

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2099

S.P. 823

In Senate, January 4, 1990

Submitted by the Department of Corrections pursuant to Joint Rule 24.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOLLOWAY of Lincoln.

Cosponsored by Representative ANTHONY of South Portland, Representative NORTON of Winthrop and Representative MANNING of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Clarify the Maine Juvenile Code.



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

2
4 **Sec. 1. 15 MRSA §3103, sub-§2**, as amended by PL 1979, c. 681, §38, is further amended to read:

6 **2. Dispositional powers.** All of the dispositional powers of
8 the Juvenile Court provided in section 3314 shall apply to a
10 juvenile who is adjudicated to have committed a juvenile crime,
12 except that no commitment to the Maine Youth Center or other
14 detention may be imposed for conduct described in subsection 1,
16 paragraphs B and, C and C-1.

18 **Sec. 2. 15 MRSA §3203-A, sub-§1, ¶B-1**, as enacted by PL 1987,
20 c. 398, §5, is amended to read:

22 B-1. When, in the judgment of a law enforcement officer,
24 immediate secure detention is required to prevent a juvenile
26 ~~who satisfies the requirements of subsection 4, paragraph D~~
28 from imminently inflicting bodily harm to others or to
30 ~~himself~~ the juvenile, the officer may refer the juvenile for
32 temporary, emergency detention to a facility approved
34 pursuant to subsection 7, prior to notifying a juvenile
36 caseworker or the Department of the Attorney General, as
38 applicable. Such a facility may detain the juvenile on an
40 emergency basis for up to 2 hours, provided that the law
42 enforcement officer ~~from the facility~~ immediately notifies
44 the juvenile caseworker or the Department of the Attorney
46 General and requests authorization to detain the juvenile
48 beyond the term of the temporary, emergency detention
50 pursuant to paragraph B. The juvenile caseworker or the
52 Department of the Attorney General shall order the
conditional or unconditional release of a juvenile or shall
effect a detention placement within 2 hours following a
temporary, emergency detention. It shall be the
responsibility of the law enforcement officer to remain at
the facility until the juvenile caseworker or the Department
of the Attorney General has released the juvenile or has
authorized detention.

40 **Sec. 3. 15 MRSA §3203-A, sub-§3**, as enacted by PL 1985, c.
42 439, §9, is amended to read:

44 **3. Law enforcement officer's report.** An officer who
46 notifies a juvenile caseworker pursuant to subsection 1,
48 paragraph A or B shall file a brief written report with the
50 juvenile caseworker, stating the juvenile's name, date of birth
52 and address; the name and address of the juvenile's legal
custodian; and the facts which led to the referral notification,
including the offense which the juvenile is alleged to have
committed. The report shall contain sufficient information to
establish the jurisdiction of the Juvenile Court.

2 A report of a notification pursuant to subsection 1, paragraph A,
must be filed within 24 hours of the referral notification,
4 excluding nonjudicial days. A report of a notification pursuant
to subsection 1, paragraph B, must be filed within 24 hours of
the referral notification.

6
8 The date on which the report is received by the juvenile
caseworker is the date of referral to the juvenile caseworker for
an intake assessment.

10
12 **Sec. 4. 15 MRSA §3203-A, sub-§4, ¶B,** as amended by PL 1987, c.
698, §3, is further amended to read:

14 B. Release may be unconditional or conditioned upon the
16 juvenile's promise to appear for subsequent official
proceedings or, if a juvenile cannot appropriately be
18 released on one of these 2 bases, upon the least onerous of
the following conditions, or combination of conditions,
20 necessary to ensure his the juvenile's appearance or to
ensure the protection of the community or any member of the
community:

22 (1) Upon the written promise of his the juvenile's
24 legal custodian to produce the juvenile for subsequent
official proceedings or at any place or time when so
26 ordered by the juvenile caseworker or the Juvenile
Court;

28 (2) Upon the juvenile's voluntary agreement to
30 placement into the care of a responsible person or
organization, including one providing attendant care;

32 (3) Upon prescribed conditions, reasonably related to
34 securing the juvenile's presence at subsequent official
proceedings or at any place or time when so ordered by
36 the juvenile caseworker or the court, restricting the
juvenile's activities, associations, residence or
38 travel; or

40 (4) Upon such other prescribed conditions as may be
42 reasonably related to securing the juvenile's presence
at subsequent official proceedings or at any place or
44 time when so ordered by the juvenile caseworker or the
court; or

46 (5) Upon prescribed conditions, reasonably related to
48 ensuring the protection of the community or any member
of the community.

50 Upon imposition of any condition of release described in
52 subparagraph (2), (3) or (4) or (5), the juvenile
caseworker shall provide the juvenile with a copy of the

condition imposed, inform the juvenile of the consequences applicable to violation of the condition and inform the juvenile of the right to have the condition reviewed by the Juvenile Court pursuant to subsection 10 ~~of the consequences applicable to violation of any condition.~~

Sec. 5. 15 MRSA §3203-A, sub-§4, ¶D, as enacted by PL 1985, c. 439, §9, is amended to read:

D. Detention of a juvenile in a detention facility may be ordered by the Juvenile Court or a juvenile caseworker when there is probable cause to believe the juvenile:

(1) Has committed an act which that would be murder or a Class A, Class B or Class C crime if committed by an adult;

(2) Has refused to participate voluntarily in a conditional release placement or is incapacitated by drugs or alcohol to the extent of being incapable of participating in a conditional release placement;

(3) Has intentionally or knowingly violated a condition imposed as part of conditional release on a pending offense or has committed an offense subsequent to that release, which would be a crime if committed by an adult;

(4) Has committed the juvenile crime which that would be escape if the juvenile was an adult;

(5) Has escaped from a facility to which the juvenile had been committed pursuant to an order of adjudication or is absent without authorization from a prior placement by a juvenile caseworker or the Juvenile Court; ~~or~~

(6) Has a prior record of failure to appear in court when so ordered or summonsed by a law enforcement officer, juvenile caseworker or the court or has stated his the intent not to appear; or

(7) Has committed an act that would be assault, criminal threatening, or reckless conduct if committed by an adult and that has been committed against a family or household member.

Nonetheless, when, in the judgment of the juvenile caseworker or the Juvenile Court, it is not necessary or appropriate to detain a juvenile who satisfies the criteria for detention, the juvenile caseworker or the Juvenile Court may order the placement of the juvenile in the juvenile's

2 home or in an alternative facility or service, such as a
temporary holding resource, group home, emergency shelter,
4 foster placement or attendant care, subject to specific
conditions, including supervision by a juvenile caseworker
6 or a designated supervisor. Such a placement shall be
considered a conditional release.

8 In no case may detention be ordered when either
10 unconditional or conditional release is appropriate.

12 **Sec. 6. 15 MRSA §3203-A, sub-§4, ¶E**, as enacted by PL 1985, c.
439, §9, is amended to read:

14 E. If a juvenile caseworker orders a juvenile detained, the
juvenile caseworker shall, within 24 hours, petition the
16 Juvenile Court for a review of the detention, unless the
juvenile caseworker has ordered the release of the juvenile
18 prior to the expiration of the 24-hour period. The juvenile
caseworker may order the release of the juvenile anytime
20 prior to the detention hearing. If the juvenile is so
released, a detention hearing shall not be held.

22 **Sec. 7. 15 MRSA §3203-A, sub-§5, ¶¶A and C**, as enacted by PL
24 1985, c. 439, §9, are amended to read:

26 A. A detention hearing shall precede and shall be separate
from a bind-over or adjudicatory hearing. Reliable hearsay
28 evidence, presented in testimony or affidavits, may be
considered in making any determination in that hearing.

30 C. No continued detention may be ordered unless the
32 Juvenile Court shall determine that there is probable cause
to believe that the juvenile has committed a juvenile
34 crime. ~~That determination shall be made on the basis of~~
~~evidence, including reliable hearsay evidence, presented in~~
36 ~~testimony or affidavits.~~

38 **Sec. 8. 15 MRSA §3203-A, sub-§§9 and 10**, as enacted by PL 1985,
c. 439, §9, are amended to read:

40 **9. Violation of conditions of release.** Upon notification
42 that a juvenile has intentionally or knowingly violated a
condition of his release, whether imposed by a court or a
44 juvenile caseworker, a juvenile caseworker or a law enforcement
officer may apply to the Juvenile Court for a warrant of arrest.

46 A law enforcement officer having probable cause to believe that a
48 juvenile has violated a condition of release in his the officer's
presence may arrest the juvenile without a warrant.

50 Following the arrest of a juvenile for violation of a condition
52 of his release, the law enforcement officer shall immediately

2 notify the juvenile caseworker. The juvenile caseworker shall
either direct the release of the juvenile with or without
4 imposing different or additional conditions for release of the
juvenile or shall revoke release and order the juvenile detained
6 ~~for reasons set forth~~ in accordance with subsection 4, paragraph
paragraphs C and D .

8 If different or additional conditions of release are imposed, the
juvenile may request the Juvenile Court to review the conditions
10 pursuant to subsection 10. The review of additional or different
conditions shall include a hearing to determine if the
12 preponderance of the evidence indicates that the juvenile
intentionally or knowingly violated a condition of release.

14 **10. Juvenile Court to review for abuse of discretion.** Upon
16 the request of a juvenile or legal custodian, the Juvenile Court
shall, at the juvenile's first appearance or within 7 days,
18 review for abuse of discretion, any condition of release imposed
pursuant to subsection 4, paragraph B, subparagraph (2), (3) ~~or~~
20 (4) or (5).

22 **Sec. 9. 15 MRSA §3204**, as amended by PL 1985, c. 439, §10, is
further amended to read:

24 **§3204. Statements not admissible in evidence**

26 No statements of a juvenile made to a juvenile caseworker
28 during the course of a preliminary investigation under section
3301 may be admissible in evidence in--any--proceeding at an
30 adjudicatory hearing against that juvenile if a petition based on
the same facts is later filed.

32 **Sec. 10. 15 MRSA §3306-A** is enacted to read:

34 **§3306-A. Release or detention at first appearance**

36 At the juvenile's first appearance or at any subsequent
38 appearance before the court, the court may order, pending further
appearances before the court, the juvenile's unconditional
40 release, conditioned release or detention in accordance with
section 3203-A.

42 **STATEMENT OF FACT**

44
46 Since its enactment, the Maine Juvenile Code has undergone
numerous revisions and amendments. In order to avoid confusion
48 and differing interpretations of the code this bill makes the
following changes.

50
52 1. The bill corrects an oversight to an internal
cross-reference. It prevents juveniles who commit "tobacco
54 offenses" from being subjected to detention or commitment to the
Maine Youth Center.

2 2. Because law enforcement officers are not familiar with
4 the detention criteria, reference to the criteria is taken out of
6 the statutory provision permitting those officers to order a
8 temporary, emergency detention in the case of a juvenile who is
10 about to inflict bodily harm on self or others. The pertinent
12 prerequisite for such detention is the harm. The detention can
14 only last 2 hours at most. At that point, further detention
16 requires authorization from a juvenile caseworker, who is well
18 versed in the detention criteria.

20 3. The bill makes clear what a law enforcement officer's
22 written report must contain. It also clarifies the point that
24 the date of referral to a juvenile caseworker is the date the
26 caseworker receives the report.

28 4. It has been the law that a juvenile may be detained not
30 only to ensure appearance at court but also to protect the public
32 as illustrated by the Maine Revised Statutes, Title 15, section
34 3203-A, subsection 4, paragraph C. If detention has the latter
36 purpose, it is only logical that the less restrictive alternative
38 of conditional release may be used for the same purpose.

40 5. The bill makes clear that detention of a juvenile is a
42 last resort. In addition, it adds to the detention criteria the
44 inability to participate in a conditional release due to
46 substance abuse, a growing problem, and the commission of Class D
48 crimes of violence against family or household members, a
50 circumstance which could warrant detention to prevent further
acts of domestic violence.

6. The bill permits a juvenile caseworker to order the
release of a detained juvenile anytime it is appropriate prior to
a court hearing.

7. The bill makes clear that reliable hearsay may be
considered in determining not only whether a juvenile crime has
been committed but also whether one of the detention criteria has
been fulfilled.

8. The bill clarifies the provision governing violations of
conditions of release.

9. The bill clarifies that only statements made to a
caseworker when the caseworker is acting as an intake worker are
inadmissible. That is how the law read prior to intake workers
becoming juvenile caseworkers. It also allows statements to be
admissible in detention hearings, thus, for example, assuring
protection when a juvenile makes threatening statements, which,
although not admissible in an adjudicatory hearing, should be
admissible in other proceedings.

2 10. The bill clarifies a provision under which some judges
3 feel they cannot order a juvenile's detention unless it has first
4 been ordered by a juvenile caseworker.