

MAINE STATE LEGISLATURE

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1 Sec. 2. 15 MRSA §3101, sub-§4, ¶E-1 is enacted
2 to read:

3 E-1. If the juvenile court finds, pursuant to
4 paragraph E, that it is appropriate to prosecute
5 the juvenile as if he were an adult, the court
6 may direct detention of any such juvenile who is
7 to be detained pending an adjudication hearing in
8 a section of a jail which is used primarily for
9 the detention of adults, when it finds by clear
10 and convincing evidence that:

11 (1) The juvenile's behavior presents an im-
12 minent danger of harm to himself or to oth-
13 ers; and

14 (2) There is no less restrictive alterna-
15 tive to detention in an adult section which
16 serves the purposes of detention.

17 In determining whether the juvenile's behav-
18 ior presents a danger to himself or others,
19 the juvenile court shall consider, among
20 other factors:

21 (a) The nature of and the circum-
22 stances surrounding the offense with
23 which the juvenile is charged, includ-
24 ing whether the offense was committed
25 in an aggressive, violent, premeditated
26 or willful manner;

27 (b) The record and previous history of
28 the juvenile, including his emotional
29 attitude and pattern of living; and

30 (c) If applicable, the juvenile's be-
31 havior and mental condition during any
32 previous and current period of deten-
33 tion or commitment.

34 Sec. 3. 15 MRSA §3203-A, sub-§1, ¶A-1 is enacted
35 to read:

36 A-1. If the law enforcement officer determines
37 that detention is not necessary but the officer
38 is unable to immediately return the juvenile to

1 the custody of his legal custodian or another
2 suitable person, the officer, with the juvenile's
3 consent, may deliver the juvenile to any public
4 or private agency which provides nonsecure ser-
5 vices to juveniles.

6 Sec. 4. 15 MRS §3203-A, sub-§1, ¶B, as enacted
7 by PL 1985, c. 439, §9, is amended to read:

8 B. When, in the judgment of a law enforcement
9 officer, a juvenile should be detained prior to
10 his initial appearance in juvenile court, the law
11 enforcement officer shall immediately notify a
12 juvenile caseworker.

13 (1) Detention under this section shall be
14 requested by the law enforcement officer
15 within 2 hours after the juvenile's arrest
16 or the juvenile shall be released.

17 (2) After the law enforcement officer noti-
18 fies the juvenile caseworker and requests
19 detention, the juvenile caseworker shall or-
20 der the conditional or unconditional release
21 or shall effect a detention placement within
22 12 hours following the juvenile's arrest.

23 ~~(3) During the 12-hour period referred to~~
24 ~~in subparagraph (2), any secure physical~~
25 ~~confinement of the juvenile shall require~~
26 ~~the approval of the juvenile caseworker. The~~
27 ~~juvenile caseworker shall approve secure~~
28 ~~physical confinement during the custody pe-~~
29 ~~riod only when it is necessary to prevent~~
30 ~~imminent escape or to prevent the juvenile~~
31 ~~from harming himself or others. Secure phys-~~
32 ~~ical confinement exists when the juvenile is~~
33 ~~placed within a locked setting.~~

34 Sec. 5. 15 MRS §3203-A, sub-§1, ¶B-1 is enacted
35 to read:

36 B-1. When, in the judgment of a law enforcement
37 officer, immediate secure detention is required
38 to prevent a juvenile who satisfies the require-
39 ments of subsection 4, paragraph D from imminent-
40 ly inflicting bodily harm to others or to him-

1 self, the officer may refer the juvenile for tem-
2 porary, emergency detention to a facility ap-
3 proved pursuant to subsection 7, prior to notify-
4 ing a juvenile caseworker or the Department of
5 the Attorney General, as applicable. Such a fa-
6 ility may detain the juvenile on an emergency
7 basis for up to 2 hours, provided that the law
8 enforcement officer from the facility immediately
9 notifies the juvenile caseworker or the Depart-
10 ment of the Attorney General and requests autho-
11 rization to detain the juvenile beyond the term
12 of the temporary, emergency detention pursuant to
13 paragraph B. The juvenile caseworker or the De-
14 partment of the Attorney General shall order the
15 conditional or unconditional release of a juve-
16 nile or shall effect a detention placement within
17 2 hours following a temporary, emergency deten-
18 tion. It shall be the responsibility of the law
19 enforcement officer to remain at the facility un-
20 til the juvenile caseworker or the Department of
21 the Attorney General has released the juvenile or
22 has authorized detention.

23 Sec. 6. 15 MRSA §3203-A, sub-§7, ¶A, as enacted
24 by PL 1985, c. 439, §9, is amended to read:

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

29 (1) Contains a separate section for juve-
30 niles which complies with mandatory separa-
31 tion standards established by the Department
32 of Corrections pursuant to Title 34-A, sec-
33 tion 1208;

34 (2) Provides for no regular contact between
35 the juveniles with the adult detainees or
36 inmates; and

37 (3) Has an adequate staff to monitor and
38 supervise the juvenile's activities at all
39 times.

40 Juveniles detained in the adult receiving serving
41 facilities shall be placed only in the separate

1 juvenile sections which comply with mandatory
2 separation standards established by the Depart-
3 ment of Corrections pursuant to Title 34-A, sec-
4 tion 1208.

5 Sec. 7. 15 MRSA §3203-A, sub-§7, ¶C, as enacted
6 by PL 1985, c. 439, §9, is amended to read:

7 C. Upon the request of the Commissioner of Cor-
8 rections or his designee, a judge may approve the
9 transfer of a juvenile, who is detained at the
10 Maine Youth Center, to any a jail or--to--another
11 secure-facility-intended-for-use-or which is used
12 for the detention of adults:

13 (1) If the judge finds, by clear and con-
14 vincing evidence, that:

15 (a) Jurisdiction of the matter as a
16 juvenile case has been waived and the
17 juvenile has been bound over pursuant
18 to section 3101, subsection 4; or

19 (b) A prosecutor has requested the
20 court to bind over the juvenile, pursu-
21 ant to section 3101, subsection 4, be-
22 cause he is accused of having committed
23 a subsequent offense, while committed
24 to the center;

25 (2) If the judge finds, by clear and con-
26 vincing evidence, that the juvenile's behav-
27 ior:

28 (a) Presents an imminent danger of
29 harm to himself or to others; or

30 (b) Presents a substantial likelihood
31 that the juvenile will absent himself
32 from the center; and

33 (3) If the judge finds, by clear and con-
34 vincing evidence that there is no less re-
35 strictive alternative to detention in an
36 adult facility which will meet the purposes
37 of detention.

1 Sec. 8. 15 MRS.A §3203-A, sub-§7, ¶D is enacted
2 to read:

3 D. Upon the petition of a sheriff or his designee,
4 the District Court may approve the transfer
5 of a juvenile who has been bound over pursuant to
6 section 3101, subsection 4, from a separate juvenile
7 section, which is described in paragraph A,
8 to any section of a jail or another secure facility
9 which is intended for use or used primarily
10 for the detention of adults, if the court finds
11 by clear and convincing evidence that:

12 (1) The juvenile's behavior presents an im-
13 minent danger of harm to himself or to others;
14 and

15 (2) There is no less restrictive alternative
16 to detention in an adult section which
17 serves the purposes of detention.

18 That determination shall be made on the basis
19 of evidence, including reliable hearsay evidence,
20 presented in testimony or affidavits. In
21 determining whether the juvenile's behavior
22 presents a danger to himself or others, the court
23 shall consider, among other factors:

24 (a) The nature of and the circum-
25 stances surrounding the offense with
26 which the juvenile is charged, includ-
27 ing whether the offense was committed
28 in an aggressive, violent, premeditated
29 or willful manner;

30 (b) The record and previous history of
31 the juvenile, including his emotional
32 attitude and pattern of living; and

33 (c) The juvenile's behavior and mental
34 condition during any previous and cur-
35 rent period of detention or commitment.

1

STATEMENT OF FACT

2 The definition of a secure detention facility in
3 the current law is extremely broad. It can be con-
4 strued to encompass a range of situations, from a
5 room with an open door, if a person with authority to
6 be in that room has informed a juvenile that he may
7 not leave, to a police cruiser while it is used to
8 transport a juvenile, to an area within the security
9 perimeter of a facility which is intended and used
10 for the detention or confinement of persons. Only the
11 last example is usually understood as a secure deten-
12 tion facility. This new draft follows this under-
13 standing and will avoid misconstruction of the provi-
14 sion and the necessity to record as a detention, in
15 response to both federal and state reporting require-
16 ments, restraints on movement which fall outside the
17 circumstances included in the example. The new draft
18 defines a secure detention facility to encompass only
19 a facility, or sections of a facility, which are by
20 their physical structure constructed, equipped and
21 operated to restrict substantially the ability of an
22 individual to leave at will.

23 The law does not specify whether juveniles who
24 have been bound over pursuant to the Maine Revised
25 Statutes, Title 15, section 3101, but who have not
26 been convicted, should be held in the juvenile or in
27 the adult sections of the jails. The requirements for
28 holding these youths have been interpreted both ways
29 and jail practices have varied, regardless of the
30 prevailing opinion. There is a need to clarify the
31 law to promote consistent practices which accommodate
32 both the desirability of protecting these youths, who
33 are usually weaker and less sophisticated than
34 adults, from adults prior to conviction and the de-
35 sirability of protecting other juveniles from
36 bound-over youths, who usually stand accused of a se-
37 rious offense and whose behavior threatens the safety
38 of other juveniles. The new draft establishes a pro-
39 cess for a judicial determination to reconcile these
40 competing interests on a case-by-case basis and de-
41 termines whether the juvenile would be held in an
42 adult or the juvenile section of the facility.

1 Similarly, there is a need to provide a process
2 by which a youth, who was not placed in an adult section
3 at the time of bind-over, may be transferred to
4 an adult section, if circumstances arise whereby the
5 youth's behavior presents an imminent danger of harm
6 to himself or others. The new draft provides a process
7 to permit transfer to an adult section for
8 youths detained as juveniles subsequent to bind-over,
9 upon demonstration that the youth presents an imminent
10 danger to himself or others.

11 Current law is ambiguous as to whether it is the
12 responsibility of the law enforcement officer who arrests
13 a juvenile, or the facility to which the juvenile
14 is brought for detention, to obtain permission
15 of a juvenile caseworker to detain the juvenile. By
16 placing the responsibility for obtaining permission
17 to detain a juvenile on the officer who effects the
18 arrest, the new draft reduces the number of juveniles
19 who are unnecessarily and inappropriately transferred
20 to the custody of the sheriffs and eliminates the
21 transportation expenses associated with bringing
22 these juveniles, who are inappropriate for secure detention,
23 to the jails and returning them.

24 Further, the law provides little direction as to
25 whom a juvenile who a law enforcement officer does
26 not wish to detain may be released in the absence of
27 the juvenile's legal custodian. The new draft specifically
28 permits a law enforcement officer to release a
29 juvenile who accepts services to a public or private
30 agency which serves juveniles when the juvenile's legal
31 custodian is not available to provide care and
32 supervision.

33 Currently, the law makes no provision for the
34 emergency detention of a juvenile, who is out of control
35 and presents a danger to himself or others, prior
36 to obtaining permission for detention from a juvenile
37 caseworker. Some youths require secure services
38 immediately, on an emergency basis, to permit the law
39 enforcement officer to submit the required request
40 for detention. Although provision was made in the
41 Maine Juvenile Code in 1985 for "secure physical confinement,"
42 that mechanism was inadequate to ensure the appropriate
43 management of the most egregious cases and permitted
44 substantial restrictions on lib-

1 erty for an excessive period, up to 12 hours. The
2 temporary emergency detention proposed in this new
3 draft provides for a more secure setting during con-
4 finement but also provides more restrictive eligibil-
5 ity criteria and substantially limits the period of
6 that custody, reduced from a maximum of 12 hours to a
7 maximum of 2 hours.

8 The State's jail standards, which are mandatory
9 for all of the jails and lockups in the State, the
10 Maine Revised Statutes, Title 34-A, section 1208, are
11 being amended to add a new section which separately
12 and specifically governs procedures and practices
13 particular to the management of juveniles in these
14 facilities. This new draft adds a citation to the
15 provisions governing the facilities to which the
16 standards apply, both to direct the attention of
17 those affected by the standards to their applicabili-
18 ty and to provide emphasis for the policy which di-
19 rects that juveniles merit and shall be afforded more
20 solicitous treatment than that offered adults.

21 Under certain conditions, the current law permits
22 transferring a youth, who is held at the Maine Youth
23 Center and who has been bound over pursuant to Title
24 15, section 3101, to a jail or to another secure fa-
25 cility which services adults, i.e., the Maine Correc-
26 tional Center and the Maine State Prison. Neither of
27 the secure adult facilities is currently capable of
28 accommodating the needs of the youth who are the sub-
29 ject of this option. The new draft limits the provi-
30 sion governing the transfer of youth held at the
31 Maine Youth Center, who have been bound over but not
32 yet convicted, to exclude the option for removal of
33 these youths to the Maine Correctional Center and
34 Maine State Prison and to make this section consist-
35 ent with the practice which will be established by
36 enactment of the provision governing where those ju-
37 veniles may be held in jails.

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