

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1541

S.P. 588

In Senate, April 16, 1991

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 OTT of York and Senator COLLINS of Aroostook.

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STATE OF MAINE

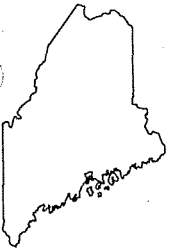
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

An Act to Clarify the Maine Juvenile Code.

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

2  
4       **Sec. 1. 15 MRSA §3003, sub-§4-B** is enacted to read:

6       **4-B. Detention.** "Detention" means the holding of a person  
8 in a facility characterized by either physically restrictive  
10 construction or intensive staff supervision that is intended to  
12 prevent a person who is placed in or admitted to the facility  
14 from departing at will.

16       **Sec. 2. 15 MRSA §3003, sub-§24-A**, as amended by PL 1989, c.  
18 744, §2, is further amended to read:

20       **24-A. Secure detention facility.** "Secure detention  
22 facility" means a facility characterized by either physically  
24 restrictive construction ~~or intensive staff supervision which~~  
26 that is intended to prevent a person who is placed in or admitted  
28 to the facility from departing at will.

30       **Sec. 3. 15 MRSA §3003, sub-§26**, as amended by PL 1989, c. 925,  
32 §2, is further amended to read:

34       **26. Temporary holding resource.** "Temporary holding  
36 resource" means an area not in a jail, ~~consisting of not more~~  
38 ~~than 2 rooms, with a capacity to serve no more than 4 juveniles,~~  
40 which or other secure detention facility intended or primarily  
42 used for the detention of adults that may be used to provide  
44 secure or nonsecure supervision for a juvenile for a period not  
46 to exceed 48 72 hours, excluding Saturday, Sunday and legal  
48 holidays, pending the completion of a procedure authorized by law  
50 to be taken in regard to a juvenile. The level of security  
52 provided is dependent on the intensity of personal supervision  
employed rather than on the physical characteristics of the  
facility.

54       **Sec. 4. 15 MRSA §3203-A, sub-§3**, as amended by PL 1989, c.  
56 741, §4, is further amended to read:

58       **3. Law enforcement officer's report.** An officer who  
60 notifies a juvenile caseworker pursuant to subsection 1,  
62 paragraph A or B shall file a brief written report with the  
64 juvenile caseworker, stating the juvenile's name, date of birth  
66 and address; the name and address of the juvenile's legal  
68 custodian; and the facts which that led to the notification,  
70 including the offense which that the juvenile is alleged to have  
72 committed. The report shall must contain sufficient information  
to establish the jurisdiction of the Juvenile Court.

74       A report of a notification pursuant to subsection 1, paragraph A,  
76 must be filed within 24 hours of the notification, excluding  
78 nonjudicial days. ~~A report of a notification pursuant to~~  
80 ~~subsection 1, paragraph B, must be filed within 24 hours of the~~  
82 ~~notification.~~

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

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

8  
10 A. A Upon notification from a law enforcement officer, a  
12 juvenile caseworker shall direct the release or detention of  
14 a juvenile pending his that juvenile's initial appearance  
16 before the court. When a juvenile is released  
18 unconditionally, whether by a law enforcement officer  
20 without notification to a juvenile caseworker or by a  
22 juvenile caseworker, and the law enforcement officer  
24 subsequently acquires information that makes detention or  
conditional release necessary, the law enforcement officer  
may apply to the court for a warrant of arrest. Following  
the arrest of the juvenile, the law enforcement officer  
immediately shall notify the juvenile caseworker. The  
juvenile caseworker shall direct the unconditional or  
conditional release of the juvenile or order the juvenile  
detained in accordance with paragraphs C and D.

26 Sec. 6. 15 MRSA §3203-A, sub-§4, ¶B, as amended by PL 1989, c.  
741, §5, is further amended to read:

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

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

42 (2) Upon the juvenile's voluntary agreement to  
44 placement ~~ate~~ in the care of a responsible person or  
organization, including one providing attendant care;

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

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

8 (5) Upon prescribed conditions, reasonably related to  
10 ensuring the protection of the community or any member  
of the community, including the juvenile.

12 Upon imposition of any condition of release described in  
14 subparagraph (2), (3), (4) or (5), the juvenile caseworker  
shall provide the juvenile with a copy of the condition  
16 imposed, inform the juvenile of the consequences applicable  
to violation of the condition and inform the juvenile of the  
18 right to have the condition reviewed by the Juvenile Court  
pursuant to subsection 10.

20 **Sec. 7. 15 MRSA §3203-A, sub-§4, ¶C**, as enacted by PL 1985, c.  
22 439, §9, is amended to read:

24 C. Detention, if ordered, shall must be in the least  
restrictive residential setting that will serve the purposes  
26 of the Maine Juvenile Code as provided in section 3002 and  
one of the following purposes of detention:

28 (1) To ensure the presence of the juvenile at  
30 subsequent court proceedings;

32 (2) To provide physical care for a juvenile who cannot  
return home because there is no parent or other  
34 suitable person willing and able to supervise and care  
for ~~him~~ the juvenile adequately;

36 (3) To prevent the juvenile from harming or  
intimidating any witness or otherwise threatening the  
38 orderly progress of the court proceedings;

40 (4) To prevent the juvenile from inflicting bodily  
harm on others; or

42 (5) To protect the juvenile from an immediate threat  
44 of bodily harm.

46 After December 31, 1991, detention must be in a temporary  
48 holding resource that provides secure supervision unless  
physically restrictive detention is necessary.

50 **Sec. 8. 15 MRSA §3203-A, sub-§4, ¶E**, as amended by PL 1989, c.  
52 741, §7, is further amended to read:

2 E. If a juvenile caseworker orders a juvenile detained, the  
juvenile caseworker shall, within 24 hours, excluding  
4 nonjudicial days, petition the Juvenile Court for a review  
of the detention, unless the juvenile caseworker has ordered  
6 the release of the juvenile prior to the expiration of the  
24-hour period. The juvenile caseworker may order the  
8 release of the juvenile anytime prior to the detention  
hearing. If the juvenile is so released, a detention  
hearing shall may not be held.

10 **Sec. 9. 15 MRSA §3203-A, sub-§7, ¶A**, as amended by PL 1989, c.  
12 925, §6, is further amended to read:

14 A. A juvenile may be detained in a jail or other secure  
detention facility intended for use or primarily used for  
16 the detention of adults only when the serving facility:

18 (1) Contains an area where juveniles are under direct  
staff observation at all times, in a separate section  
20 for juveniles that complies with mandatory sight and  
sound separation standards established by the  
22 Department of Corrections pursuant to Title 34-A,  
section 1208;

24 (2) Provides for no regular contact between the  
26 juveniles with the adult detainees or inmates; and

28 (3) Has an adequate staff to provide direct  
observation and supervise the juvenile's activities at  
30 all times during emergency detention.

32 Juveniles detained in adult-serving facilities may be placed  
only in the separate juvenile sections that comply with  
34 mandatory separation standards established by the Department  
of Corrections pursuant to Title 34-A, section 1208, unless  
36 the court orders that the person be detained with adults for  
any period of detention occurring after the detainee has  
38 attained the age of 18 years or unless the juvenile is  
bound over as an adult and held in an adult section of a  
40 facility pursuant to court order.

42 **Sec. 10. 15 MRSA §3203-A, sub-§7, ¶B**, as enacted by PL 1985,  
c. 439, §9, is amended to read:

44 B. A juvenile may be held in custody or detention in any  
46 detention facility approved or operated by the Department of  
Corrections exclusively for juveniles or a temporary holding  
48 resource that provides secure supervision approved by the  
Department of Corrections, pending his the juvenile's  
50 release or hearing in the Juvenile Court.

2           Sec. 11. 15 MRSA §3203-A, sub-§7, ¶B-1, as enacted by PL 1989,  
c. 925, §7, is amended to read:

4           B-1. After December 31, 1991 and until December 31, 1993,  
6 if the juvenile caseworker determines there is no acceptable  
8 alternative, a juvenile may be detained for up to 24 hours,  
excluding Saturday, Sunday and legal holidays, in a jail or  
other secure detention facility intended or primarily used  
for the detention of adults, if:

10           (1) The facility is not located in a standard  
12 metropolitan statistical area and meets the statutory  
14 criteria outlined in the federal Juvenile Justice  
Delinquency Act, Section 223(a)(14)(A), (B) and (C);

16           (2) The facility complies with mandatory sight and  
18 sound separation standards established by the  
Department of Corrections in accordance with Title  
34-A, section 1208;

20           (3) The facility has adequate certified correctional  
22 staff to monitor and supervise the juvenile at all  
times during detention; and

24           (4) The juvenile is detained only to await a detention  
26 hearing, a preliminary hearing pursuant to Title 17-A,  
section 1205 or an entrustment violation hearing.

28           Sec. 12. 15 MRSA §3203-A, sub-§7, ¶C, as amended by PL 1989,  
30 c. 744, §3, is further amended to read:

32           C. Upon the request of the Commissioner of Corrections or  
34 the commissioner's designee, a judge may approve the  
transfer of a juvenile, who is detained at the Maine Youth  
36 Center or in another detention facility described in  
paragraph B and operated by the department, to any section  
38 of a jail which--is--used or other secure facility that is  
intended for use or used primarily for the detention of  
adults:

40           (1) If the judge finds, by clear and convincing  
42 evidence, that:

44           (a) Jurisdiction of the matter as a juvenile case  
46 has been waived and the juvenile has been bound  
over pursuant to section 3101, subsection 4;

48           (2) If the judge finds, by clear and convincing  
evidence, that the juvenile's behavior:

50           (a) Presents an imminent danger of harm to the  
52 juvenile or to others; or

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(b) Presents a substantial likelihood that the juvenile will leave the detention facility; and

(3) If the judge finds, by clear and convincing evidence, that there is no less restrictive alternative to detention in an adult facility which that will meet the purposes of detention.

In determining whether the juvenile's behavior presents a danger to the juvenile or others, the court shall consider, among other factors:

(a) The nature of and the circumstances surrounding the offense with which the juvenile is charged, including whether the offense was committed in an aggressive, violent, premeditated or willful manner;

(b) The record and previous history of the juvenile, including the juvenile's emotional attitude and pattern of living; and

(c) If applicable, the juvenile's behavior and mental condition during any previous or current period of detention or commitment.

**Sec. 13. 15 MRSA §3203-A, sub-§7, ¶D, as enacted by PL 1987, c. 398, §8, is amended to read:**

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

(1) The juvenile's behavior presents an imminent danger of harm to ~~himself~~ that juvenile or to others; and

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

That determination shall ~~must~~ be made on the basis of evidence, including reliable hearsay evidence, presented in testimony or affidavits. In determining whether the



2 juvenile's behavior presents a danger to himself that  
3 juvenile or others, the court shall consider, among other  
4 factors:

6 (a) The nature of and the circumstances  
7 surrounding the offense with which the juvenile is  
8 charged, including whether the offense was  
9 committed in an aggressive, violent, premeditated  
10 or willful manner;

12 (b) The record and previous history of the  
13 juvenile, including his the juvenile's emotional  
14 attitude and pattern of living; and

16 (c) The juvenile's behavior and mental condition  
17 during any previous and or current period of  
18 detention or commitment.

20 **Sec. 14. 15 MRSA §3203-A, sub-§9**, as amended by PL 1989, c.  
21 741, §9, is further amended to read:

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

28 A law enforcement officer or juvenile caseworker having probable  
29 cause to believe that a juvenile has violated a condition of  
30 release in the officer's or juvenile caseworker's presence may  
31 arrest the juvenile without a warrant.

32 Following the arrest of a juvenile by a law enforcement officer  
33 for violation of a condition of release, the law enforcement  
34 officer shall immediately notify the juvenile caseworker. The  
35 juvenile caseworker shall either direct the release of the  
36 juvenile with or without imposing different or additional  
37 conditions for release of the juvenile or shall revoke release  
38 and order the juvenile detained in accordance with subsection 4,  
39 paragraphs C and D.

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

48 **Sec. 15. 15 MRSA §3205**, as amended by PL 1989, c. 925, §9, is  
49 repealed and the following enacted in its place:

52 **§3205. Juvenile in adult-serving jail**

2           1. Generally. After December 31, 1991, a juvenile may not  
4           be committed to or detained in a jail or other secure detention  
6           facility intended or primarily used for the detention of adults,  
8           except when bound over as an adult or as provided in section  
10           3203-A, subsection 1, paragraph B-1 or section 3203-A, subsection  
12           7, paragraph B-1. A juvenile who is detained in a jail or other  
          secure detention facility intended or primarily used for the  
          detention of adults may be detained only in a section of a  
          facility that meets the requirements of section 3203-A,  
          subsection 7, paragraph A, unless bound over as an adult and held  
          in an adult section of a facility pursuant to court order.

14           2. Exception. Subsection 1 applies to any person who is  
16           considered a juvenile by virtue of section 3101, subsection 2,  
18           paragraph D except that if the person has attained the age of 18  
20           years, any detention and any commitment pursuant to section 3314,  
22           subsection 1, paragraph H may be, upon the order of a court, in  
          an adult section of a jail or other secure detention facility  
          intended or primarily used for the detention of adults and may  
          extend beyond the time limits set out in section 3203-A,  
          subsection 1, paragraph B-1 and section 3203-A, subsection 7,  
          paragraph B-1.

24           **Sec. 16. 15 MRSA §3306-A,** as enacted by PL 1989, c. 741, §15,  
26           is amended to read:

28           **§3306-A. Release or detention at first appearance**

30           At the juvenile's first appearance or at any subsequent  
32           appearance before the court, the court may order, pending further  
34           appearances before the court, the juvenile's unconditional  
36           release, conditioned release or detention in accordance with  
          section 3203-A. Unless the court orders otherwise, any juvenile  
          put on conditional release by a juvenile caseworker remains on  
          conditional release until disposition.

38           **Sec. 17. 15 MRSA §3307, sub-§1-A,** as enacted by PL 1989, c.  
40           421, is amended to read:

42           **1-A. Release of identity.** No law enforcement officer,  
44           officer of the court or juvenile caseworker may release the  
46           identity of any juvenile until a petition is filed charging the  
48           juvenile with a juvenile crime described in subsection 2. This  
50           section does not preclude the release of the identity of a  
          juvenile to a complainant or victim if a juvenile caseworker  
          decides not to file a petition in accordance with section 3301,  
          subsection 5, paragraph B or if the juvenile caseworker requests  
          the prosecuting attorney to file a petition in accordance with  
          section 3301, subsection 5, paragraph C.

2           **Sec. 18. 15 MRSA §3308, sub-§3**, as enacted by PL 1977, c. 520,  
§1, is amended to read:

4           **3. Parties.** Records of court proceedings and of the other  
6 records described in subsection 5 shall must be open to  
inspection by the juvenile, his the juvenile's parents, guardian  
8 or legal custodian, his the juvenile's attorney, the prosecuting  
attorney and to any agency to which legal custody of the juvenile  
10 also be open to inspection by the Department of Human Services  
prior to adjudication if commitment to the Department of Human  
12 Services is a proposed disposition.

14           **Sec. 19. 15 MRSA §3314, sub-§1, ¶C**, as amended by PL 1985, c.  
439, §15, is repealed.

16           **Sec. 20. 15 MRSA §3314, sub-§1, ¶D**, as amended by PL 1983, c.  
18 480, Pt. B, §18, is repealed.

20           **Sec. 21. 15 MRSA §3314, sub-§1, ¶H**, as amended by PL 1989, c.  
502, Pt. A, §§43 and 44, is amended to read:

22           H. The court may commit the juvenile to the Maine Youth  
24 Center and order that the sentence disposition be suspended  
or may commit the juvenile for a period of detention which  
26 shall that may not exceed 30 days, with or without an  
underlying suspended sentence disposition to the Maine Youth  
28 Center, which detention may be served intermittently as the  
court may order and which shall must be ordered served in a  
30 county--jail--designated detention facility approved or  
operated by the Department of Corrections as a place for the  
32 secure--detention--of exclusively for juveniles,--or--in--a  
nonsecure--group--care--home--or--halfway--house. When --the  
34 detention-is--ordered--served--in--a--county--jail,--the--juvenile  
may--be--detained--only--in--that--part--of--the--jail--which--meets  
36 the--requirements--of--section--3203-A,--subsection--7,--paragraph  
A,--unless--the--court--orders--that--the--person--be--housed--with  
38 adults--for--that--portion--of--the--detention--served--after--the  
detainee--has--attained--the--age--of--18--years. The court may  
40 order such a sentence disposition to be served as a part of  
and with a period of probation, which shall be is subject to  
42 such provisions of Title 17-A, section 1204 as the court may  
order and which shall must be administered pursuant to Title  
44 34-A, chapter 5, subchapter IV. Revocation of probation  
shall be is governed by the procedure contained in  
46 subsection 2. Any disposition under this paragraph is  
subject to Title 17-A, section 1253, subsection 2, but not  
48 to Title 17-A, section 1253, subsection 3-B, 4 or 5.

50           **Sec. 22. 15 MRSA §3314, sub-§4**, as enacted by PL 1983, c. 581,  
§2, is amended to read:

2 4. **Medical support.** Whenever the court commits a juvenile  
to the Maine Youth Center or to the Department of Human Services  
or ~~Department of Corrections for placement in a foster home,~~  
4 ~~group care home or halfway house,~~ it shall notify his the  
juvenile's parents or legal guardian and, after hearing, may, as  
6 justice may demand, require the parent or legal guardian to  
provide medical insurance for or contract to pay the full cost of  
8 any medical treatment which, mental health treatment, substance  
abuse treatment and counseling that may be provided to the  
10 juvenile while he the juvenile is committed.

12 **Sec. 23. 15 MRSA §3317**, as amended by PL 1987, c. 400, §4, is  
further amended to read:

14 **§3317. Disposition after return to Juvenile Court**

16 In instances of commitment of a juvenile to the Department  
18 of ~~Corrections,~~ the Department of Human Services or the Maine  
Youth Center or when the juvenile is under a specified period of  
20 probation, the commissioner of either the department or, the  
superintendent of the youth center or the Director of Probation  
22 and Parole following the commitment may for good cause petition  
the Juvenile Court having original jurisdiction in the case for a  
24 judicial review of the disposition, including extension of the  
period of commitment or period of probation. In all cases in  
26 which a juvenile is returned to a Juvenile Court, the Juvenile  
Court may make any of the dispositions otherwise provided in  
28 section 3314. When reviewing a commitment to the Department of  
Human Services, the court shall consider efforts made by the  
30 Department of Corrections and the Department of Human Services to  
reunify the juvenile with his the juvenile's parents or  
32 custodians, shall make a finding regarding those efforts and  
shall return custody of the juvenile to a parent or legal  
34 custodian if the return of the juvenile would is not be contrary  
to the welfare of the juvenile. A petition for judicial review  
36 of a disposition committing the child to the Department of Human  
Services shall must be served on the parents at least 7 days  
38 prior to the hearing.

40 **Sec. 24. 30-A MRSA §451, sub-§4**, as amended by PL 1989, c.  
925, §12, is further amended to read:

42 **4. Detention.** In the case of an adult, "detention" means  
44 the confining of an adult held in lawful custody in a specially  
constructed or modified facility designed to ensure continued  
46 custody and control. Detention may be confinement before trial  
or another hearing by a court or confinement to serve  
48 court-imposed sentences or dispositions and may be in a jail or  
lock-up. In the case of a juvenile, "detention" means ~~being held~~  
50 ~~in a secure detention facility, as defined~~ has the same meaning  
as in Title 15, section 3003, subsection 24-A 4-B.

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