

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1951

H. P. 1847

House of Representatives, February 14, 1980

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

EDWIN H. PERT, Clerk of the House

Presented by Mr. Hobbins of Saco.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Concerning Revisions in the Maine Juvenile Code.

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

Sec. 1. 15 MRSA § 3003, sub-§ 23, as enacted by PL 1977, c. 520, § 1, is amended to read:

23. Probation. "Probation" means a legal status created by court order in cases involving a juvenile adjudicated as having committed a juvenile crime, which permits the juvenile to remain in his own home or other placement designated by ~~an agent of the Department of Mental Health and Corrections~~ **the Juvenile Court** subject to ~~being returned to the court for a commission of a new juvenile crime or revocation~~ **for violation of any general or specific condition** imposed by the court.

Sec. 2. 15 MRSA § 3101, sub-§ 4, ¶ B, as enacted by PL 1977, c. 520, § 1, is amended by adding at the end the following new paragraphs:

The Maine Rules of Evidence shall apply only to the probable cause portion of the bind-over hearing.

For the purpose of making the findings required by paragraph E, subparagraphs (2) and (3), written reports and other material may be received by the court along with other evidence, but the court, if so requested by the juvenile, his parent or

guardian or other party, shall require that the person or persons, who wrote the report or prepared the material, appear as witness and be subject to examination, and the court may require that the persons whose statements appear in the report appear as witnesses and be subject to examination.

Sec. 3. 15 MRSA § 3103, sub-§ 1, ¶ D, as enacted by PL 1977, c. 664, § 11, is amended to read:

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

Sec. 4. 15 MRSA § 3201, sub-§ 1, as enacted by PL 1977, c. 520, § 1, is amended to read:

1. Warrantless arrests. Arrests without warrants of juveniles for juvenile crimes defined by section 3103, subsection 1, paragraphs A, D and E, by law enforcement officers or private persons shall be made pursuant to the provisions of Title 17-A, sections 15 and 16. For purposes of this section, a juvenile crime defined under section 3103, subsection 1, paragraph D, shall be deemed a Class D or Class E crime.

Sec. 5. 15 MRSA § 3201, sub-§ 3 is enacted to read:

3. Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime, as defined by section 3103, subsection 1, paragraphs B or C, has been committed may request that the juvenile provide the officer with reasonably credible evidence of his name, address and age. The evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer with evidence of his name, address and age and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period the verification is being attempted, the officer may require the juvenile to remain in his presence for a period not to exceed 2 hours.

After informing the juvenile of the provisions of this subsection, the officer may arrest the juvenile for a crime defined in section 3103, subsection 1, paragraphs B or C, if the juvenile intentionally refuses to furnish any evidence of his name, address and age, or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of his name, address and age.

Sec. 6. 15 MRSA § 3202, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

§ 3202. Arrest warrants for juveniles

Following issuance of a petition pursuant to section 3301, an arrest warrant for a juvenile may be issued pursuant to Rule 4, Maine District Court Criminal Rules.

Sec. 7. 15 MRSA § 3203, sub-§ 2, ¶A, as amended by PL 1977, c. 664, § 14, is further amended to read:

A. When a juvenile is arrested, the law enforcement officer or the intake worker shall notify a parent, guardian or legal custodian of the juvenile without unnecessary delay and inform him of the juvenile's whereabouts, the name and telephone number of the intake worker who has been contacted and, if a juvenile has been placed in a detention facility, that detention hearing will be held within 48 hours following this placement ~~except that this paragraph does not require any such hearing to be held on a Saturday, Sunday or legal holiday or within 24 hours following Saturdays, Sundays or legal holidays which have occurred after the placement.~~

Sec. 8. 15 MRSA § 3203, sub-§ 4, ¶B, as repealed and replaced by PL 1977, c. 664, § 16, is amended by adding at the end the following new sentence:

Upon imposition of any condition of release described in subparagraph (2), (3) or (4), the intake worker shall inform the juvenile of the right to have the condition reviewed by the Juvenile Court pursuant to subsection 5-A.

Sec. 9. 15 MRSA § 3203, sub-§ 5-A is enacted to read:

5-A. Juvenile Court to review for abuse of discretion. Upon the request of a juvenile or his parent, guardian or legal custodian, the Juvenile Court shall, at the juvenile's first appearance or within 7 days, review for abuse of discretion, any condition or release imposed pursuant to subsection 4, paragraph B, subparagraphs (2), (3) and (4).

Sec. 10. 15 MRSA § 3203, sub-§ 7, ¶A, as repealed and replaced by PL 1977, c. 664, § 18, is repealed and the following enacted in its place:

A. A juvenile may be detained in a jail or other security facility intended or used primarily for the detention of adults only when the receiving facility:

- (1) Contains a separate section for juveniles;**
- (2) Provides for no regular contact between the juveniles with the adult detainees or inmates; and**
- (3) Has adequate staff to monitor and supervise the juvenile's activities at all times.**

Juveniles detained in the adult receiving facilities shall be placed only in the separate juvenile sections.

Sec. 11. 15 MRSA § 3204, as repealed and replaced by PL 1977, c. 664, § 20, is amended to read:

§ 3204. Statements not admissible in evidence

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

Sec. 12. 15 MRSA § 3301, sub-§ 5, ¶ B, 2nd sentence, as enacted by PL 1977, c. 664, § 22, is amended to read:

The intake worker may effect whatever informal adjustment is agreed to by the juvenile and his parents, guardian or legal custodian if the juvenile is not emancipated, **including a restitution contract with the victim of the crime.**

Sec. 13. 15 MRSA § 3304, sub-§ 3, ¶ B, as enacted by PL 1977, c. 520, § 1, is amended by adding at the end the following new sentence:

Service upon a parent, guardian or legal custodian who is out-of-state may be by a reasonable method ordered by the court.

Sec. 14. 15 MRSA § 3304, sub-§ 6-A is enacted to read:

6-A. Effect of nonappearance of parent or custodian. The failure of a parent, guardian or legal custodian to appear in response to the summons or for a later hearing, or the inability to serve such a party, shall not prevent the court from continuing with the proceedings against a juvenile who is before the court.

Sec. 15. 15 MRSA § 3307, sub-§ 1, as amended by PL 1977, c. 664, § 26, is repealed.

Sec. 16. 15 MRSA § 3307, sub-§ 2, ¶ A, as amended by PL 1979, c. 373, § 2, is repealed and the following enacted in its place:

A. The general public shall be allowed to attend all proceedings involving charges which would constitute murder or a Class A, Class B, or Class C offense if committed by an adult, including all proceedings involving both a Class C or greater offense and a Class D or Class E offense, or an offense described in section 3103, subsection 1, paragraphs B to E, when both charges arise out of the same transaction.

Sec. 17. 15 MRSA § 3307, sub-§ 2, ¶ B, as repealed and replaced by PL 1977, c. 664, § 28, is amended to read:

B. The general public shall be excluded from ~~all other juvenile hearings and any proceedings involving a juvenile crime that would constitute a Class D or Class E offense and offenses described in section 3103, subsection 1, paragraphs B to E, except as provided in paragraph A except that a juvenile charged with a juvenile crime that would constitute murder or a Class A, Class B or Class C offense and with a juvenile crime that would constitute a Class D or Class E offense or with conduct described in section 3103, subsection 1 paragraphs B, C, D or E arising from the same underlying transaction may elect to have all charges adjudicated in one hearing, and, where a juvenile does so elect, the general public shall not be excluded from that hearing.~~

Sec. 18. 15 MRSA § 3307, sub-§ 2, ¶ C, as enacted by PL 1979, c. 233, § 1, is repealed.

Sec. 19. 15 MRSA § 3308, sub-§ 2, as enacted by PL 1977, c. 520, § 1, is amended to read:

2. Hearings open to public. In the case of a hearing open to the general public under section 3307, the petition, the record of the hearing and the order of adjudication shall be open to public inspection, **provided that any court subsequently sentencing the juvenile after he has become an adult may consider only murder and Class A, Class B and Class C offenses committed by the juvenile.**

Sec. 20. 15 MRSA § 3308, sub-§ 3-A is enacted to read:

3-A. Victims. The name of a juvenile subject to Juvenile Court proceedings shall be made known to the victim of a juvenile crime upon a determination by the court that the victim has a legitimate interest in maintaining a civil action for damages caused by the juvenile crime.

Sec. 21. 15 MRSA § 3310, sub-§ 1, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

1. Evidence and fact-finding. The Maine Rules of Evidence shall apply in the adjudicatory hearing. There shall be no jury.

Sec. 22. 15 MRSA § 3310, sub-§ 2, ¶A, as enacted by PL 1977, c. 520, § 1, is amended to read:

A. When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence **without amendment of the petition** if all the parties consent.

Sec. 23. 15 MRSA § 3310, sub-§ 2, ¶B, first ¶, as enacted by PL 1977, c. 520, § 1, is amended to read:

In such the event all of the parties do not consent as provided in paragraph A, the court, on the motion of any party or on its own motion, shall:

Sec. 24. 15 MRSA § 3310, sub-§ 5, ¶A, as amended by PL 1979, c. 373, § 4, is further amended to read:

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

Sec. 25. 15 MRSA § 3311, sub-§ 1, first sentence, as enacted by PL 1977, c. 520, § 1, is amended to read:

For the purpose of determining proper disposition of a juvenile who has been adjudicated as having committed a juvenile crime, written reports and other material relating to the juvenile's mental, physical and social history may be received by the court along with other evidence; but the court, if so requested by the juvenile, his parent or guardian, or other party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to ~~both direct and cross-examination~~ **examination by the court and any party.**

Sec. 26. 15 MRSA § 3311, sub-§ 2, as enacted by PL 1977, c. 520, § 1, is amended to read:

2. Notice of right to examination. The court shall inform the juvenile or his parent, guardian or legal custodian of the right of ~~cross-examination~~ **examination** concerning any written report or other material specified in subsection 1.

Sec. 27. 15 MRSA § 3312, sub-§ 1, as enacted by PL 1977, c. 520, § 1, is amended by adding at the end the following new sentence:

The Maine Rules of Evidence shall not apply in dispositional hearings.

Sec. 28. 15 MRSA § 3314, sub-§ 1, first sentence, as amended by PL 1979, c. 233, § 2, is further amended to read:

When a juvenile has been adjudicated as having committed a juvenile crime, the court shall enter a dispositional order containing one or more of the following alternatives ~~with special attention to paragraphs B and E~~.

Sec. 29. 15 MRSA § 3314, sub-§ 1, ¶G, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

G. Except for a violation of section 3103, subsection 1, paragraph D, the court may impose a fine, subsection 1, paragraph D, the court may impose a fine, subject to Title 17-A, sections 1301 to 1305. For purposes of this section, juvenile offenses defined under section 3103, subsection 1, paragraphs B and C, shall be deemed Class E crimes.

Sec. 30. 15 MRSA § 3314, sub-§ 1, ¶H, as repealed and replaced by PL 1977, c. 664, § 37, is amended by adding at the end the following new sentence:

Revocation of probation shall be governed by the procedure contained in subsection 2.

Sec. 31. 15 MRSA § 3314, sub-§ 2, as amended by PL 1977, c. 664, § 38, is further amended to read:

2. Suspended dispositional alternative. The court may impose any of the dispositional alternatives provided in subsection 1, and may suspend its ~~sentenee and sentenee~~ **dispositional alternative and place the juvenile to on a specified** period of probation which shall be subject to such provisions of Title 17-A, section 1204, as the court may order and which shall be administered pursuant to the provisions of Title 34, chapter 121, subchapter V-A.

Revocation of probation shall be governed by the procedure contained in Title 17-A, sections 1205, 1205-A and 1206, except that Title 17-A, section 1206, subsection 7-A, shall not apply, provided that a disposition under subsection 1, paragraph F, may be modified to a disposition under subsection 1, paragraph H.

Sec. 32. 15 MRSA § 3405, sub-§ 1, as repealed and replaced by PL 1979, c. 512, § 12, is amended by adding at the end the following new sentences:

The Superior Court may affirm, reverse or modify any order of the Juvenile Court or remand for further proceedings. The Superior Court shall enter a new order of disposition if it finds that the Juvenile Court's disposition was an abuse of discretion.

Sec. 33. 15 MRSA § 3407, sub-§ 2, ¶ A, as enacted by PL 1979, c. 512, § 14, is amended by adding at the end the following new sentence:

An appeal by the State pursuant to this paragraph is subject to section 2115-A, subsections 5 and 8.

Sec. 34. 15 MRSA § 3407, sub-§ 2, ¶ C, as enacted by PL 1979, c. 512, § 14, is amended to read:

C. Appeals pursuant to this subsection shall be taken in the same manner as appeals ~~from following~~ a judgment of conviction of an adult in Superior Court, except as otherwise provided by rule promulgated by the Supreme Judicial Court.

Sec. 35. 34 MRSA § 1683, as enacted by PL 1977, c. 520, § 3, is repealed.

STATEMENT OF FACT

This bill contains amendments to the Maine Juvenile Code as recommended by the Criminal Law Advisory Commission. The substance of significant changes is indicated below.

Section 1 amends the statutory language to reflect the fact that the Juvenile Court and not the Department of Mental Health and Corrections presently imposes all probation conditions under Title 15, section 3314, subsection 2, which incorporates Title 17-A, section 1204.

Section 2 clarifies the applicability of the Maine Rules of Evidence in bind-over proceedings. The 2nd paragraph strikes a balance between the right of the juvenile to confront witnesses against him and the evidentiary burden upon the State to show that the juvenile would be more appropriately tried as an adult.

Section 3 conforms Title 15, section 3103, subsection 1, paragraph D, to what is believed to be its original intent by the correction of an apparent clerical error. As amended, the Juvenile Court would have the authority to order a commitment to a secure institution for conduct which constitutes a violation of the court's initial disposition of a juvenile adjudicated to have committed an alcohol or marijuana offense not otherwise incarcerable under section 3103, subsection 2. A literal reading of the present language would define a crime only under the following remote circumstances: The court must have adjudicated a juvenile of committing an alcohol or marijuana possession offense and must have imposed a fine, suspended it and placed the juvenile on probation; after a revocation of the probation, the juvenile must then have refused to pay the underlying fine.

Sections 4 and 5 clarify the warrantless arrest powers of law enforcement

officers for the uniquely juvenile crimes of possession of a usable amount of marijuana, Title 15, section 3103, subsection 1, paragraph B, and offenses involving intoxicating liquor, section 3103, subsection 1, paragraph C. The new subsection 3 is derived from Title 17-A, section 17, and would empower enforcement officers to demand evidence of a juvenile's name, address and age where the officer has probable cause to believe that the juvenile is engaging in conduct constituting a paragraph B or C offense. The failure to provide such information would constitute grounds for an arrest. Upon obtaining the necessary information from the juvenile, the officer would refer the matter to the intake worker when, in the officer's judgment, juvenile court proceedings should be commenced.

The policy choice of not arresting for these offenses is grounded, in part, on the code's pervasive treatment of juveniles in a manner similar to adults. Both Title 15, section 3103, subsection 1, paragraphs B and C, conduct, if committed by an adult, would be civil violations and thereby neither an arrestable offense nor one carrying a potential penalty of imprisonment. The proposal is also consistent with section 3103, subsection 2, which prohibits incarceration for section 3103, subsection 1, paragraphs B and C, offenses upon disposition.

Section 7 amends, for clarity, the present provision which literally requires that the hearing must take place just after midnight on Monday if a juvenile has been detained on a Friday.

Sections 8 and 9 provide one level of review for conditions of release imposed by the intake worker. Unlike the detention hearing, which occurs automatically, this review is upon request.

Section 10 clarifies the restrictions placed on the detention of juveniles in adult or secure facilities. No substantive change is intended.

Section 11 clarifies the policy concerning the admissibility of statements made by the juvenile to the intake worker.

Section 12 transfers the provision enacted by Public Law 1979, chapter 233, section 1, presently Title 15, section 3307, subsection 2, paragraph C, to a more logical place.

Section 13 provides for a method for out-of-state service. The purpose of such service, apart from the directive of Title 15, section 3304, subsection 4, for the custodian to produce the juvenile, is notice rather than obtaining personal jurisdiction over the custodian.

Section 14 makes clear that service upon parents or custodians is for the purpose of providing them with notice of the proceedings and encouraging participation, but that their failure to participate should not defeat the power of the court over the juvenile.

Sections 16 and 17 change the present provision which forces 2 separate trials for 2 or more juvenile crimes arising out of the same transaction, for example,

burglary and a theft committed in the course of the burglary. The provision is designed to balance the protection given to juveniles through closed hearings on less serious offenses and the need for judicial economy in cases where the juvenile is already subject to public proceedings on the greater offense.

Section 18 repeals the provision rearranged by section 12 of this bill.

Section 19 clarifies the scope of an adult sentencing court's reliance on the prior juvenile record of the offender. It is consistent with publicity provisions in Title 15, section 3307.

Section 20 enables the victim of a crime to learn the identity of a juvenile, subject to court proceedings, who has caused him injury. At present, the victim of a crime, unless he knows the juvenile or unless the crime is Class C or greater, so that records are open under Title 15, section 3308, subsection 2, may not be able to learn the identity of the juvenile perpetrator.

Section 21, in conjunction with sections 2, 15 and 27, clarifies the application of the Maine Rules of Evidence in juvenile proceedings.

Sections 22 and 23 conform this provision with the presumed original legislative intent. If the parties consent under Title 15, section 3310, subsection 2, paragraph A, there is no need for amendment. The very existence of paragraph A indicates the desire for a more liberal procedure for the variance amendment process than that allowed by District Court Rule 3, incorporated by Title 15, section 3302, and governing the content of the petition. Only when there is no consent is it necessary to provide a procedure for amendment, continuance or a new petition.

Section 24 eliminates the implication that the court, as fact finder, may, in effect, "nullify" a juvenile prosecution despite sufficient evidence and makes clear that after the close of the evidence the court may not simply continue a case in order to avoid adjudication.

Sections 25 and 26 reflect the fact that the person preparing the report is not called as a witness for any particular party.

Section 28 repeals the language enacted by Public Law 1979, chapter 233, section 2. Although in many cases there is considerable value to work programs or restitution conditions, in other cases, such alternatives may be inappropriate or outweighed by competing societal interests.

Section 29 provides for a maximum level of fines according to Title 17-A and classifies uniquely juvenile offenses for purposes of fines.

Sections 30 and 31 clarify probation revocation procedures by applying the procedural features of adult revocation to the code. Current procedures are repealed by section 35 of this bill. Title 17-A, section 1206, subsection 7-A, which authorizes an adult court to impose only a part of the suspended sentence, is specifically excepted because of the inability to impose a portion of a common suspended sentence, an indeterminate commitment to the Maine Youth Center. The provision would, however, authorize the court to impose, as a portion of an

indeterminate Maine Youth Center commitment, any portion of the 30-day maximum detention to be served at a county jail, the short-term determinate sentence to the county jail being less harsh than an indeterminate commitment to the Maine Youth Center.

Section 32 clarifies Superior Court review on appeals from the Juvenile Court by restating Title 15, section 3406, which was repealed by Public Law 1979, chapter 512, section 13.

Section 33 eliminates 2nd level review of orders of disposition from the Superior Court to the Law Court and conforms the extent of disposition review to the right of review of sentences in adult proceedings, which is one level of appeal of the sentence to the Appellate Division of the Supreme Judicial Court, pursuant to Title 15, section 2141 and the Maine Rules of Criminal Proceedings, Rule 40.

Section 34 replaces a word to conform the provision with proper terminology.