

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1504

S.P. 520

In Senate, March 29, 2005

An Act To Amend the Statutes Relating to Juveniles

Submitted by the Department of Corrections pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DIAMOND of Cumberland.
Cosponsored by Representative SYKES of Harrison and
Senator: CLUKEY of Aroostook, Representatives: BLANCHETTE of Bangor, CHURCHILL
of Washburn, GERZOFKY of Brunswick.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 12 MRSA §6004**, as enacted by PL 2003, c. 410, §1, is amended to read:

6 **§6004. Juvenile violations**

8 Notwithstanding other provisions of law, a person who has
9 not attained 18 years of age and who is convicted of a crime for
10 a violation of a provision of this Part that is not defined as a
11 juvenile crime under Title 15, section 3103, subsection 1 may not
12 be sentenced to a term of imprisonment, a split sentence of
13 imprisonment or a suspended term of imprisonment, except that,
14 once the person has attained 18 years of age, that person may be
15 sentenced to a term of imprisonment, a split sentence of
16 imprisonment or a suspended term of imprisonment for the
17 following reasons:

18 1. Failure to pay fine. A willful refusal to pay a fine
19 resulting from the conviction;

22 2. Violation of probation. A willful violation of the
23 terms of probation resulting from the conviction; or

24 3. Failure to comply with other terms. A willful failure
25 to comply with the terms of any other court order issued as a
26 result of the conviction.

28 **Sec. 2. 12 MRSA §8004**, as enacted by PL 2003, c. 410, §3, is
29 amended to read:

32 **§8004. Juvenile violations**

34 Notwithstanding other provisions of law, a person who has
35 not attained 18 years of age and who is convicted of a crime for
36 a violation of a provision of this Part that is not defined as a
37 juvenile crime under Title 15, section 3103, subsection 1 may not
38 be sentenced to a term of imprisonment, a split sentence of
39 imprisonment or a suspended term of imprisonment; except that,
40 once the person has attained 18 years of age, that person may be
41 sentenced to a term of imprisonment, a split sentence of
42 imprisonment or a suspended term of imprisonment for the
43 following reasons:

44 1. Failure to pay fine. A willful refusal to pay a fine
45 resulting from the conviction;

48 2. Violation of probation. A willful violation of the
49 terms of probation resulting from the conviction; or

2 3. Failure to comply with other terms. A willful failure
4 to comply with the terms of any other court order issued as a
5 result of the conviction.

6 **Sec. 3. 12 MRSA §10608**, as enacted by PL 2003, c. 655, Pt. B,
7 §66 and affected by §422, is amended to read:

8 **§10608. Juvenile violations**

10 Notwithstanding other provisions of law, a person who has
11 not attained 18 years of age and who is convicted of a crime for
12 a violation of this Part that is not defined as a juvenile crime
13 under Title 15, section 3103, subsection 1 may not be sentenced
14 to a term of imprisonment, a split sentence of imprisonment or a
15 suspended term of imprisonment, except that, once the person has
16 attained 18 years of age, that person may be sentenced to a term
17 of imprisonment, a split sentence of imprisonment or a suspended
18 term of imprisonment for the following reasons:

20 1. Failure to pay fine. A willful refusal to pay a fine
21 resulting from the conviction;

22 2. Violation of probation. A willful violation of the
23 terms of probation resulting from the conviction; or

24 3. Failure to comply with other terms. A willful failure
25 to comply with the terms of any other court order issued as a
26 result of the conviction.

27 **Sec. 4. 15 MRSA §3003, sub-§2-A**, as amended by PL 1987, c.
28 698, §1, is further amended to read:

29 **2-A. Attendant; attendant care.** "Attendant" means an agent
30 of a county sheriff or of the Department of Corrections who is
31 authorized to provide temporary supervision of a juvenile alleged
32 to have committed a juvenile crime or of a juvenile adjudicated
33 as having committed a juvenile crime when supervision is
34 appropriate as an interim measure pending the completion of a
35 procedure authorized by law to be taken in regard to such
36 juvenile. Supervision ~~shall~~ must be exercised during that period
37 beginning with receipt of the juvenile by the attendant and
38 ending upon the release of the juvenile to ~~his~~ the juvenile's
39 legal custodian or other responsible adult. This supervision
40 constitutes "attendant care." Attendant care may not be ordered
41 by the juvenile court except with the consent of the county
42 sheriff or the Department of Corrections.

43 **Sec. 5. 15 MRSA §3201, sub-§1**, as amended by PL 2003, c. 305,
44 §4, is further amended to read:

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

Sec. 6. 15 MRSA §3201, sub-§3, as amended by PL 1995, c. 470, §6, is further amended to read:

3. Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime, as defined by section 3103, subsection 1, paragraph B or C has been committed may request that the juvenile provide the officer with reasonably credible evidence of the juvenile's name, address and age date of birth. The evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer with evidence of the juvenile's name, address and age date of birth and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period the verification is being attempted, the officer may require the juvenile to remain present for a period not to exceed 2 hours. The officer may not arrest the juvenile for the juvenile crime defined by section 3103, subsection 1, paragraph B or C.

After informing the juvenile of the provisions of this subsection, the officer may arrest the juvenile for a ~~crime defined in section 3103, subsection 1, paragraph B or C~~ conduct that, if committed by an adult, would be considered criminal as described in Title 17-A, section 17, subsection 2 if the juvenile intentionally refuses to furnish any evidence of the juvenile's correct name, address and age or date of birth, or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of the juvenile's name, address ~~and age~~ or date of birth.

Sec. 7. 15 MRSA §3202, as amended by PL 2001, c. 4, §1, is further amended to read:

§3202. Arrest warrants for juveniles

An arrest warrant for a juvenile must be issued in the manner provided by Rule 4 of the Maine Rules of Criminal Procedure, except that affidavits alone must be presented and a petition is not necessary. Following arrest, the juvenile is subject to the procedures specified in ~~section~~ sections 3203-A and 3301.

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Sec. 8. 15 MRSA §3203-A, sub-§4, ¶F is enacted to read:

F. Conditional release or detention may not be ordered for a juvenile for conduct described in section 3103, subsection 1, paragraph B or C.

Sec. 9. 15 MRSA §3203-A, sub-§4-A, as enacted by PL 2003, c. 180, §3, is amended to read:

4-A. Probable cause determination. Except in a bona fide emergency or other extraordinary circumstance, when a juvenile arrested without a warrant for a juvenile crime or a violation of conditional release is not released from custody or does not receive a detention hearing within 48 hours after arrest, including Saturdays, Sundays and legal holidays, a Juvenile Court Judge or justice of the peace shall determine, within that time period, whether there is probable cause to believe that the juvenile has committed a juvenile crime unless it has already been determined by a Juvenile Court Judge or justice of the peace that there is probable cause to believe that the juvenile has committed a juvenile crime. Evidence presented to establish such probable cause may include affidavits and other reliable hearsay evidence as permitted by the Juvenile Court Judge or justice of the peace. If the evidence does not establish such probable cause, the Juvenile Court Judge or justice of the peace shall order the juvenile's discharge from detention.

Sec. 10. 15 MRSA §3203-A, sub-§7, ¶B-5, as enacted by PL 1999, c. 624, Pt. A, §5, is amended to read:

B-5. If the juvenile community corrections officer who ordered the detention or the attorney for the State who ordered the detention determines there is no reasonable alternative, a juvenile may be detained in a jail or other secure detention facility intended or primarily used for the detention of adults for up to 24 48 hours, excluding Saturday, Sunday and legal holidays if:

- (1) The facility meets the requirements of paragraph A;
- (2) The facility is not located in a standard metropolitan statistical area and meets the statutory criteria contained in the federal Juvenile Justice and Delinquency Prevention Act of 1974, 42 United States Code, Section 5601; and
- (3) The juvenile is detained only to await a detention hearing pursuant to subsection 5 or section 3314,

2 subsection 2, transfer to an appropriate juvenile
facility, or transport to another jurisdiction.

4 **Sec. 11. 15 MRSA §3206**, as enacted by PL 2003, c. 180, §7, is
amended to read:

6 **§3206. Detention of juveniles charged as adults**

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10 A person under 18 years of age who is arrested for a crime
12 defined under Title 12 or Title 29-A that is not a juvenile crime
14 as defined in section 3103 may not be detained ~~unless a juvenile
community corrections officer has been notified within 2 hours
after the person's arrest and has approved the detention for that
crime.~~ Section ~~3203-A, subsection 7, paragraphs A and B
governing the facilities in which juveniles may be detained apply
to any detention of such a juvenile following arrest.~~

18 **Sec. 12. 15 MRSA §3314, sub-§1, ¶H**, as amended by PL 2003, c.
503, §1, is further amended to read:

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22 H. The court may commit the juvenile to a Department of
24 Corrections juvenile correctional facility and order that
the disposition be suspended or may commit the juvenile for
26 a period of detention that may not exceed 30 days, with or
without an underlying suspended disposition to a Department
28 of Corrections juvenile correctional facility, which
detention must be served concurrently with any other period
30 of detention previously imposed and not fully discharged or
imposed on the same date but may be served intermittently as
32 the court may order and must be ordered served in a
detention facility approved or operated by the Department of
34 Corrections exclusively for juveniles. The court may order
such a disposition to be served as a part of and with a
36 period of probation that is subject to such provisions of
Title 17-A, section 1204 as the court may order and that
38 must be administered pursuant to Title 34-A, chapter 5,
subchapter 4. Revocation of probation is governed by the
40 procedure contained in subsection 2. Any disposition under
this paragraph is subject to Title 17-A, section 1253,
42 subsection 2 except that a statement is not required to be
furnished and the day-for-day deduction must be determined
by the facility, but not to Title 17-A, section 1253,
44 subsection 3-B, 4, 5 ~~or~~ 8, 9 or 10. For purposes of
calculating the commencement of the period of detention,
credit is accorded only for the portion of the first day for
46 which the juvenile is actually detained; the juvenile may
not be released until the juvenile has served the full term
48 of hours or days imposed by the court. Whenever a juvenile
is committed for a period of detention, the court shall
50 determine whether reasonable efforts have been made to

2 prevent or eliminate the need for removal of the juvenile
3 from the juvenile's home or that no reasonable efforts are
4 not necessary because of the existence of an aggravating
5 factor as defined in Title 22, section 4002, subsection 1-B
6 and whether continuation in the juvenile's home would be
7 contrary to the welfare of the juvenile. This determination
8 does not affect whether the court orders a commitment for a
9 period of detention.

10 **Sec. 13. 15 MRSA §3314, sub-§3-B** is enacted to read:

12 **3-B. Operator's license suspension for drug trafficking.**
13 If a juvenile uses a motor vehicle to facilitate the trafficking
14 of a scheduled drug, the court may, in addition to other
15 authorized penalties, suspend the juvenile's operator's license,
16 permit, privilege to operate a motor vehicle or right to apply
17 for or obtain a license for a period not to exceed one year. A
18 suspension may not begin until after any period of incarceration
19 is served. If the court suspends a juvenile's operator's
20 license, permit, privilege to operate a motor vehicle or right to
21 apply for or obtain a license, the court shall notify the
22 Secretary of State of the suspension and the court shall take
23 physical custody of the juvenile's operator's license. The
24 Secretary of State may not reinstate the juvenile's operator's
25 license, permit, privilege to operate motor vehicle or right to
26 apply for or obtain a license unless the juvenile demonstrates
27 that after having been released and discharged from any period of
28 incarceration that may have been ordered, the juvenile has served
29 the period of suspension ordered by the court.

30 **Sec. 14. 17-A MRSA §254-A**, as enacted by PL 1995, c. 308,
31 §1, is amended to read:

32 **§254-A. Written notification not to pursue charges**
33 **for sexual abuse of a minor**

34 A prosecutor who elects not to commence a juvenile--or
35 criminal proceeding for an alleged violation of section 254
36 shall, at the request of a parent, surrogate parent or guardian
37 of the alleged victim, inform that person in writing of the
38 reason for not commencing the proceeding.

39 **Sec. 15. 29-A MRSA §115**, as enacted by PL 2003, c. 410, §8,
40 is amended to read:

41 **§115. Juvenile violations**

42 Notwithstanding other provisions of law, a person who has
43 not attained 18 years of age and who is convicted of a crime for
44 a violation of a provision of this Title that is not defined as a
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juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to a term of imprisonment, a split sentence of imprisonment or a suspended term of imprisonment, except that, once the person has attained 18 years of age, that person may be sentenced to a term of imprisonment, a split sentence of imprisonment or a suspended term of imprisonment for the following reasons:

1. Failure to pay fine. A willful refusal to pay a fine resulting from the conviction;

2. Violation of probation. A willful violation of the terms of probation resulting from the conviction; or

3. Failure to comply with other terms. A willful failure to comply with the terms of any other court order issued as a result of the conviction.

Sec. 16. 34-A MRSA §1209, sub-§3, ¶F, as enacted by PL 1983, c. 581, §§10 and 59, is repealed.

Sec. 17. 34-A MRSA §3809-A, sub-§3, as amended by PL 2003, c. 706, Pt. A, §11, is further amended to read:

3. Psychiatric hospitalization. The commissioner has all the power over a juvenile client or juvenile detainee that a guardian has over a ward and that a parent has over a child with regard to necessary psychiatric hospitalization, including hospitalization in a nonstate mental health institution or hospital for the mentally ill. If a juvenile client or juvenile detainee is or becomes 18 years of age while still under commitment or while still detained, the statutory guardianship of the commissioner over the juvenile client or juvenile detainee terminates, but the juvenile client or juvenile detainee remains subject to the control of the commissioner and staff and rules of the facility until the expiration of the period of commitment or until release or discharge from the facility. Nothing in this subsection may be construed to override the requirement to make application for psychiatric hospitalization in accordance with Title 34-B, section 3863, unless hospitalization is made with the juvenile client's or juvenile detainee's consent in accordance with Title 34-B, section 3831. If placement in a licensed residential care facility providing a mental health treatment program is an appropriate alternative to psychiatric hospitalization, that placement may be made by the commissioner with the juvenile client's or juvenile detainee's consent.

Sec. 18. 34-A MRSA §4108, sub-§2, ¶H, as enacted by PL 1991, c. 400, is amended to read:

2 H. A juvenile held under observation must be under ~~constant~~
sight and sound supervision by facility staff, which must be
4 constant if necessary to prevent imminent harm to the
juvenile.

6 **Sec. 19. 34-A MRSA §4111, sub-§3**, as amended by PL 2003, c.
706, Pt. A, §13, is further amended to read:

8
9 **3. Psychiatric hospitalization.** The commissioner has all
10 the power over a juvenile client or juvenile detainee that a
guardian has over a ward and that a parent has over a child with
12 regard to necessary psychiatric hospitalization, including
hospitalization in a nonstate mental health institution or
14 hospital for the mentally ill. If a juvenile client or juvenile
detainee is or becomes 18 years of age while still under
16 commitment or while still detained, the statutory guardianship of
the commissioner over the juvenile client or juvenile detainee
18 terminates, but the juvenile client or juvenile detainee remains
subject to the control of the commissioner and staff and rules of
20 the facility until the expiration of the period of commitment or
until release or discharge from the facility. Nothing in this
22 subsection may be construed to override the requirement to make
application for psychiatric hospitalization in accordance with
24 Title 34-B, section 3863, unless hospitalization is made with the
juvenile client's or juvenile detainee's consent in accordance
26 with Title 34-B, section 3831. If placement in a licensed
residential care facility providing a mental health treatment
program is an appropriate alternative to psychiatric
hospitalization, that placement may be made by the commissioner
with the juvenile client's or juvenile detainee's consent.

32 **Sec. 20. 34-A MRSA §5402, sub-§2, ¶H**, as enacted by PL 1983,
c. 459, §6, is amended to read:

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35 H. Issue warrants for the arrest of parole violators and
36 juveniles who violate conditions of placement on community
reintegration status pursuant to sections 3810 and 4112;

40 SUMMARY

41 This bill repeals a reference to an outdated Executive Order
42 relating to the membership of the Juvenile Justice Advisory
Group. It also makes consistent the observation provisions for
44 the Department of Corrections' 2 juvenile facilities. It
eliminates the authority to conditionally release or detain
46 juveniles for juvenile crimes for which the present law does not
allow incarceration, such as possession of marijuana.

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49 The bill allows the Commissioner of Corrections to issue
50 arrest warrants for juveniles who violate provisions of community

2 reintegration. It also allows placement of a juvenile, with the
juvenile's consent, in a licensed residential care facility
4 providing a mental health treatment program as an alternative to
psychiatric hospitalization.

6 The bill adds a provision to eliminate duplicative probable
cause determinations. It clarifies that attendant care may not
8 be ordered without the consent of the sheriff or the Department
of Corrections, as it is these agencies that have to contract and
10 pay for attendant care.

12 The bill eliminates a reference to juvenile proceedings in
connection with sexual abuse of a minor since this is a crime
14 that, by definition, a juvenile cannot commit. It changes the
length of detention allowed in a rural jail from 24 to 48 hours
16 to match new federal law. This bill clarifies how so-called
"shock sentences" are to be calculated.

18 The bill adds a cross-reference that was inadvertently
20 omitted when the new juvenile crime of failure to comply with a
court order resulting from a conviction for an adult crime under
22 the Maine Revised Statutes, Title 12 or 29-A was created.

24 The bill makes it clear that juveniles may not be arrested
for juvenile crimes for which the present law does not allow
26 incarceration, such as possession of marijuana, but that they may
be arrested for the juvenile crime that is equivalent to the
28 adult crime found in Title 17-A, section 17, subsection 2 and it
makes minor changes to the wording of the juvenile provision to
30 make it fully consistent with the wording of the adult provision.

32 This bill amends the provision for arrests with warrants to
make it clear that the detention provisions in the Juvenile Code
34 apply, just as they do for arrests without warrants.

36 The bill adds a provision similar to the adult provision for
suspension of an operator's license for using a motor vehicle for
38 drug trafficking.

40 Finally, the bill clarifies the law relating to juveniles
who commit adult crimes under Titles 12 and 29-A. It makes clear
42 that no version of imprisonment is allowed unless, after the
juvenile becomes an adult, the person fails to comply with a
44 court order that results from the conviction. It also eliminates
juvenile detention for these crimes since imprisonment is not
46 allowed as a sentence for a juvenile.