

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 979**

H. P. 803

House of Representatives, March 6, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Perkins of South Portland.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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**AN ACT** Relating to Procedure in the District Court Concerning Juveniles  
and to Certain Records of the District and Superior Courts Concerning  
Juveniles.

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

**Sec. 1.** 15 MRSA § 2501, first sentence is amended to read:

The purpose of chapters 401 to 409 is to provide that in proceedings pertaining to juveniles, as defined in section 2502, and as covered by chapters 401 to 409, the care, custody and discipline of said juveniles shall approximate as nearly as possible that which they should receive from their parents or custodians **and that which is compatible with due process of law**; and that as far as practicable, they shall be treated, not as criminals, but as young persons in need of aid, encouragement and guidance.

**Sec. 2.** 15 MRSA § 2502, sub-§§ 1-A and 1-B are enacted to read:

**1-A.** Adjudicatory hearing. "Adjudicatory hearing" means, in the case of a petition to determine delinquency, an initial fact-finding hearing to determine whether the juvenile complained against did the act or acts alleged in the petition which, if done by an adult, would constitute a crime. Any adjudication of a commission of a juvenile offense by the court shall be made at the conclusion of an adjudicatory hearing.

**1-B.** Dispositional hearing. "Dispositional hearing" means, in the case of a petition to determine delinquency, a hearing to determine on the basis of the evidence presented whether a juvenile, adjudicated to have committed a juvenile offense at an adjudicatory hearing, requires residential or non-residential supervision, assignment to a community-based treatment program

or confinement in a correctional institution. Any dispositional order by the court regarding a juvenile adjudicated to have committed a juvenile offense shall be made at the conclusion of a dispositional hearing.

Sec. 3. 15 MRSA § 2503, first ¶ is amended to read:

If, ~~in any proceeding before~~ after completion of an adjudicatory hearing by a juvenile court resulting in an adjudication of a commission of a juvenile offense, the court has cause to believe that the juvenile is mentally retarded or mentally ill, the court may, before making a dispositional decision in the case, require such juvenile to be examined by any qualified psychiatrist and the result of said examination shall be reported to the court for its guidance.

Sec. 4. 15 MRSA § 2606, as last amended by PL 1971, c. 528, § 1, is repealed and the following enacted in place thereof:

§ 2606. Record

Each juvenile court shall keep a record of proceedings to be known as the "juvenile court record." It shall be separate from any District Court records and it shall contain a brief outline and description of juvenile court proceedings, including the disposition of each case. The juvenile court record may be maintained in any place, provided that it shall not be open to the general public and that any record or any part thereof, including investigations and reports by probation officers, social agencies and clinics, whether on file with the juvenile court or another state or private agency, shall be confidential and for the use of the juvenile court and open to inspection or disclosure to any 3rd party only upon written order of said court, except that such records shall be available to the attorney representing the juvenile, the juvenile's parents or guardian, or state correctional or social welfare agencies for the purpose of carrying out duties specifically authorized by law.

Any record or any part thereof forwarded by the juvenile court or any of its employees to any persons, governmental or private agencies or institutions shall not be disclosed, directly or indirectly, to any 3rd party except upon written order of said court. Neither the fact that a person was previously before a juvenile court for any proceeding under chapters 401 to 409, nor any confession, admission or statement made by him to the court or any officer thereof at any stage of such proceedings, nor any official record of such proceedings shall be competent evidence against him or his interests in any other court, except that juvenile court records pertaining to motor vehicle violations by juveniles shall be transmitted by juvenile courts, together with a summary of the pertinent facts of the motor vehicle violation, to the Secretary of State and shall be admissible in evidence in hearings conducted by the Secretary of State regarding motor vehicle violations or motor vehicle licenses and registrations.

Sec. 5. 15 MRSA § 2606-A is enacted to read:

§ 2606-A. Maintenance of juvenile records

Whenever any child has been found delinquent and has subsequently reached the age of 18 years, and has been discharged entirely from the supervision of the juvenile court or from the custody or supervision of the Bureau

of Corrections or from the care of any other institution or agency to whom he has been committed by the court, the Bureau of Corrections shall file a petition with the juvenile court which made the original adjudication and, if such court finds that no subsequent proceeding is pending against him in the juvenile court or in any court of criminal jurisdiction, it shall order all police, court and correctional records pertaining specifically to such child to be erased. Upon entry of such an erasure order, all references including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact that such erasures have been made may be verified by the child or his attorney. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions, other than the news media, known to have information pertaining to the delinquency proceedings affecting such child. Whenever a child is dismissed as not delinquent by the juvenile court, all police and court records pertaining to such charge shall be ordered erased immediately without the filing of a petition.

Sec. 6. 15 MRSA § 2608, first ¶ is amended to read:

When any juvenile has been arrested, the arresting officer shall immediately inform the juvenile of his right to remain silent, and of his right to be represented at every stage of the proceedings concerning him by counsel chosen by him or his parent or other person legally responsible for his care, or provided for him if he and his legal guardian are indigent, and shall thereafter make arrangements for the juvenile's custody or safekeeping until the earliest opportunity to bring the juvenile ~~is brought~~ before a juvenile court. If the arresting officer believes that security provisions must be made for any juvenile arrested until he may be brought before a juvenile court, such officer shall transport and deliver said juvenile to any place of detention including a jail designated by the Department of Mental Health and Corrections as a place for the security detention of juveniles, and said juvenile shall be received and held at such place of detention, with or without process.

Sec. 6-A. 15 MRSA § 2608, 2nd ¶ as amended by PL 1967, c. 160, is amended to read:

Once a juvenile has been brought before a juvenile court, said court, after determining that legal counsel for the juvenile has been obtained and is present with the juvenile, shall determine the custody or detention to be prescribed for said juvenile, as the court shall deem appropriate, pending disposition of the cause by said juvenile court, including: Requiring bail, or accepting, instead of bail, the personal recognizance of the parent, legal guardian or other suitable person who has control of, or is related to, the juvenile to keep him in secure custody and to produce him before the juvenile court as said court may order. In exercising its discretion, the court may order that the juvenile be detained, pending disposition of the case, in any place deemed by the court to be suitable, including a jail and juvenile institutions. Detention shall be allowed in a jail or juvenile institution only pursuant to an order of juvenile court and the juvenile court shall make such order only when it

appears to the court, as indicated by a preponderance of the evidence, to be in the best interests of the community or of the juvenile apprehended, in which event provision must be made to have the juvenile segregated from criminal offenders, and the juvenile court shall so order.

Sec. 7. 15 MRSA § 2609 is repealed and the following enacted in place thereof:

§ 2609. Hearings in juvenile courts

There shall be no terms of the juvenile court, but the court may assign matters for hearing at its discretion. Juvenile court hearings shall not be criminal in nature and shall be conducted separately from any criminal proceeding. The hearings shall be held in a room other than the district courtroom whenever feasible and shall be private, except that juvenile court hearings regarding motor vehicle violations by juveniles shall be public and may be heard in the district courtroom. The judge may administer all oaths required by law.

The juvenile shall be represented by counsel at every stage of a juvenile proceeding, and no waiver of the right to counsel by the juvenile or his parents or legal guardian shall be permitted by the court.

Hearings in the juvenile court contemplating a possible adjudication of a commission of a juvenile offense shall be bifurcate in nature, consisting of an initial adjudicatory hearing as defined in section 2502, subsection 1-A, requiring a determination by the court of whether a juvenile offense was committed by the respondent and a subsequent dispositional hearing, as defined in section 2502, subsection 1-B, requiring a determination by the court as to the most appropriate placement for the juvenile if it has been determined in the adjudicatory hearing that he committed the offense or offenses alleged in the petition of delinquency. Upon completion of the adjudicatory hearing, the dispositional hearing may commence immediately if an adjudication of a commission of a juvenile offense is made. Reports prepared by the Division of Probation and Parole or other public or private agency concerning the juvenile and for use by the court prior to the making of an order of disposition shall not be furnished to the court prior to the completion of an adjudicatory hearing, but may be used in a dispositional hearing.

Only evidence that is competent, material and relevant may be admitted in an adjudicatory hearing. Any adjudication of a commission of a juvenile offense at the conclusion of an adjudicatory hearing that a respondent did the offense or offenses complained of must be based on a preponderance of the evidence and for this purpose an uncorroborated confession made out of court by a respondent is not sufficient.

Only evidence that is material and relevant may be admitted during a dispositional hearing and a determination by the court at the conclusion of a dispositional hearing as to the most appropriate placement for the adjudicated juvenile must be based on a preponderance of the evidence.

Any person who, without the written consent of the juvenile court, divulges or publishes the name of any juvenile brought before or to be brought before

a juvenile court, or who, being present at any juvenile court hearing which is private, divulges or publishes, without the written consent of the juvenile court, any of the matters which occurred at said hearing may be found guilty by the juvenile court of criminal contempt and may be punished accordingly, except that law enforcement, correctional and social welfare personnel may furnish such information to other law enforcement, correctional and social welfare personnel for the purpose of carrying out duties specifically authorized by law.

Sec. 8. 15 MRSA § 2611, sub-§ 2 is repealed.

Sec. 9. 15 MRSA § 2611, sub-§ 4, ¶ F is amended to read:

F. Suspend the imposition of sentence, or continue the case for sentence, or impose sentence and suspend its execution, in each case placing the juvenile on probation. When the offense committed by the juvenile has caused damage to another for which civil liability has been established or admitted, the court may in addition to placing the juvenile on probation, continue the case for sentence for not more than 2 years and order the juvenile to make restitution to the person injured;

Sec. 10. 15 MRSA § 2666, as last amended by PL 1973, c. 625, § 86, is repealed and the following enacted in place thereof:

§ 2666. Superior Court appeal record

The record in the Superior Court of all matters transpiring in the Superior Court in cases before the Superior Court upon an appeal from the judgment of a juvenile court shall be kept separate from the other records of the Superior Court. Said record in juvenile appeal cases shall not be open to the inspection of the general public, and any record or any part thereof for the use of the Superior Court on appeal, including all reports, investigations and other matters concerning the juvenile furnished to the Superior Court shall be confidential and for the use of the Superior Court, and open to inspection or disclosure to any 3rd party only upon written order of said court, except that such records shall be available to the attorney representing the juvenile, the juvenile's parents or guardian, or state correctional or social welfare agencies for the purpose of carrying out duties specifically authorized by law.

Any record or any part thereof forwarded by the Superior Court or any of its employees to any persons, governmental or private agencies or institutions shall not be disclosed, directly or indirectly, to any 3rd party except upon written order of said court. Neither the fact that a person was previously before a Superior Court for any matter relating to a proceeding under chapters 401 to 409, nor any confession, admission or statement made by him to the court or any officer thereof at any stage of such proceedings, nor any official record of such proceedings shall be competent evidence against him or his interests in any other court, except that Superior Court records pertaining to motor vehicle violations by juveniles shall be transmitted by the Superior Court, together with a summary of the pertinent facts of the motor vehicle violation, to the Secretary of State, and shall be admissible in evidence in hearings conducted by the Secretary of State regarding motor vehicle violations or motor vehicle licenses and registrations.

## STATEMENT OF FACT

This legislation is designed to provide several procedural due process safeguards for the consideration of juvenile matters by the District Court, as well as to provide a clear system for the control and confidentiality of juvenile court records. The legislation is drawn from similar juvenile court provisions in effect in the states of New York, California and Connecticut, and effects recommendations #8 and #16 of the report of the Governor's Task Force on Corrections.