

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

DATE: 3-19-98

(Filing No. H-970)

CRIMINAL JUSTICE

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 662, L.D. 915, Bill, "An Act to Amend the Laws Concerning Juvenile Petition, Adjudication and Disposition"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 15 MRSA §3002, sub-§1, as amended by PL 1979, c. 663, §113, is further amended to read:

1. Purposes. The purposes of this Part are:

A. To secure for each juvenile subject to these provisions such care and guidance, preferably in his the juvenile's own home, as will best serve his the juvenile's welfare and the interests of society;

B. To preserve and strengthen family ties whenever possible, including improvement of home environment;

C. To remove a juvenile from the custody of his the juvenile's parents only when his the juvenile's welfare and safety or the protection of the public would otherwise be endangered or where, when necessary, to punish a child adjudicated, pursuant to chapter 507, as having committed a juvenile crime;

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

COMMITTEE AMENDMENT

2 E. To provide procedures through which the provisions of  
the law are executed and enforced and ~~which will assure that~~  
4 ensure that the parties receive fair hearings at which their  
rights as citizens are recognized and protected. ; and

6 F. To provide consequences, which may include those of a  
7 punitive nature, for repeated serious criminal behavior or  
8 repeated violations of probation conditions.

10 **Sec. 2. 15 MRSA §3101, sub-§4, §§C-1 and C-2** are enacted to  
read:

12  
14 C-1. With respect to the finding of probable cause required  
by paragraph E, subparagraph (1), the State has the burden  
of proof.

16  
18 C-2. With respect to the finding of appropriateness  
required by paragraph E, subparagraph (2), the State has the  
20 burden of proof, except that in a case involving a juvenile  
who is charged with one or more juvenile crimes that, if the  
22 juvenile were an adult, would constitute murder, attempted  
murder, felony murder, Class A manslaughter other than the  
24 reckless or criminally negligent operation of a motor  
vehicle, elevated aggravated assault, arson that recklessly  
26 endangers any person, causing a catastrophe, Class A robbery  
or Class A gross sexual assault in which the victim submits  
as a result of compulsion, the juvenile has the burden of  
28 proof.

30 **Sec. 3. 15 MRSA §3101, sub-§4, ¶D,** as repealed and replaced by  
PL 1981, c. 470, Pt. A, §33, is repealed and the following  
32 enacted in its place:

34 D. The Juvenile Court shall consider the following factors  
in deciding whether to bind a juvenile over to Superior  
36 Court:

38 (1) Seriousness of the crime: the nature and  
seriousness of the offense with greater weight being  
40 given to offenses against the person than against  
property; whether the offense was committed in an  
42 aggressive, violent, premeditated or intentional  
manner;

44  
46 (2) Characteristics of the juvenile: the record and  
previous history of the juvenile; the age of the  
48 juvenile; the juvenile's emotional attitude and pattern  
of living;

(3) Public safety: whether the protection of the community requires commitment of the juvenile for a period longer than the greatest commitment authorized; whether the protection of the community requires commitment of the juvenile to a facility that is more secure than any dispositional alternative under section 3314; and

(4) Dispositional alternatives: whether future criminal conduct by the juvenile will be deterred by the dispositional alternatives available; whether the dispositional alternatives would diminish the gravity of the offense.

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

E. The Juvenile Court shall bind a juvenile over to the Superior Court if it finds:

(1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, Class B or Class C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it; and

(2) ~~By a preponderance of the evidence that, after~~ After a consideration of the seriousness of the crime, the characteristics of the juvenile, the public safety and the dispositional alternatives available ~~to the Juvenile Court, as specified in paragraph D, it is appropriate to prosecute the juvenile as if he were an adult, that:~~

(a) If the State has the burden of proof, the State has established by a preponderance of the evidence that it is appropriate to prosecute the juvenile as if the juvenile were an adult; or

(b) If the juvenile has the burden of proof, the juvenile has failed to establish by a preponderance of the evidence that it is not appropriate to prosecute the juvenile as if the juvenile were an adult.

Sec. 5. 15 MRSA §3101, sub-§4, ¶E-1, as enacted by PL 1987, c. 398, §2, is amended to read:

~~E-1. If the juvenile court finds, pursuant to paragraph E, that it is appropriate to prosecute the juvenile as if he~~

2 ~~were--an--adult~~ Juvenile Court binds the juvenile over to  
3 Superior Court, the court may direct detention of any such  
4 juvenile who is to be detained ~~pending--an--adjudication~~  
5 hearing in a section of a jail ~~which~~ that is used primarily  
6 for the detention of adults, when it finds by clear and  
convincing evidence that:

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

12 (2) There is ~~no~~ not a less restrictive alternative to  
13 detention in an adult section ~~which~~ that serves the  
14 purposes of detention.

16 In determining whether the juvenile's behavior presents  
17 a danger to ~~himself~~ that juvenile or others, the  
18 ~~juvenile--court~~ Juvenile Court shall consider, among  
19 other factors:

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

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

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

34 **Sec. 6. 15 MRSA §3203-A, sub-§1, ¶C,** as amended by PL 1991, c.  
35 39, is further amended to read:

38 C. In cases under Title 5, section 200-A, the law  
39 enforcement officer shall immediately notify the juvenile  
40 caseworker and the Department of the Attorney General. In  
41 all other cases the law enforcement officer shall  
42 immediately notify the juvenile caseworker if the law  
43 enforcement officer believes that immediate secure detention  
44 is required. If the juvenile caseworker determines not to  
45 order the detention or continued detention of the juvenile  
46 ~~in a case under Title 5, section 200-A,~~ the caseworker shall  
47 inform the law enforcement officer and the attorney for the  
48 State prior to the juvenile's release. ~~The Attorney General~~  
49 ~~or deputy or assistant attorney general~~ for the State, with  
50 or without a request from a law enforcement officer, shall

2 consider the facts of the case and, consult with the  
juvenile caseworker who made the initial determination,  
4 consider standards for detention under subsection 4,  
paragraph C and subsection 4, paragraph D, subparagraphs (1)  
6 to (6) and may order detention or continued detention of the  
juvenile under the same or any authorized conditions pending  
the juvenile's initial appearance before the court.

8  
9 **Sec. 7. 15 MRSA §3203-A, sub-§4, ¶E,** as amended by PL 1991, c.  
10 493, §9, is further amended to read:

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

26 **Sec. 8. 15 MRSA §3203-A, sub-§5,** as amended by PL 1989, c.  
27 741, §8, is further amended to read:

28  
29 **5. Detention hearing.** Upon petition by a juvenile  
30 caseworker who ordered the detention or an attorney for the State  
who ordered the detention, the Juvenile Court shall review the  
32 decision to detain a juvenile.

34 A. A detention hearing shall must precede and shall must be  
separate from a bind-over or adjudicatory hearing. Evidence  
36 presented at a detention hearing may include testimony,  
affidavits and other reliable hearsay evidence as permitted  
38 by the court and may be considered in making any  
determination in that hearing.

40  
41 B. Following a detention hearing, a court shall order a  
42 juvenile's release, in accordance with subsection 4, unless  
it finds, by a preponderance of the evidence, that continued  
44 detention is necessary to meet one of the purposes of  
detention provided in that subsection. The Juvenile Court  
46 shall ensure, by appropriate order, that any such continued  
detention is otherwise in accordance with the requirements  
48 of subsection 4.

2 C. ~~No--continued~~ Continued detention may not be ordered  
unless the Juvenile Court ~~shall--determine~~ determines that  
4 there is probable cause to believe that the juvenile has  
committed a juvenile crime.

6 **Sec. 9. 15 MRSA §3301, sub-§6**, as amended by PL 1985, c. 439,  
§11, is further amended to read:

8  
6. **Review by attorney for the State.** If the juvenile  
10 caseworker decides not to request the ~~proseecuting~~ proseecuting attorney for  
the State to file a petition, the juvenile caseworker shall  
12 inform the complainant, the law enforcement officer and the  
victim ~~shall--be--informed~~ of the decision and of the reasons  
14 ~~therefer~~ for the decision as soon as practicable and . The  
juvenile caseworker ~~shall be--advised~~ advise the complainant, the  
16 law enforcement officer and the victim that they may submit their  
complaint to the ~~proseecuting~~ proseecuting attorney for the State for review.

18  
The ~~proseecuting~~ proseecuting attorney for the State on ~~his~~ that attorney's own  
20 motion or upon receiving a request for review by the law  
enforcement officer, the complainant or the victim, shall  
22 consider the facts of the case, consult with the juvenile  
caseworker who made the initial decision and then make a final  
24 decision as to whether to file the petition shall--be--filed.  
Notwithstanding any action or inaction by the juvenile  
26 caseworker, the attorney for the State may file a petition at any  
time more than 30 days after the juvenile caseworker has been  
28 given notice pursuant to section 3203-A.

30 **Sec. 10. 15 MRSA §3308, sub-§7, ¶B**, as amended by PL 1997, c.  
278, §1 and c. 421, Pt. A, §5, is repealed and the following  
32 enacted in its place:

34 B. Nothing in this section precludes sharing of any  
information in the records of court proceedings or other  
36 records described in subsection 5 by one criminal justice  
agency with another criminal justice agency for the  
38 administration of criminal justice or juvenile criminal  
justice or for criminal justice agency employment.

40  
42 **Sec. 11. 15 MRSA §3402, sub-§1, ¶B**, as repealed and replaced  
by PL 1979, c. 512, §9, is amended to read:

44 B. An order of disposition, or of any subsequent order  
46 modifying disposition, for an abuse of discretion; and

48 **Sec. 12. 15 MRSA §3402, sub-§1, ¶C**, as repealed and replaced  
by PL 1979, c. 512, §9, is repealed.

50 **Sec. 13. 15 MRSA §3402, sub-§4**, as repealed and replaced by PL  
1979, c. 512, §9, is amended to read:





in the court system can be absorbed within the budgeted resources of the Judicial Department.'

## SUMMARY

The amendment replaces the bill and does the following.

1. It clarifies that the purpose of the Juvenile Code includes consequences that may be of a punitive nature.

2. It amends the juvenile bind-over statute to include public safety and the age of the juvenile as factors the court must consider in determining whether to bind a juvenile over to the adult court system.

3. It amends the juvenile bind-over law to shift from the State to the juvenile the burden of proof regarding the appropriateness of placement in the juvenile system when the juvenile is charged with a violent offense against a person.

4. It authorizes the attorney for the State to order detention of a juvenile. Before making the detention determination, the attorney for the State must consider the facts of the case, consult with the juvenile caseworker who made the initial determination regarding detention and consider standards for detention that are used by juvenile caseworkers.

5. It clarifies that law enforcement agencies may share juvenile criminal records with other law enforcement agencies for purposes of the administration of criminal justice and juvenile justice.

6. It reduces the delays in the juvenile justice system by eliminating the intermediate appeals process for juveniles bound over to criminal court.

7. It adds a fiscal note.