

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1727

S.P. 570

In Senate, April 1, 1997

An Act to Establish and Implement Restorative Justice.

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 MURRAY of Penobscot. (GOVERNOR'S BILL).
Cosponsored by Representative POVICH of Ellsworth and
Senators: BENOIT of Franklin, JENKINS of Androscoggin, LONGLEY of Waldo,
MITCHELL of Penobscot, Representatives: BUNKER of Kossuth Township, McALEVEY of
Waterboro, PEAVEY of Woolwich, THOMPSON of Naples.

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

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PART A

Sec. A-1. 15 MRSA §3204, as amended by PL 1989, c. 741, §10, is further amended to read:

§3204. Statements not admissible in evidence

No statements of a juvenile made to a juvenile caseworker during the course of a preliminary investigation or made during the course of a family group conference under section 3301 may be admissible in evidence at an adjudicatory hearing against that juvenile if a petition based on the same facts is later filed.

Sec. A-2. 15 MRSA §3301, sub-§5, ¶B, as amended by PL 1985, c. 439, §11, is further amended to read:

B. Make whatever informal adjustment is practicable without a petition. The juvenile caseworker may effect whatever informal adjustment is agreed to by the juvenile and his the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated, including a restitution contract with the victim of the crime and the performance of community service. Informal adjustments ~~shall~~ may extend no longer than 6 months and ~~informal adjustments shall~~ may not be commenced unless:

(1) The juvenile caseworker determines that the juvenile and his the juvenile's parents, guardian or legal custodian, if the juvenile is not emancipated, were advised of their constitutional rights, including the right to an adjudicatory hearing, the right to be represented by counsel and the right to have counsel appointed by the court if indigent;

(2) The facts establish prima facie jurisdiction, except that any admission made in connection with this informal adjustment ~~cannot~~ may not be used in evidence against the juvenile if a petition based on the same facts is later filed; and

(3) Written consent to the informal adjustment is obtained from the juvenile and his the juvenile's parents, guardian or legal custodian if the juvenile is not emancipated; or

Sec. A-3. 15 MRSA §3301, sub-§§5-A and 6-A are enacted to read:

2 **5-A. Family group conference.** In accordance with policy
and procedures established by the Department of Corrections, the
juvenile caseworker may initiate a family group conference after
4 completing the preliminary investigation. Conference
participants may include: the facilitator of the conference; the
6 juvenile caseworker; the juvenile; the juvenile's parents,
guardian or legal custodian; the complainant; the victim; a
8 person designated by the victim; the law enforcement officer who
notified the juvenile caseworker; and any other person that the
10 juvenile caseworker determines is appropriate. The result of the
family group conference may be an agreement to effect an informal
12 adjustment or a recommendation to the juvenile caseworker to
choose one of the alternatives in subsection 5. If the result is
14 a recommendation, the juvenile caseworker shall consider the
recommendation and decide which alternative to choose.

16
18 **6-A. Records confidential.** Except as otherwise provided in
this Title, information contained in records pertaining to a
juvenile against whom a juvenile petition has not been filed is
20 confidential unless the juvenile, and the juvenile's parents,
guardian or legal custodian if the juvenile is not emancipated,
22 has given informed written consent to the disclosure of the
records.

24
26 **Sec. A-4. 15 MRSA §3308, sub-§2,** as amended by PL 1979, c.
681, §20, is further amended to read:

28 **2. Hearings open to public.** In the case of a hearing open
to the general public under section 3307, the petition, the
30 record of the hearing and the order of adjudication shall be are
open to public inspection, provided that any court subsequently
32 sentencing the juvenile after he the juvenile has become an adult
may consider only murder and Class A, Class B and Class C
34 offenses committed by the juvenile. The petition, the record of
the hearing and the order of adjudication are open to inspection
36 by the victim regardless of whether the hearing is open to the
general public under section 3307.

38
40 **Sec. A-5. 15 MRSA §3308, sub-§7, ¶B,** as amended by PL 1993, c.
354, §6, is further amended to read:

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

- 2 (1) The person concerning whom the records are sought
has been convicted of a crime as an adult;
- 4 (2) The person concerning whom the records are sought
6 has been adjudicated as having committed a juvenile
8 crime that, if committed by an adult, would be defined
as a Class A, B or C crime by Title 17-A, the Maine
10 Criminal Code, or by any other criminal statute outside
that code;
- 12 (3) The person concerning whom the records are sought
has been adjudicated as having committed a juvenile
14 crime with the use of a dangerous weapon, as defined in
Title 17-A, section 2, subsection 9;
- 16 (4) The person concerning whom the records are sought
18 has been adjudicated as having committed 2 or more
juvenile crimes that, if committed by an adult, would
20 be defined as Class D or Class E crimes by Title 17-A,
the Maine Criminal Code, or by any other criminal
statute outside that code; or
- 22 (5) The person seeking the records is the prosecuting
24 attorney in any proceeding and the person concerning
whom the records are sought is a defendant in that
26 proceeding.

28 **Sec. A-6. 15 MRSA §3308, sub-§7, ¶C**, as enacted by PL 1993, c.
30 354, §7, is amended to read:

32 C. Nothing in this section precludes dissemination of any
34 information in the records of the Department of Corrections
if the person concerning whom the records are sought, the
36 person's legal guardian, if any, and if the person is a
minor, the person's parent or legal guardian has given
informed written consent to the disclosure of the records.

38 **PART B**

40 **Sec. B-1. 17-A MRSA §1202, sub-§2**, as amended by PL 1989, c.
42 393, is further amended to read:

44 2. During the period of probation specified in the sentence
made pursuant to subsection 1, and upon application of a person
46 on probation, or the person's probation officer, or upon its own
motion, the court may, after a hearing upon notice to the
48 probation officer and the person on probation, modify the
requirements imposed by the court or a community reparations
50 board, add further requirements authorized by section 1204, or

2 relieve the person on probation of any requirement imposed by the
3 court or a community reparations board that, in its opinion,
4 imposes on the person an unreasonable burden.

5
6 Notwithstanding this subsection, the court may grant, ex parte, a
7 motion brought by the probation officer to add further
8 requirements if the requirements are immediately necessary to
9 protect the safety of an individual or the public and if all
10 reasonable efforts have been made to give written or oral notice
11 to the person on probation. Any requirements added pursuant to
12 an ex parte motion do not take effect until written notice of the
13 requirements, along with written notice of the scheduled date,
14 time and place when the court shall hold a hearing on the added
15 requirements, is given to the person on probation.

16 **Sec. B-2. 17-A MRSA §1204-A** is enacted to read:

17 **§1204-A. Community reparations boards**

18
19 1. If the court imposes a sentencing alternative that
20 includes a period of probation, the court shall require as a
21 condition of probation that the convicted person appear before a
22 community reparations board and abide by any requirement imposed
23 by the board if:

24
25 A. The person has been sentenced to a suspended term of
26 imprisonment with probation or a split sentence of
27 imprisonment with probation the initial portion of which
28 must be served in a county jail under section 1203;

29
30 B. The Department of Corrections recommends that appearance
31 before the board be required; and

32
33 C. The court finds no circumstance that makes appearance
34 inappropriate.

35
36 2. A person required to appear before a community
37 reparations board shall:

38
39 A. Cooperate with the preparation of the intake report to
40 be submitted to the board;

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42 B. Appear before the board as directed by the probation
43 officer; and

44
45 C. Cooperate with the board.

46
47 3. The powers of a community reparations board are limited
48 to requiring the convicted person to:

2 A. Pay restitution in accordance with chapter 54;

4 B. Perform community service;

6 C. Complete a prescribed course of counseling or education;

8 D. Refrain from frequenting specified places or consorting
with specified persons;

10 E. Comply with reparative sanctions other than restitution,
including, but not limited to, writing an apology to the
victim and fulfilling crime-impact education measures; and

14 F. Report to the board regarding compliance with the other
requirements of this subsection.

16 4. No requirement imposed by a community reparations board
may extend longer than 6 months, except to pay restitution.

18 5. Failure to abide by the requirements of this section
constitutes a violation of probation.

20 Sec. B-3. 34-A MRSA §5901 is enacted to read:

22 §5901. Community reparations boards

24 1. Reparations boards authorized. The department may
26 establish community reparations boards to exercise the powers set
28 out in Title 17-A, section 1204-A.

30 2. Members. The commissioner shall appoint as members of
32 the boards persons who are residents of the community or
34 communities encompassed within the geographical areas served by
36 the boards. The members of the boards serve without
compensation. Members of the boards serve at the pleasure of the
commissioner.

38 3. Meetings. Meetings of the boards must be conducted in
40 accordance with policy and guidelines established by the
department.

42 4. Deliberations. Meetings of the boards must be open to
44 the public except as provided in subsection 5 and except that the
deliberations of the boards as to the appropriate requirements to
46 impose on persons appearing before them must be conducted in
executive sessions from which all persons except board members
48 are excluded. The requirements imposed, however, must be
announced in meetings open to the public.

2 5. Confidentiality. Intake reports submitted to the boards
3 are confidential. Information contained in intake reports or
4 otherwise provided to the boards that is made confidential by law
5 may not be disclosed in meetings of the boards open to the public
6 or be otherwise disclosed except in accordance with the governing
7 law.

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10 **SUMMARY**

11 Part A of this bill permits a juvenile caseworker, after
12 completing a preliminary investigation of a juvenile accused of
13 having committed a juvenile crime, to initiate a family group
14 conference in order to bring about an agreement for an informal
15 adjustment or to receive a recommendation as to whether the
16 juvenile caseworker should decide that no further action is
17 required regarding the juvenile, that an informal adjustment
18 should be arranged or that a petition should be filed. The bill
19 also makes provision for confidentiality in relation to the
20 family group conferences and clarifies several other juvenile
21 confidentiality provisions.

22 Part B of this bill states that on recommendation of the
23 Department of Corrections, a probationer must appear before and
24 abide by the requirements of a community reparations board.
25 Appearance is not required if the court finds it inappropriate or
26 if the person is given a term of unsuspended imprisonment in a
27 department facility. The bill also provides for the
28 establishment of community reparations boards.