

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 647

H. P. 518

House of Representatives, February 12, 1975

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Miskavage of Augusta.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT Amending Laws Relating to Juvenile and Correctional Institutions  
and Judicial Dispositions.

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

Sec. 1. 15 MRSA § 2611, sub-§ 3, is repealed and the following enacted in place thereof:

3. Find probable cause. Find probable cause to hold the juvenile for action by the grand jury within and for the same county. Such finding may be made if, and only if, the Juvenile court concludes, and so states in its probable cause finding, that, from the totality of the child's circumstances, it appears the child's age, maturity, experience and development are such as to require prosecution under the general law; the nature and seriousness of the child's conduct constitute a threat to the community; the conduct of the child was committed in a violent manner and there is reasonable likelihood that like future conduct will not be deterred by continuing the child under the care, protection and discipline of the juvenile law processes;

Sec. 2. 15 MRSA § 2611, sub-§ 4, ¶ D, as last amended by PL 1971, c. 528, § 3, is repealed as follows:

~~D. Commit to the custody and control of the State Parole Board;~~

Sec. 3. 15 MRSA § 2611, sub-§ 4, ¶ E, as last amended by PL 1973, c. 625, § 85, is further amended to read:

E. Commit to the care of a family subject to supervision by the ~~State Parole Board~~ Division of Probation and Parole or by the Department of Health and Welfare;

Sec. 4. 15 MRSA § 2611, sub-§ 4, ¶ G, as last amended by P & SL 1973, c. 53, is repealed and the following enacted in place thereof:

G. Dismiss the action and refer the juvenile to the Department of Mental Health and Corrections which, through its Bureau of Mental Health or Bureau of Mental Retardation, shall cause the provision of services needed by the juvenile to every extent possible, including, but not limited to, causing application to be made for admission of the juvenile to the Augusta Mental Health Institute or to the Bangor Mental Health Institute pursuant to Title 34, chapter 191, if the juvenile is alleged to be a mentally ill individual or to the Pineland Center under Title 34, section 2152, if the juvenile is alleged to be mentally retarded, provided that the court has received a report as provided in section 2503 that the juvenile is mentally ill or mentally retarded;

Sec. 5. 15 MRSA § 2611, sub-§ 4, ¶ H is amended by adding at the end the following new paragraph:

The juvenile court shall not commit a juvenile to the Boys Training Center or the Stevens School if the offense or act committed by the juvenile would not be an offense under the criminal law of this State, if committed by a person 18 years of age or over; except that when the juvenile court in the original juvenile proceeding has adjudicated the commission of the juvenile offense of habitual truancy, behaving in an incorrigible or indecent and lascivious manner, or repeatedly deserting one's home without just cause, and the juvenile court finds at a probation revocation hearing that the juvenile has continued such conduct while on probation and finds that there exists no other less restrictive alternative, it may commit such juvenile to the Boys Training Center or Stevens School.

Sec. 6. 15 MRSA § 2611, sub-§ 5, as last repealed and replaced by PL 1971, c. 121, § 2, is repealed and the following enacted in place thereof:

5. Dispositions after return to a juvenile court. In instances of commitment of a juvenile to the Boys Training Center or to the Stevens School, the superintendent thereof following such commitment may for good cause petition the juvenile court having original jurisdiction in the case for a judicial review of disposition. In all cases in which a juvenile is returned to a juvenile court from the Boys Training Center or Stevens School, the juvenile court may make any of the dispositions otherwise provided in this section.

Sec. 7. 15 MRSA § 2661, sub-§ 2, first sentence, as last amended by PL 1969, c. 501, § 3, is further amended to read:

Any juvenile adjudged by the juvenile court to have committed a juvenile offense may, personally or by his parent or parents, his next friend, guardian or attorney, appeal from such judgment or any orders based thereon, to the Superior Court within and for the county wherein the juvenile offense, concerning which the judgment was rendered, is alleged to have been committed, by giving written notice of appeal to the juvenile court within 5 days next after the entry of such judgment or order.

Sec. 8. 15 MRSA § 2714, as last amended by PL 1973, c. 788, § 64, is amended to read:

**§ 2714. Commitment**

A boy between the ages of 11 and 18 may be committed to the Boys Training Center and a girl between the ages of 11 and 18 may be committed to the Stevens School, pursuant to chapters 401 to 409. All commitments of such children shall be for the term of their minority, ~~unless sooner discharged by the superintendent; but no~~ except that in the case of the commitment of a child who is at the time of the juvenile court's final disposition of the case of the age of 17 years or over, the term of commitment shall extend for one year from the date of commitment. Discharge from the center shall be in accordance with section 2718. No child shall be committed who is deaf, mute, blind or a proper subject for the Augusta Mental Health Institute, the Bangor Mental Health Institute or the Pineland Center.

Sec. 9. 15 MRSA § 2716, as last amended by PL 1971, c. 92, is further amended by adding at the end the following 2 paragraphs to read:

Notwithstanding any other provision of this chapter, if, at the expiration of the period of commitment of any child committed to a center, such child is participating in an educational or vocational program within the center or outside the center on entrustment in a residential setting, at the election of such child approved by the superintendent of the center, any such program may be continued until completed. In the event of such election and approval, the child may continue to reside at the center or in an entrustment residential setting at the expense of the State until the program is completed. The election of the child to continue in an educational or vocational program beyond the term of commitment or the approval thereof by the superintendent, or both, may be withdrawn at any time and, in any such event, such withdrawal shall be irrevocable.

In the event that any child committed to the center shall attain the age of 18 years while still under commitment, the statutory guardianship of the superintendent with respect to any such child shall terminate; however, any such child shall remain subject to the control of the superintendent and staff of the center and rules and regulations thereof until the expiration of the period of commitment or discharge from the center.

Sec. 10. 15 MRSA § 2718, as last amended by PL 1965, c. 3, is repealed and the following enacted in place thereof:

**§ 2718. Discharge**

The superintendent shall cause every child committed to the center to be discharged therefrom forthwith upon the expiration of the child's minority or at the expiration of one year from the date of commitment if such child was of the age of 17 years or over at the time of the juvenile court's final disposition of the case; shall cause every child committed to the center to be discharged therefrom at any time during the period of commitment that it is determined that the child has benefitted optimally from services and facilities of the center, and may cause any child committed to the center to be discharged therefrom when it is determined that discharge would be in the best interest of the child.

**Sec. 11.** 15 MRSA § 2719, as last amended by PL 1973, c. 788, § 65, is repealed and the following enacted in place thereof:

**§ 2719. Offenses while under commitment**

1. **Absence without leave.** If a child committed to a center absents himself or herself from the center without leave or attempts to do so, he or she may be committed to the center under a new commitment following adjudication of the absence without leave by the juvenile court having territorial jurisdiction where the center is located. Under this subsection "absence without leave" is a juvenile offense. Commitment ordered by the juvenile court following adjudication under this subsection shall be for a fixed term of 6 months to run concurrently with the term of the original commitment and subject to the discharge provisions of section 2718.

2. **Assault and battery.** In addition to the general applicability of Title 17, section 201, to any child committed to a center, a child committed to a center who, then being of the age of 14 years or more, is alleged to have committed an assault and battery of a high and aggravated nature as defined in Title 17, section 201, upon any member of the staff of the center, shall be subject to a hearing before the juvenile court under section 2611, subsection 3, and the juvenile court shall conduct a probable cause hearing and shall make findings appropriate thereto and decree accordingly.

**Sec. 12.** 34 MRSA § 801, as last amended by PL 1973, c. 788, § 169, is repealed and the following enacted in place thereof:

**§ 801. Men's Correctional Center; age groups**

The Men's Correctional Center, located at South Windham, shall be maintained for the confinement and rehabilitation of males under the age of 18 years with respect to whom probable cause has been found under Title 15, section 2611, subsection 3, who have pleaded guilty to, or have been tried and convicted of, crimes in the Superior Court and males over the age of 18 years and of not more than 26 years of age who have been convicted of, or who have pleaded guilty to, crimes in the courts of the State, and who have been duly sentenced and committed thereto.

All persons sentenced and committed to the center shall be detained and confined in accordance with the orders or sentences of the courts and rules and regulations of the center. The provisions for the safekeeping or employment of such inmates shall be made for the purpose of teaching such inmates a useful trade or profession and improving their mental and moral condition.

The head of the institution shall be called the superintendent, who shall have supervision and control of the inmates, employees, grounds, buildings and equipment at the center.

The Superintendent of the Men's Correctional Center is authorized, subject to the written approval of the commissioner, to contract with the Director of the Federal Bureau of Prisons acting pursuant to Title 18, U.S.C. § 4002, for the imprisonment, subsistence, care and proper employment of men convicted of crimes against the United States, and may receive and detain any such men pursuant to such contracts.

Sec. 13. 34 MRSA § 801-A, sub-§ 2, as last repealed and replaced by PL 1969, c. 192, § 7, is repealed and the following enacted in place thereof:

2. Inmate. "Inmate" as used in this chapter shall mean any male sentenced and committed to the center.

Sec. 14. 34 MRSA § 802, the first ¶, as last amended by PL 1971, c. 544, § 118-B, and the 2nd ¶, as last amended by PL 1971, c. 121, § 7, are repealed and the following enacted in place thereof:

When, before any court having jurisdiction, a male of not more than 26 years of age is convicted or has pleaded guilty to an offense punishable by imprisonment in the State Prison or by imprisonment in the county jail for more than 6 months, such court may sentence him and order his commitment to the Men's Correctional Center, or sentence him to the punishment provided by law for the same offense.

When any such male is ordered committed to the center, the court shall not fix the term of commitment to the center. The duration of the commitment, including time spent on parole, shall not exceed 3 years.

Sec. 15. 34 MRSA § 851, as last amended by PL 1973, c. 788, § 170, is repealed and the following enacted in place thereof:

§ 851. Women's Correctional Center; population categories; superintendent

The Women's Correctional Center, located at Hallowell, Maine, shall be maintained for the confinement and rehabilitation of females under the age of 18 years with respect to whom probable cause has been found under Title 15, section 2611, subsection 3, who have pleaded guilty to, or have been tried and convicted of, crimes in the Superior Court and females over the age of 18 years and of not more than 26 years of age who have been convicted of, or who have pleaded guilty to, crimes in the courts of the State, and who have been duly sentenced and committed thereto, and all females sentenced to the Maine State Prison who shall be committed, and transported directly from the place of sentence, to the center.

All such females shall be detained and confined in accordance with the orders or sentences of the courts and the rules and regulations of the center.

The superintendent of the center shall have supervision and control of the inmates, prisoners, employees, grounds, buildings and equipment at the center.

The Superintendent of the Women's Correctional Center is authorized, subject to the written approval of the commissioner, to contract with the Director of the Federal Bureau of Prisons acting pursuant to Title 18, U.S.C. § 4002, for the imprisonment, subsistence, care and proper employment of women convicted of crimes against the United States, and may receive and detain any such women pursuant to such contracts.

Sec. 16. 34 MRSA § 851-A, sub-§ 2, as last repealed and replaced by PL 1969, c. 192, § 12, is repealed and the following enacted in place thereof:

2. Inmate. "Inmate" as used in this chapter shall mean any female sentenced and committed to the center;

Sec. 17. 34 MRSA § 853, as last amended by PL 1973, c. 788, § 171, is further amended to read:

§ 853. Commitment; length of sentence; woman attendant

When before any court having jurisdiction, a woman ~~over the age of 18 years and under the age of 40 years~~ of not more than 26 years of age is convicted of, or has pleaded guilty to an offense punishable by imprisonment in the State Prison, or by imprisonment in the county jail for more than 6 months, such court may sentence her and order her commitment to the center, or sentence her to the punishment provided by law for the same offense.

When any such woman ~~or any female adjudicated to have committed a juvenile offense under Title 15, section 2611, subsection 1, paragraph A-r, or any female adjudicated or convicted under Title 15, section 2719~~ is ordered committed to the center the court shall not fix the term of commitment to the center. The duration of the commitment, including time spent on parole shall not exceed 3 years. Upon commitment of any such woman and upon sentencing any woman to the Maine State Prison, if the officer to whom the judgment and order of commitment is addressed is not a woman, the judge shall, in all cases when feasible, designate a woman to be an attendant to accompany her to the center.

### STATEMENT OF FACT

This bill removes constitutional infirmities from sections of the juvenile law relating to judicial dispositions. The bill eliminates juvenile court commitment of juvenile offenders to the Men's and Women's Correctional Centers, thus removing the potential for violations of the 14th Amendment to the United States Constitution as to such commitments.

This bill will put the administration of probation and parole services under the supervision of the Division of Probation and Parole rather than under the State Parole Board as is presently the case.

The bill expands the dispositional alternatives in cases of mentally ill and mentally retarded juveniles.

This Act will enable the Boys Training Center and Stevens School to bring to bear rehabilitation programs with respect to adjudicated juveniles who, at the time of disposition, are nearing their 18th birthday by permitting the term of commitment in such cases to extend for one year. Presently commitment of juveniles approaching their 18th birthday results in nothing more than incarceration since it is impossible to bring to bear rehabilitative programs when the juvenile will only be in the institution for several months.

This Act changes the criteria for finding probable cause to refer a juvenile case to the grand jury and permits commitment to the correctional centers of

minors with respect to whom probable cause has been found and who have pleaded guilty in or have been convicted in criminal proceedings in the Superior Court. This Act lowers the age of commitment of women to the Women's Correctional Center to the age of 26, thus conforming such statutes to the laws relating to the commitment of men to the Men's Correctional Center.

This Act enables the juvenile court, following exhaustion of all other less restrictive dispositional alternatives at the time of a probation revocation hearing, to commit juveniles to juvenile institutions who are habitual truants, repeated runaways and incorrigibles provided that the court finds such conduct is engaged in continuously by the juvenile.

This Act accords to juveniles a personal right of appeal not presently available in the juvenile law.