

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1796

H.P. 1312

House of Representatives, February 20, 1996

An Act to Facilitate the Lawful Detention of Juveniles.

(EMERGENCY)

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CLUKEY of Houlton. (GOVERNOR'S BILL)
Cosponsored by Representatives: BUNKER of Kossuth Township, McALEVEY of
Waterboro, THOMPSON of Naples.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, there is an extreme shortage of juvenile detention
6 beds and immediate relief is needed; and

8 Whereas, the full benefit of the proposed exceptions will be
realized in the winter season; and

10 Whereas, in the judgment of the Legislature, these facts
12 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
14 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

18 **Sec. 1. 15 MRSA §3003, sub-§26**, as amended by PL 1991, c. 493,
20 §3, is further amended to read:

22 **26. Temporary holding resource.** "Temporary holding
resource" means an area not in a jail or other secure detention
24 facility intended or primarily used for the detention of adults
that may be used to provide secure supervision for a juvenile for
26 ~~a period not to exceed 72 hours, excluding Saturday, Sunday and~~
~~legal holidays~~, pending the completion of a procedure authorized
28 by law to be taken in regard to a juvenile. Security is provided
by intense personal supervision rather than by the physical
30 characteristics of the facility.

32 **Sec. 2. 15 MRSA §3203-A, sub-§7, ¶B-1**, as amended by PL 1995,
c. 155, §1, is further amended to read:

34 B-1. After December 31, 1991 and until the Northern Maine
36 Regional Juvenile Detention Facility begins operating, if
the juvenile caseworker determines there is no acceptable
38 alternative, a juvenile may be detained for up to 24 hours,
excluding Saturday, Sunday and legal holidays, in a jail or
40 other secure detention facility intended or primarily used
for the detention of adults, if:

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

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

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

4
6 (4) The juvenile is detained only to await a court
hearing, a preliminary hearing pursuant to Title 17-A,
section 1205, an entrustment violation hearing or
8 transfer to another detention facility.

10 If the requirements of this paragraph are otherwise met and
12 if a condition that threatens safety exists, such as
14 severely adverse, life-threatening weather conditions that
16 do not allow for reasonably safe travel, a juvenile may be
18 further detained in a jail or other secure detention
facility intended or primarily used for the detention of
adults for up to 24 hours after the time that conditions
allow for reasonably safe travel.

20 **Sec. 3. 30-A MRSA §1557, sub-§6** is enacted to read:

22 **6. Commissioner of Corrections to determine temporary**
housing assignments. If a county that does not have a jail or
24 has a jail that is not fully certified is unable to locate space
in any other county facility for an adult or juvenile, that
26 county may contact the Commissioner of Corrections for approval
to obtain temporary housing in a correctional or detention
28 facility operated by the Department of Corrections. The sending
county shall contact each other county facility in a continuing
30 effort to locate placement in a county facility. When the
sending county locates available space in a county facility, the
32 sheriff of the sending county shall transfer the person from the
department's correctional or detention facility and place the
34 person in the county facility.

36 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

38
40 **STATEMENT OF FACT**

42 This bill eliminates the 72-hour limit on the use of a
temporary holding resource, thus permitting this less restrictive
44 form of detention to be used without an artificial time limit,
just as the more restrictive form of detention in a secure
46 detention facility has no such artificial time limit. This
increases the flexibility of the counties and is consistent with
48 federal law. This bill also inserts into the "rural exception"
for detention in a county jail an inclement weather exception
50 that currently exists in federal law. The purpose of this
exception is to prevent a sheriff's departments from having to
drive juveniles to other facilities or to courts under dangerous

2 conditions in order to avoid being out of compliance with state
law detention requirements.

4 Finally, the bill allows the Department of Corrections to
6 provide temporary housing for a county that has no jail, or a
jail that is not fully certified.