

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1978

H. P. 1917

Office of the Clerk of the House
EDWIN H. PERT, Clerk

Filed by the Joint Standing Committee on Judiciary under Joint Rule 17, pursuant to chapter 520 of the Public Laws of 1977 (H. P. 1794, L. D. 1894)

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

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Sec. 1. 15 MRSA § 3003, sub-§ 3, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

3. Bind-over hearing. "Bind-over hearing" means a hearing at which the juvenile court determines whether or not to permit the State to proceed against a juvenile as 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Sec. 2. 15 MRSA § 3003, sub-§ 11, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place: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, sub § 1, as enacted by PL 1977, c. 520, § 1, is amended to read:

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

A. Conduct which, if committed by an adult, would be defined as a ~~criminal~~ crime by Title 17-A, the Maine Criminal Code, or by any other criminal statute, private act or ordinance outside that code, including any rule or regulation under a statute, except for 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 paragraphs B and C, willful refusal to pay a resulting fine and willful violation of the terms of a resulting probation.

Sec. 7. 15 MRSA § 3202, 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, sub-§ 1, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

1. No statements of a juvenile made while in custody as a result of interrogation by a law enforcement officer 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 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.

Sec. 10. 15 MRSA § 3204, sub-§ 3 is enacted to read:

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

Sec. 11. 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. 12. 15 MRSA § 3301, sub-§ 3, last ¶, 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. 13. 15 MRSA § 3304, sub-§ 5, as enacted by PL 1977, c. 520, § 1, is amended by inserting at the end the following new sentence:

The court may waive this requirement if it finds that such service is not possible and explains this finding in writing.

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-§ 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. 16. 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. 17. 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. 18. 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. 19. 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. 20. 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

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

Section 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.

Section 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.

Section 3 corrects an internal reference in the bill.

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

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

Section 6 more clearly describes the relation of juvenile crimes to the Maine Criminal Code, paragraph A, and adds a new juvenile offense, paragraph 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 paragraph B) or the illegal purchase or consumption of intoxicating liquor (see paragraph 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 paragraphs 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.

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

Section 8, for the purpose of clarity, rearranges the paragraphs of section 3203, subsection 7.

Sections 9 and 10 make a grammatical correction and specify that any statements of a juvenile to an intake worker shall not be admissible in evidence against that juvenile.

Section 11 uses the phrase "prosecuting attorney" to refer to both a district attorney and an attorney general.

Section 12 makes it mandatory that an intake worker's efforts to achieve an informal adjustment cannot extend longer than 6 months.

Section 13 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.

Section 14 removes an unnecessary phrase.

Section 15 conforms the wording of the section to that of the Maine Criminal Code.

Section 16 increases the different proceedings for which a verbatim record shall be made.

Section 17 confirms the court's traditional discretion in making adjudications (paragraph A) and adds a word inadvertently left out (paragraph B).

Section 18 affirms that a juvenile is in the legal custody of his parents or guardian until the court changes this status.

Section 19 changes a word to make the code's vocabulary consistent.

Section 20 allows the State to appeal any order, rather than any pretrial order, which deprives the prosecution of evidence.