

# MAINE STATE LEGISLATURE

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STATE OF MAINE

ONE HUNDRED AND EIGHTH LEGISLATURE

COMMITTEE ON JUDICIARY

December 1, 1977

John Martin, Chairman  
Legislative Council  
State House  
Augusta, Maine 04333

Dear Representative Martin:

The report of the Joint Standing Committee of the Judiciary on its review of the Juvenile Code P.L. 1977 c. 520 is attached. The legislation provided in the report addresses several problems in the Code. The committee recognizes that the problems of bail and detention are of continuing concern. However, the Committee decided to delay proposing solutions to these problems until the public hearings during the 1978 session.

Sincerely,

*Samuel W. Collins, Jr.*  
Senator Samuel W. Collins, Jr.  
Senate Chairman

*Richard A. Spencer*  
Representative Richard A. Spencer  
House Chairman

THE REPORT  
OF THE JOINT STANDING COMMITTEE ON THE JUDICIARY  
ON THE MAINE JUVENILE CODE

1. Introduction. When the Maine Juvenile Code was enacted into law on July 19, 1977, Section 24 of the law directed the Joint Standing Select Committee on Judiciary to continue to study this subject. The need for such study was expressed in Section 25 of the law:

The Legislature recognizes that there are inevitably errors and unforeseen problems in the enactment of any major revision of an area of law such as the Maine Juvenile Code and realizes that amendments to the code will almost certainly be necessary.

2. Proposed changes to the Maine Juvenile Code. The Committee on Judiciary has completed this initial study and in Appendix A to this report proposes legislation to amend the Code.

There is one area in which the committee did not recommend amending legislation yet which is deserving of additional debate by the Legislature. This is the question of the Code's inconsistent treatment of "bail" and "detention". The Code provides for pre-trial detention of a juvenile on the order of an intake worker or a judge (see 15 MRSA §3303, sub-§§4-5) yet the Code also provides for bail for juveniles "in the same manner as provided for adults" (see 15 MRSA §3303, sub-§8). The Committee trusts that interested parties will raise the issue of this inconsistency during the hearing and debate of the attached Code amendments.

Further, one of the Committee's proposed amendments to the Code needs additional explanation. Currently, if a juvenile is adjudicated to have committed either the illegal possession of marijuana (see 15 MRSA §3103, sub-§1, ¶B) or the illegal purchase or consumption of intoxicating liquor (see 15 MRSA §3103, sub-§1, ¶C), then the Code limits the court's dispositional powers and prevents it from ordering the juvenile detained. While the Committee agrees that this restriction on the power to detain is sound, it feels that the court has insufficient powers to enforce whatever disposition it does order for a marijuana or liquor violation. Thus, the proposed bill in Section 6 adds a new offense to the category of "juvenile crime": it shall be a juvenile crime if a juvenile, having been adjudicated to have committed either a marijuana or liquor offense described in 15 MRSA §3103, sub-§1, ¶s B-C, willfully refuses to pay a resulting court ordered fine or willfully violates the terms of a resulting probation. Then, for such an offense, the Court could order detention as well as any of its other dispositional options. It is the intent of the Committee that the term "willfully" as used in this new offense means that the juvenile possessed the capacity to comply with the court's order but refused to do so.

All other Committee proposed changes to the Juvenile Code are adequately explained in the bill's Statement of Fact.

APPENDIX A

AN ACT TO AMEND THE MAINE JUVENILE CODE

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are certain amendments which must be made to the Maine Juvenile Code which takes effect on July 1, 1978; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 15 MRSA §3003, sub-§3, as enacted by PL 1977, c. 520, §1, is amended to read:

3. Bind over hearing. "Bind over hearing" means a hearing at which the juvenile court determines whether ~~it shall continue to exercise the jurisdiction given it by this Part over the juvenile alleged to have committed a juvenile crime or to waive that jurisdiction in order that~~ or not to permit the State may to proceed against the a juvenile as ~~it would~~ if he were an adult.

Sec. 2. 15 MRSA §3003, sub-§11, as enacted by PL 1977, c. 520, §1, is repealed and the following enacted in its place:

11. Intake. "Intake" means the acceptance of referrals of juveniles prior to court action and the screening of such referrals.

Sec. 3. 15 MRSA §3003, sub-§15, as enacted by PL 1977, c. 520, §1, is amended to read:

15. Juvenile court. "Juvenile court" means the District Court exercising the jurisdiction conferred by ~~this Part~~ section 3101.

Sec. 4. 15 MRSA §3101, sub-§4, ¶A, first sentence, as enacted by PL 1977, c. 520, §1, is amended to read:

When a petition alleges that a juvenile has committed an act which would be ~~a criminal homicide in the first or 2nd degree murder~~ or a Class A, B or C crime if committed by an adult, the court shall, upon request of the prosecuting attorney, continue the case for further investigation and for a bind-over hearing to determine whether the jurisdiction of the juvenile court over the juvenile should be waived.

Sec. 5. 15 MRSA §3101, sub-§4, ¶E, sub-¶(1), as enacted by PL 1977, c. 520, §1, is amended to read:

(1) There is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it;

Sec. 6. 15 MRSA §3103, subsection 1, as enacted by Public Law 1977, c. 520, §1 is amended to read:

1. Definition. The term "juvenile crime," as used in this Act means the following offenses:

A. Conduct which, if committed by an adult, would be defined as a criminal by Title 17-A, the Maine Criminal Code, or by any other statute, private act or ordinance outside that code, including any rule or regulation under a statute except those statutes specifically excepted by section 3101, subsection 2, paragraph B;

B. The possession of a useable amount of marijuana; and

C. A violation of Title 28, section 303; and

D. If a juvenile is adjudicated to have committed an action described in paragraph B and C, willful refusal to pay a resulting fine and willful violation of the terms of a resulting probation.

Sec. 7. 15 MRSA §3203, sub-§4, ¶A, as enacted by PL 1977, c. 520, §1, is amended to read:

A. An intake worker shall direct the release of all arrested juveniles, pending adjudication, to the juvenile's parents, or, if his parents cannot be located, to another responsible adult, unless, in the worker's opinion, the juvenile's immediate welfare or the protection of the community or the securing of the juvenile's presence at the next hearing requires that he be detained.

Sec. 8. 15 MRSA §3203, sub-§7, as enacted by PL 1977, c. 520, §1, is repealed and the following enacted in its place:

7. Restriction on place of detention. An intake worker or a juvenile court judge may direct the delivery of an arrested juvenile to a jail or other secure facility intended or used for the detention of adults only when the receiving facility contains a separate section for juveniles and has an adequate staff to supervise and monitor the juvenile's activities at all times and:

A. When the jurisdiction of the matter as a juvenile case has been waived and the juvenile has been bound over pursuant to section 3101, subsection 4; or

B. When the judge or intake worker determines, after consultation with the administrator of a juvenile detention facility, that the juvenile is beyond the control of the facility's staff.

Sec. 9. 15 MRSA §3204, as enacted by Public Law 1977, c. 520, §1 is amended to read:

No statements of a juvenile made while in custody and as a result of interrogation, ~~while in custody~~ by a law enforcement officer ~~or intake worker~~, and concerning a juvenile crime alleged to have been committed by the juvenile shall be admissible in evidence against that juvenile unless a parent, guardian or legal ~~custodian~~ custodian of the juvenile was present at such interrogation and the juvenile and his parent, guardian or legal custodian were advised of the juvenile's right to remain silent, the right to be advised by counsel, the right to have counsel appointed if indigent, and of the fact that any statements made may be used against him in a court of law, and unless, after having been so advised, the juvenile and his parents, guardian or legal custodian voluntarily waived these rights. If counsel representing the juvenile is present at such interrogation, such statements may be admissible in evidence even though the juvenile's parent, guardian or legal custodian was not present.

2. Notwithstanding the provisions of subsection 1, statement of a juvenile shall not be inadmissible in evidence by reason of the absence of a parent, guardian or legal custodian if the juvenile is emancipated.

3. No statements of a juvenile made to an intake worker shall be admissible in evidence against that juvenile.

Sec. 10. 15 MRSA §3301, sub-§2, ¶B, as enacted by PL 1977, c. 520, §1, is amended to read:

B. Decision not to file petition. If the intake worker decides not to request that a petition be filed, the complainant and the victim shall be informed of the decision and of the reasons therefor as soon as practicable and shall be advised that they may submit the complaint to the ~~district attorney for the district in which the alleged juvenile crime occurred or to the attorney general~~ prosecuting attorney for review.

The ~~district~~ prosecuting attorney or the attorney general, upon receiving a request for a review, shall consider the facts presented by the complainant and or the victim, consult with the intake worker who made the initial decision and then make a final decision as to whether the petition shall be filed.

Sec. 11. 15 MRSA §3301, sub-§3, last sentence, as enacted by PL 1977, c. 520, §1, is amended to read:

Efforts to effect informal adjustment ~~may~~ shall extend no longer than 6 months.

Sec. 12. 15 MRSA §3304, sub-§5, as enacted by PL 1977, c. 520, §1 is amended to read:

5. Service on parents of juvenile. If the person or persons to whom a summons is served are not the parents or guardian of the juvenile, the summons shall also be issued to the parents or guardian or both, notifying them of the pendency of the cause and the time and place set for hearing. The court may waive this requirement if it finds that such service is not possible and explains this finding in writing.

Sec. 13. 15 MRSA §3307, sub-§2, ¶A, as enacted by PL 1977, c. 520, §1, is amended to read:

A. The general public shall not be excluded from adjudicatory hearings on a juvenile crime that would constitute ~~criminal-homicide-in-the-first-or-2nd-degree~~ 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.

Sec. 14. 15 MRSA §3307, sub-§1, first paragraph, as enacted by PL 1977, c. 520, §1, is amended to read:

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 ~~in-a-formal-manner~~ as if the juvenile were an adult accused of a crime.

Sec. 15. 15 MRSA §3307, sub-§3, as enacted by PL 1977, c. 520, §1, is amended to read:

3. Record. A verbatim record shall be made of all ~~proceedings-that-might-result-in-an-adjudication-that-a-juvenile-crime-was-committed~~ detention, bind-over, adjudicatory and dispositional hearings.

Sec. 16. 15 MRSA §3310, sub-§5, as enacted by PL 1977, c. 520, §1, is amended to read:

5. Adjudication.

A. When the court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt, the court ~~shall~~ may adjudge that the juvenile committed a juvenile crime and shall, in all such adjudications, issue an order of adjudication setting forth the basis for its findings.

B. The court shall then hold the dispositional hearing, but such hearing may be continued for not more than 2 weeks on the motion of any interested party or on the motion of the court.

Sec. 17. 15 MRSA §3314, sub-§1, ¶A, as enacted by PL 1977, c. 520, §1, is amended to read:

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

Sec. 18. 15 MRSA §3401, sub-§2, ¶C, as enacted by PL 1977, c. 520, §1, is amended to read:

C. To provide for review of juvenile court decisions so that the legislatively defined ~~goals~~ purposes of the juvenile justice system as a whole are realized.

Sec. 19. 15 MRSA §3402, sub-§3, ¶C, as enacted by PL 1977, c. 520, §1, is amended to read:

C. Any ~~pretrial~~ order which deprives the prosecution of evidence; or

## STATEMENT OF FACT

Sec. 1., clarifies that the responsibility of the juvenile court is to decide whether or not to permit the State to proceed against the juvenile as if he were an adult.

Sec. 2., simplifies the definition of "intake", and leaves to other sections of the bill the specific description of the actions that may take place during the "intake" of a juvenile.

Sec. 3., corrects an internal reference in the bill.

Sec. 4., conforms the wording of the section to that of the Maine Criminal Code.

Sec. 5., specifies the juvenile crimes which may result in the juvenile court binding over a juvenile to the Superior Court.

Sec. 6., more clearly describes the relation of juvenile crimes to the Maine Criminal Code (§A); and adds a new juvenile offense (§D). The reason this new offense is needed is to provide the court with adequate powers to enforce its orders. Currently, if a juvenile is adjudicated to have committed either the illegal possession of marijuana (see §B) or the illegal purchase or consumption of intoxicating liquor (see §C), then the Juvenile Code limits the court's dispositional powers and prevents it from ordering the juvenile detained. Thus, this section seeks to increase the court's dispositional powers by adding the following new offense to the category of "juvenile crime": it shall be a juvenile crime if a juvenile, having been adjudicated to have committed either a marijuana or liquor offense described in §'s B and C, willfully refuses to pay a resulting fine or willfully violates the terms of a resulting probation. If such an offense was committed, the court could then order detention.

Sec. 7., provides the intake worker with authority to direct detention where the intake worker believes detention is necessary to ensure the juvenile's appearance at an adjudicatory proceeding.

Sec. 8., for the purpose of clarity, rearranges the paragraphs of §3203, sub-§7.

Sec. 9., makes a grammatical correction; and specifies that any statements of a juvenile to an intake worker shall not be admissible in evidence against that juvenile.

Sec. 10., uses the phrase "prosecuting attorney" to refer to both a district attorney and an attorney general.

Sec. 11., makes it mandatory that an intake worker's efforts to achieve an informal adjustment cannot extend longer than 6 months.



Sec. 12., allows the court to waive the requirement that parents of the juvenile be served a summons; the court may do this only if it finds, and explains why in writing, that such service is impossible.

Sec. 13., conforms the wording of the section to that of the Maine Criminal Code.

Sec. 14., removes an unnecessary phrase.

Sec. 15., increases the different proceedings for which a verbatim record must be made.

Sec. 16., confirms the court's traditional discretion in making adjudications (¶A); and adds a word inadvertently left out (¶B).

Sec. 17., affirms that a juvenile is in the legal custody of his parents or guardian until the court changes this status.

Sec. 18., changes a word to make the Code's vocabulary consistent.

Sec. 19., allows the state to appeal any order (rather than any pretrial order) which deprives the prosecution of evidence.