

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 504

S.P. 175

In Senate, January 28, 1997

**An Act to Amend Certain Provisions Dealing with the Subjects of
Juvenile Petition, Adjudication and Disposition.**

Reference to the Committee on Criminal Justice 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 BENOIT of Franklin.
Cosponsored by Representative BUNKER of Kossuth Township and
Representatives: CLUKEY of Houlton, GOOLEY of Farmington, WATERHOUSE of Bridgton.

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

2
3 **Sec. 1. 15 MRSA §3002, sub-§1, ¶D**, as amended by PL 1979, c.
4 663, §113, is further amended to read:

6 D. To secure for any juvenile removed from the custody of
7 his the juvenile's parents the necessary treatment, care,
8 guidance and discipline to assist him the juvenile in
9 becoming a responsible and productive member of society; and

10 **Sec. 2. 15 MRSA §3002, sub-§1, ¶E**, as enacted by PL 1977, c.
11 520, §1, is amended to read:

12 E. To provide procedures through which the provisions of
13 the law are executed and enforced and which that will assure
14 the parties fair hearings at which their rights as citizens
15 are recognized and protected; and

16 **Sec. 3. 15 MRSA §3002, sub-§1, ¶F** is enacted to read:

17 F. To provide consequences, which may include those of a
18 punitive nature, for repeated criminal behavior or repeated
19 violations of probation conditions.

20 **Sec. 4. 15 MRSA §3003, sub-§14**, as enacted by PL 1977, c. 520,
21 §1, is amended to read:

22 14. **Juvenile.** "Juvenile" means any person who has not
23 attained the age of 18 17 years.

24 **Sec. 5. 15 MRSA §3101, sub-§4, ¶E**, as repealed and replaced by
25 PL 1979, c. 681, §5, is amended to read:

26 E. The Juvenile Court shall bind a juvenile over to the
27 Superior Court if-it-finds at the request of the prosecuting
28 attorney unless within 5 days of that request the defendant
29 requests a bind-over hearing and the court finds at the
30 hearing:

31 (1) That there is no probable cause to believe that a
32 juvenile crime has been committed that would constitute
33 murder or a Class A, Class B or Class C crime if the
34 juvenile involved were an adult and that the juvenile
35 to be bound over committed it; and or

36 (2) By a preponderance of the evidence that, after a
37 consideration of the seriousness of the crime, the
38 characteristics of the juvenile and the dispositional
39 alternatives available to the Juvenile Court, as

2 specified in paragraph D, it is appropriate
3 inappropriate to prosecute the juvenile as if he that
4 juvenile were an adult.

6 **Sec. 6. 15 MRSA §3101, sub-§4, ¶E-1**, as enacted by PL 1987, c.
398, §2, is amended to read:

8 ~~E-1. If the juvenile court finds, pursuant to paragraph E,~~
9 ~~that it is appropriate to prosecute the juvenile as if he~~
10 ~~were an adult~~ Juvenile Court binds the juvenile over to
11 Superior Court, the ~~court~~ Juvenile Court may direct
12 detention of any such juvenile who is to be detained pending
13 an adjudication hearing in a section of a jail which that is
14 used primarily for the detention of adults, when it finds by
15 clear and convincing evidence that:

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

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

21 In determining whether the juvenile's behavior presents
22 a danger to himself the juvenile or others, the
23 ~~juvenile--court~~ Juvenile Court shall consider, among
24 other factors:

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

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

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

36 **Sec. 7. 15 MRSA §3103, sub-§1, ¶B**, as amended by PL 1977, c.
37 664, §11, is repealed.

38 **Sec. 8. 15 MRSA §3103, sub-§1, ¶C**, as amended by PL 1987, c.
39 45, Pt. B, §3, is repealed.

40 **Sec. 9. 15 MRSA §3103, sub-§1, ¶D**, as amended by PL 1995, c.
41 470, §3, is repealed.

2 **Sec. 10. 15 MRSA §3103, sub-§2**, as amended by PL 1995, c. 470,
§4, is further amended to read:

4
6 **2. Dispositional powers.** All of the dispositional powers of
the Juvenile Court provided in section 3314 apply to a juvenile
who is adjudicated to have committed a juvenile crime, ~~except~~
8 ~~that no commitment to the Maine Youth Center or other detention~~
~~may be imposed for conduct described in subsection 1, paragraphs~~
10 ~~B and C.~~

12 **Sec. 11. 15 MRSA §3105-A, sub-§2, ¶C**, as amended by PL 1995,
c. 470, §5, is further amended to read:

14
16 C. A prosecution for conduct specified in section 3103,
subsection 1, paragraph B, ~~C, D,~~ E or F must be commenced
within one year after it is committed.

18 **Sec. 12. 15 MRSA §3201, sub-§1**, as amended by PL 1987, c. 277,
20 §2, is further amended to read:

22 **1. Warrantless arrests.** Arrests without warrants of
juveniles for juvenile crimes defined by section 3103, subsection
24 1, paragraphs A, D, E and F by law enforcement officers or
private persons shall must be made pursuant to the provisions of
26 Title 17-A, sections 15 and 16. ~~For purposes of this section, a~~
~~juvenile crime defined under section 3103, subsection 1,~~
28 ~~paragraph D, shall be deemed a Class D or Class E crime.~~

30 **Sec. 13. 15 MRSA §3201, sub-§3**, as amended by PL 1995, c. 470,
§6, is repealed.

32 **Sec. 14. 15 MRSA §3203-A, sub-§1, ¶C**, as amended by PL 1991,
34 c. 39, is further amended to read:

36 C. In all cases under ~~Title 5, section 200-A~~, the law
enforcement officer shall immediately notify the juvenile
38 caseworker and the ~~Department of the Attorney General~~
prosecuting attorney if the law enforcement officer feels
40 immediate secure detention is required. If the juvenile
caseworker determines not to order the detention or
42 continued detention of the juvenile ~~in a case under Title 5,~~
~~section 200-A~~, the caseworker shall inform the law
44 enforcement officer and the attorney for the State prior to
the juvenile's release. ~~The Attorney General or deputy or~~
46 ~~assistant prosecuting attorney general~~, with or without a
request from a law enforcement officer, shall consider the
48 facts of the case and consult with the juvenile caseworker
who made the initial determination and may order detention

2 or continued detention of the juvenile under the same or any
authorized conditions pending the juvenile's initial
appearance before the court.

4
6 **Sec. 15.** 15 MRSA §3203-A, sub-§2-A, as enacted by PL 1987, c.
367, is repealed.

8 **Sec. 16.** 15 MRSA §3301, sub-§1, ¶C, as enacted by PL 1977, c.
520, §1, is amended to read:

10 C. Request a petition to be filed and issue a summons to
12 the juvenile to appear in Juvenile Court.

14 **Sec. 17.** 15 MRSA §3301, sub-§5, ¶C, as amended by PL 1985, c.
439, §11, is further amended to read:

16 C. If the juvenile caseworker determines that the facts are
18 sufficient for the filing of a petition, he the juvenile
caseworker may request the prosecuting attorney to file a
20 petition. If the juvenile caseworker decides to request a
petition, that caseworker shall issue a summons to the
22 juvenile or, if the juvenile caseworker is unable to serve
the juvenile, the juvenile caseworker may request the
24 appropriate local law enforcement agency to issue a summons,
in accordance with section 3304.

26 **Sec. 18.** 15 MRSA §3301, sub-§6, as amended by PL 1985, c. 439,
28 §11, is further amended to read:

30 **6. Review by prosecuting attorney.** If the juvenile
caseworker decides not to request the prosecuting attorney to
32 file a petition, the complainant, the law enforcement officer and
the victim shall must be informed of the decision and of the
34 reasons therefor as soon as practicable and shall must be advised
that they may submit their complaint to the prosecuting attorney
36 for review.

38 The prosecuting attorney ~~en-his-own-motion~~ sua sponte or upon
receiving a request for review by from the law enforcement
40 officer, the complainant or the victim, shall consider the facts
of the case, consult with the juvenile caseworker who made the
42 initial decision and then make a final decision as to whether the
petition shall--be is filed. Notwithstanding any action or
44 inaction by the juvenile caseworker, the prosecuting attorney may
elect to file a petition at any time more than 10 days after the
46 juvenile caseworker has been given notice pursuant to section
3203-A.

48 **Sec. 19.** 15 MRSA §3304, sub-§1, as enacted by PL 1977, c. 520,
50 §1, is repealed and the following enacted in its place:

2 1. Issuance and contents. If a juvenile caseworker decides
4 to request a juvenile petition, that caseworker shall issue a
6 summons to the juvenile. If the juvenile caseworker is unable to
8 serve the summons, the juvenile caseworker shall request that the
10 appropriate local law enforcement agency issue a summons. The
 form and content of a summons issued by a juvenile caseworker or
 law enforcement agency under this section must be the same as the
 form and content of a summons under the Maine Rules of Criminal
 Procedure, Rule 4(b).

12 **Sec. 20. 15 MRSA §3304, sub-§3,** as amended by PL 1989, c. 741,
14 §12, is repealed and the following enacted in its place:

16 3. Service. Any summons issued under subsection 1 must be
18 directed to and served upon the juvenile. Service must be made
20 by the juvenile caseworker when possible. If the juvenile
22 caseworker can not serve a summons under this section, that
 juvenile caseworker shall request that the appropriate local law
 enforcement officer serve the summons upon the juvenile. Service
 of the summons under this section must be made pursuant to and
 authorized by the Maine Rules of Criminal Procedure, Rule 4(c).

24 **Sec. 21. 15 MRSA §3304, sub-§4,** as enacted by PL 1977, c. 520,
26 §1, is repealed.

28 **Sec. 22. 15 MRSA §3304, sub-§5,** as repealed and replaced by PL
30 1989, c. 741, §13, is repealed.

32 **Sec. 23. 15 MRSA §3304, sub-§5-A** is enacted to read:

34 5-A. Notice to parents of juvenile. If a juvenile
36 caseworker issues a summons to a juvenile under subsection 1 or
38 if a caseworker requests a court summons for a juvenile under
40 subsection 3, that caseworker shall notify the juvenile's
42 guardian or legal custodian, or at least one of the juvenile's
44 parents, of the pendency of the case and of the time and place
46 set for hearing. The notice may be in an oral or written form,
 and may be served in person, over the telephone, by other
 electronic means or by first class United States mail. The
 juvenile caseworker shall certify in writing to the district
 attorney's office that notice was made to the juvenile's parent
 or guardian. The district attorney's office shall file this
 written certification of notice with the court when filing the
 juvenile petition.

48 **Sec. 24. 15 MRSA §3307, sub-§2, ¶A,** as amended by PL 1981, c.
 361, is further amended to read:

2 A. The general public shall may not be excluded from any
4 proceeding on a juvenile crime that would constitute murder
6 or a Class A, Class B or Class C crime if the juvenile
8 involved were an adult or from any proceeding on a juvenile
10 crime that would constitute a Class D crime if the juvenile
12 involved were an adult, and it is the 2nd or subsequent
14 Class D crime for that juvenile not arising from the same
16 underlying transaction, or from any subsequent dispositional
18 hearings in such cases or from any proceeding in which a
20 juvenile is charged who at the commission of the juvenile
22 crime was at least 16 years of age.

24 **Sec. 25. 15 MRSA §3307, sub-§2, ¶B,** as amended by PL 1995, c.
26 470, §7, is further amended to read:

28 B. The general public is excluded from all other juvenile
30 hearings and proceedings, except that a juvenile charged
32 with a juvenile crime that would constitute murder or a
34 Class A, Class B or Class C offense and with a juvenile
36 crime that would constitute a juvenile's first Class D
38 offense or Class E offense or with conduct described in
40 section 3103, subsection 1, paragraph B, ~~C, D or~~ E, arising
42 from the same underlying transaction may elect to have all
44 charges adjudicated in one hearing, and, when a juvenile
46 does so elect, the general public is not excluded from that
48 hearing.

50 **Sec. 26. 15 MRSA §3308, sub-§2,** as amended by PL 1979, c. 681,
§20, is further 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~~ are
open to public inspection, ~~provided that;~~ however, any court
subsequently sentencing the juvenile after ~~he~~ the juvenile has
become an adult may consider only murder and Class A, Class B and
Class C offenses committed by the juvenile or any offenses
committed by a juvenile who was at least 16 years of age at the
time the crime was committed.

Sec. 27. 15 MRSA §3308, sub-§7, ¶B, as amended by PL 1993, c.
354, §6, is further amended to read:

B. Nothing in this section precludes dissemination of any
information contained in the records of juvenile proceedings
or other records described in subsection 5 by one criminal
justice agency to another criminal justice agency for the
purpose of the administration of criminal justice, the
administration of juvenile criminal justice and for criminal
justice agency employment, as long as:

2 (1) The person concerning whom the records are sought
4 has been convicted of a crime as an adult;

6 (2) The person concerning whom the records are sought
8 has been adjudicated as having committed a juvenile
10 crime that, if committed by an adult, would be defined
12 as a Class A, B or C crime by Title 17-A, the Maine
14 Criminal Code, or by any other criminal statute outside
16 that code;

18 (3) The person concerning whom the records are sought
20 has been adjudicated as having committed a juvenile
22 crime with the use of a dangerous weapon, as defined in
24 Title 17-A, section 2, subsection 9;

26 (4) The person concerning whom the records are sought
28 has been adjudicated as having committed 2 or more
30 juvenile crimes that, if committed by an adult, would
32 be defined as Class D or Class E crimes by Title 17-A,
34 the Maine Criminal Code, or by any other criminal
36 statute outside that code; or

38 (5) The person seeking the records is the prosecuting
40 attorney in any proceeding and the person concerning
42 whom the records are sought is a defendant in that
44 proceeding; or

46 (6) The person concerning whom the records are sought
48 has been adjudicated as having committed a juvenile
50 crime and was at least 16 years of age at the time the
crime was committed.

34 **Sec. 28. 15 MRSA §3314, sub-§1, ¶G,** as amended by PL 1995, c.
36 470, §8, is further amended to read:

38 ~~G. Except for a violation of section 3103, subsection 1,~~
40 ~~paragraph D, the~~ The court may impose a fine, subject to
42 Title 17-A, sections 1301 to 1305. ~~For the purpose of this~~
44 ~~section, juvenile offenses defined in section 3103,~~
46 ~~subsection 1, paragraphs B and C are deemed Class E crimes.~~

48 **Sec. 29. 15 MRSA §3314, sub-§1, ¶H,** as amended by PL 1993, c.
50 354, §8, is further amended to read:

46 H. The court may commit the juvenile to the Maine Youth
48 Center and order that the disposition be suspended or may
50 commit the juvenile for a period of detention that may not
exceed 30 90 days, with or without an underlying suspended
disposition to the Maine Youth Center, which detention may

2 be served intermittently as the court may order and must be
3 ordered served in a detention facility approved or operated
4 by the Department of Corrections exclusively for juveniles.
5 The court may order such a disposition to be served as a
6 part of and with a period of probation, which is subject to
7 such provisions of Title 17-A, section 1204 as the court may
8 order and which must be administered pursuant to Title 34-A,
9 chapter 5, subchapter IV. Revocation of probation is
10 governed by the procedure contained in subsection 2. Any
11 disposition under this paragraph is subject to Title 17-A,
12 section 1253, subsection 2, but not to Title 17-A, section
13 1253, subsection 3-B, 4 or 5. Any disposition under this
14 paragraph ordering a period of detention to be served in a
15 county-operated detention facility by a juvenile from
16 another county is governed by section 1705.

17 **Sec. 30. 15 MRSA §3314-A**, as amended by PL 1993, c. 354, §10,
18 is further amended to read:

19 **§3314-A. Period of probation; modification and discharge**

20 The period of probation of a juvenile, its modification and
21 the juvenile's discharge, ~~is~~ are as provided by Title 17-A,
22 section 1202, except that the period of probation of a juvenile
23 convicted of a juvenile crime as defined by section 3103,
24 subsection 1, paragraph B, ~~C, D or E~~ E may not exceed one year.
25 The period of probation may extend beyond the juvenile's 21st
26 birthday.
27

28 **Sec. 31. 25 MRSA §2003, sub-§1, ¶D**, as amended by PL 1993, c.
29 524, §§6 and 7, is further amended by repealing subparagraph (5),
30 division (s).
31

32 **Sec. 32. 25 MRSA §2003, sub-§2, ¶B-1**, as amended by PL 1993, c.
33 524, §9, is further amended to read:
34

35 B-1. That the applicant understands that an affirmative
36 answer to one or more of the questions in subsection 1,
37 paragraph D, subparagraph (5), divisions (a), (b), (b-1),
38 (c-1), (l), (m), (n) and (o) to ~~(s)~~ (r) is used by the
39 issuing authority, along with other information, in judging
40 good moral character under subsection 4; and
41

42
43
44 **SUMMARY**

45 This bill amends the Maine Juvenile Code in the following
46 manner.
47

48 1. It lowers the age below which a person is considered a
49 juvenile from 18 to 17 years of age.
50

2 2. It amends the bind-over process to allow a juvenile to
be bound over to the Superior Court at the request of a
4 prosecutor. The juvenile may request a hearing on that request
of the prosecutor.

6
8 3. It removes from the definition of "juvenile crime" those
offenses involving marijuana and intoxicating liquor.

10 4. It repeals the prohibition on the questioning of
juveniles by law enforcement officers without the presence,
12 consent or notification of a legal custodian.

14 5. It amends the procedure for service of summons.

16 6. It permits hearings and records involving a juvenile who
was at least 16 years of age at the time of the crime to be open
18 to the public.