of the criminal conduct or some part thereof, or within a reasonable time thereafter, or while in fresh pursuit.

Section 302. Warrantless Arrests By a Private Person. (1) Except as otherwise specifically provided, a private person shall have the authority to arrest without a warrant: (1) any juvenile he has reasonable cause to believe has committed or is committing:

- (a) criminal homicide in the first degree or criminal homicide in the second degree; or
- (b) any class A, class B, or class C crime; and

(2) Any juvenile who in fact committed, in his presence, and in a public place any of the class D or class E crimes described in Title 17 M.R.S.A. Sections 207, 209, 211, 254, 255, 501(2) 503, 761, 762(1)(a), 806, or 1002.

For any purposes of subsection (2), in his presence has the same meaning as in Section 301 (2).

(3) Any private person who makes an arrest without a warrant pursuant to this section shall immediately contact the police department or an intake worker whose responsibility it shall be to immediately take charge of the juvenile.

Section 303. Taking children into custody...

(1) ~~A child may be taken into temporary custody~~ by a law enforcement officer or by an authorized agent of the Department of _____ without order of the court:

- (a) When he is abandoned, lost, or seriously endangered in his surroundings or seriously endangers others and immediate removal appears to be necessary for his protection or the protection of others; or
- (b) When there are reasonable grounds to believe that he has run away or escaped from his parents, guardian, or legal custodian.

(2) A juvenile probation officer may take a child into temporary custody:

- (a) Under any of the circumstances stated in subsection (1) of this section; or

(b) If he has violated the conditions of probation and he is under the continuing jurisdiction of the juvenile court.

(3) The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

Section 304. Search warrants for children...

(1) A search warrant will be issued by the juvenile court to search any place for the recovery of any child within the jurisdiction of the court believed to be a delinquent child.

(2) Such warrant shall be issued only on the conditions that the application for the warrant shall:

(a) Be in writing and supported by affidavit sworn to or affirmed before the court;

(b) Name or describe with particularity the child sought;

(c) State that the child is believed to be a delinquent child and the reasons upon which such believe is based;

(d) State the address or legal description of the place to be searched;

(e) State the reasons why it is necessary to proceed pursuant to this section instead of proceeding pursuant to sections 301, 302 or 303.

(3) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(4) The search warrant shall be directed to any officer authorized by law to execute it in the county wherein the place to be searched is located.

(5) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.

(6) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.

(7) A copy of the warrant, the application therefor, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

(8) If the child is found, the child may be arrested in conformance with the provisions of this act.

(9) The warrant shall be returned to the issuing court.

Section 305. Release or detention, notification...

(1) When a child is arrested or is taken into temporary custody, the law enforcement officer, the representative of the Department of _____ or probation officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him of the child's whereabouts, the name and telephone number of the intake worker who has been contacted and, if a child has been arrested and has been placed in a detention facility, that all parties have a right to hearing within 48 hours to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located.

(2) When a child is arrested or is taken into temporary custody, the officer, representative of the Department of _____ or probation officer shall immediately notify an intake officer.

(3) (a) A child shall not be detained by law enforcement officials, representatives of the Department of _____ or probation officers any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or legal custodian and an intake officer.

(b) Once the information described in paragraph (a) of this subsection (3) is obtained and the intake office contacted, the law enforcement officer, representative of the Department of _____ or probation officer shall take the child directly to the intake officer or to the shelter placement or detention placement designated by the intake officer without unnecessary delay.

(c) (I) No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right to the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation; except that, if a public defender or counsel representing the child is present at such interrogation, such statements or admissions

may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (c), statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian by marriage or by military services.

(III) Notwithstanding the provisions of subparagraphs (I) and (II) of this paragraph (c), no statements or admissions of any child under the age of fourteen years made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child.

(4) The officer, representative of the Department of _____ or probation officer who arrests a child or takes a child into custody shall within twenty four hours of the child being taken into custody or arrested, excluding Sundays and legal holidays, file a brief written report with the intake officer stating the facts which led to the child being taken into custody or arrested.

The report shall:

- (a) identify the child, his parents, guardian or legal custodian;
- (b) describe the circumstances of the arrest or of taking the child into custody; and
- (c) contain sufficient information to establish the jurisdiction of the juvenile court in cases of alleged delinquent behavior.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this section, an intake officer, when contacted by a law enforcement officer, representative of the Department of _____ or a probation officer about a child who has been taken into custody or arrested shall direct that the child be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released will be required to sign a written promise on standardized forms prepared by the Department of _____ and supplied by the intake officer, law enforcement officer, representative of the Department of _____

or probation officer to bring the child to the intake officer at a time set or to be set.

(6) The records of law enforcement officers concerning all children taken into temporary custody under the provisions of this act shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody except:

- (a) By order of the court;
- (b) When the court orders the child to be held for criminal proceedings, as provided in section 201(6)(b); or
- (c) When there has been a criminal conviction and a presentence investigation is being made on the application for probation.

(7) No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody under the provisions of this article may be transmitted to the federal bureau of investigation or any other person or agency except a local law enforcement agency when necessary to assist in

apprehension or to conduct a current investigation, or when the court orders the child to be held for criminal proceedings, as provided in Section 201(6)(b).

(7)(a) If an intake officer directs that a child is to be placed in a detention center, such placement must be reviewed and approved by the juvenile court for the county where the child was arrested or taken into custody within 48 hours, excluding Sundays and legal holidays.

(b) An order pursuant to such a hearing to continue the placement of a juvenile in a detention center shall be entered only if a juvenile judge finds, by a preponderance of the evidence that such detention is required:

- (I) to protect the person or property of others or of the juvenile; or
- (II) to secure the juvenile's presence at the next hearing.

(c) The district court in each county shall make provision so that a juvenile court judge is available to preside at the hearings described in subparagraph (b) of this paragraph (7) on all days except Sundays and legal holidays.

(d) Notwithstanding the provisions of subparagraphs (a), (b), or (c) of this paragraph (7),

no child held in a detention center shall be released from such facility before the initial hearing on his detention is held if a law enforcement agency has requested that a detention hearing be held.

(8) If, as provided by paragraph (7) of this Section (305), a juvenile court orders further detention of a child, it shall refer the child's case to an intake worker, who shall determine whether the interests of the child or of the community require that further action be taken.

(9) (a) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in detention or shelter care.

(b) When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available.

(10) (a) Commencing _____, an intake worker or a juvenile court judge may not direct the delivery of a juvenile to a jail or other facility intended or used for the detention of adults except:

(I) When the jurisdiction of the matter as a juvenile case has been waived pursuant

to Section 201(6)(b) of this act; or

(II) when the judge or intake worker determines, after consultation with the superintendent of a juvenile detention center that the child is beyond the control of the detention home staff; and

(III) that the receiving facility contains a separate section for juveniles and has an adequate staff to supervise and monitor the child's activities at all times.

(b) ~~The official in charge of a jail or other facility~~ for the detention of adult offenders or other persons charged with crime shall inform the court immediately when a child who is or appears to be under eighteen years of age is received at the facility, except for a child ordered by the court to be held for criminal proceedings pursuant to Section 201(6)(b).

(c) A juvenile shall not, under any circumstances, be placed or transported in any police or other vehicle which at the same time contains an adult under arrest unless the adult is involved in the same criminal transaction that instigated the child's arrest.

Section 306. Temporary Placement for Juveniles

Not Accused of Delinquent Behavior...(1) A child taken into custody pursuant to Section 303 of this act shall not be placed, under any circumstances, in a correctional facility, or in a facility intended or used to detain juveniles accused or adjudicated of delinquent behavior.

(2) An intake officer shall refer juveniles not accused of delinquent behavior only to a shelter care facility licensed by the Department of _____ . In no case shall a juvenile not accused of delinquent behavior be forced to accept such shelter placement or be held in such shelter placement involuntarily.

(3) Notwithstanding the provisions of subsection (2) of this Section 306 an intake officer shall offer and encourage the child, and his family, guardian or legal custodian to voluntarily accept social services.

Section 307. The Department of _____'s
Twenty-Four Hour Referral Service...(1) Commencing _____, the Department of _____ will establish and operate a placement referral service, staffed by intake officers, twenty-four hours a day. This referral service will make emergency placement decisions pursuant to the provisions of this act for all juveniles referred to it by law enforcement officers, representatives of the Departments of _____, _____, and probation _____.

officers.

(2) It shall be the responsibility of the Department of _____ to establish, maintain, purchase or provide the foster home, group care home, halfway house and other shelter and detention placements necessary for the referral service described in subsection (1) of this Section (307) to discharge its responsibilities as outlined in this act.