

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2005

workforce. The department shall post its annual report and recommendations on a publicly accessible site on the Internet maintained by the department by December 31st of each year, beginning in 2006.

Sec. 4. Funding; existing emergency preparedness funds. The Department of Health and Human Services shall contract with the Department of Labor and others as appropriate to undertake the research required under the Maine Revised Statutes, Title 22, sections 256-A and 256-B. The Department of Health and Human Services shall coordinate this effort and shall fund any contracts awarded under this section using existing federal emergency preparedness funds held within the Department of Health and Human Services.

Sec. 5. Seek other funds; report. The Department of Health and Human Services and the Department of Labor shall jointly seek other public and private funding sources to supplement the emergency preparedness funding referenced in section 4 that is necessary to complete the research required under the Maine Revised Statutes, Title 22, sections 256-A and 256-B and shall report to the Joint Standing Committee on Health and Human Services on those efforts at the first meeting of that committee held between October 1, 2005 and December 31, 2005.

See title page for effective date.

CHAPTER 328

S.P. 520 - L.D. 1504

An Act To Amend the Statutes Relating to Juveniles

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

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

§6004. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment- but may be committed to a Department of Corrections juvenile correctional facility for a period of detention that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would

carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of detention; or

3. History. The record or previous history of the defendant warrants a period of detention.

The court is not required to impose a period of detention notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of detention must be served concurrently with any other period of detention previously imposed and not fully discharged or imposed on the same date. Any period of detention is subject to Title 17-A, section 1253, subsection 2 but not to Title 17-A, section 1253, subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of detention in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

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

§8004. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment- but may be committed to a Department of Corrections juvenile correctional facility for a period of detention that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of detention; or

3. History. The record or previous history of the defendant warrants a period of detention.

The court is not required to impose a period of detention notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of detention must be served concurrently with any other period of detention previously imposed and not fully discharged or imposed on the

same date. Any period of detention is subject to Title 17-A, section 1253, subsection 2 but not to Title 17-A, section 1253, subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of detention in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

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

§10608. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment; but may be committed to a Department of Corrections juvenile correctional facility for a period of detention that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of detention; or

3. History. The record or previous history of the defendant warrants a period of detention.

The court is not required to impose a period of detention notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of detention must be served concurrently with any other period of detention previously imposed and not fully discharged or imposed on the same date. Any period of detention is subject to Title 17-A, section 1253, subsection 2 but not to Title 17-A, section 1253, subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of detention in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

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

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

Sec. 5. 15 MRSA §3103, sub-§1, ¶H, as enacted by PL 2003, c. 410, §7, is amended to read:

H. If a juvenile has been convicted of a crime for a violation of a provision of Title 12 or 29-A not specifically included in paragraph E or F, willful refusal to pay a resulting fine or willful violation of the terms of a resulting ~~probation~~ administrative release or willful failure to comply with the terms of any other resulting court order.

Sec. 6. 15 MRSA §3201, sub-§1, as amended by PL 2003, c. 305, §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. A law enforcement officer or private person may not arrest a juvenile for a juvenile crime defined by section 3103, subsection 1, paragraph B or C.

Sec. 7. 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. 8. 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.

Sec. 9. 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. 10. 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. 11. 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, subsection 2, transfer to an appropriate juvenile facility, or transport to another jurisdiction.

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

H. The court may commit the juvenile to a Department of Corrections juvenile correctional facility and order that the disposition be suspended or may commit the juvenile for a period of detention that may not exceed 30 days, with or without an underlying suspended disposition to a Department of Corrections juvenile correctional facility, which detention must be served concurrently with any other period of detention previously imposed and not fully discharged or imposed on the same date but may be served intermittently as the court may order and must be ordered served in a detention facility approved or operated by the Department of Corrections exclusively for juveniles. The court may order such a disposition to be served as a part of and with a period of probation that is subject to such provisions of Title 17-A, section 1204 as the court may order and that must be administered pursuant to Title 34-A, chapter 5, subchapter 4. Revocation of probation is governed by the pro-

cedure contained in subsection 2. Any disposition under this paragraph is subject to Title 17-A, section 1253, 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, 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 which the juvenile is actually detained; the juvenile may not be released until the juvenile has served the full term of hours or days imposed by the court. Whenever a juvenile is committed for a period of detention, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that ~~no~~ reasonable efforts are not necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a commitment for a period of detention.

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

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

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

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

A prosecutor who elects not to commence a ~~juvenile~~ ~~or~~ criminal proceeding for an alleged violation of section 254 shall, at the request of a parent,

surrogate parent or guardian of the alleged victim, inform that person in writing of the reason for not commencing the proceeding.

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

§115. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Title that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment: but may be committed to a Department of Corrections juvenile correctional facility for a period of detention that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of detention; or

3. History. The record or previous history of the defendant warrants a period of detention.

The court is not required to impose a period of detention notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of detention must be served concurrently with any other period of detention previously imposed and not fully discharged or imposed on the same date. Any period of detention is subject to Title 17-A, section 1253, subsection 2 but not to Title 17-A, section 1253, subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of detention in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

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 §3802, sub-§1, ¶E, as amended by PL 1999, c. 624, Pt. B, §23, is further amended to read:

E. To confine juveniles ordered detained pursuant to Title 15, section 3314, subsection 1, paragraph H; ~~and~~

Sec. 18. 34-A MRSA §3802, sub-§1, ¶F, as enacted by PL 1999, c. 624, Pt. B, §24, is amended to read:

F. To confine juveniles ordered detained pursuant to Title 15, section 3312, subsection 3, paragraph D; and

Sec. 19. 34-A MRSA §3802, sub-§1, ¶G is enacted to read:

G. To confine juveniles ordered detained pursuant to Title 12, sections 6004, 8004 and 10608 and Title 29-A, section 115.

Sec. 20. 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. 21. 34-A MRSA §4102, as amended by PL 2003, c. 410, §18 and c. 545, §6, is repealed.

Sec. 22. 34-A MRSA §4102-A is enacted to read:

§4102-A. Purposes; accomplishment of purposes

1. Statement. The purposes of the Mountain View Youth Development Center are:

A. To detain juveniles pending a court proceeding;

B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section 3309-A, and court-ordered examinations pursuant to Title 15, section 3318;

C. To rehabilitate juveniles committed to a juvenile correctional facility pursuant to Title 15, section 3314, subsection 1, paragraph F;

D. To protect the public from dangerous juveniles;

E. To confine juveniles ordered detained pursuant to Title 15, section 3314, subsection 1, paragraph H;

F. To confine juveniles ordered detained pursuant to Title 15, section 3312, subsection 3, paragraph D; and

G. To confine juveniles ordered detained pursuant to Title 12, sections 6004, 8004 and 10608 and Title 29-A, section 115.

2. Accomplishment. To accomplish the purposes set out in subsection 1, the disciplines of education, casework, group work, psychology, psychiatry, medicine, nursing, vocational training and religion as they are related to human relations and personality development must be employed. Security measures, whether in the form of physically restrictive construction or intensive staff supervision, when appropriate, may be taken to accomplish these purposes.

Sec. 23. 34-A MRSA §4108, sub-§2, ¶H, as enacted by PL 1991, c. 400, is amended to read:

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

Sec. 24. 34-A MRSA §4111, sub-§3, as amended by PL 2003, c. 706, Pt. A, §13, 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. 25. 34-A MRSA §5402, sub-§2, ¶H, as enacted by PL 1983, c. 459, §6, is amended to read:

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

See title page for effective date.

CHAPTER 329

H.P. 943 - L.D. 1360

An Act To Improve the Management and Safety of State Correctional Facilities

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

Sec. 1. 15 MRSA §2162, as amended by PL 1975, c. 771, §160, is further amended to read:

§2162. Commutation to jail

When a person is sentenced ~~to confinement in the State Prison~~ and committed to the custody of the Department of Corrections, the Governor may, if ~~he deems the Governor considers~~ it consistent with the public interest and the welfare of the ~~convict~~ prisoner, commute ~~said that prisoner's~~ sentence to imprisonment in any county jail, there to be supported at the charge of the State at an expense not exceeding the price paid for the support of other prisoners in ~~said that county~~ jail.

Sec. 2. 17-A MRSA §757-B is enacted to read:

§757-B. Trafficking of alcoholic beverages in adult correctional facilities

1. A person is guilty of trafficking of an alcoholic beverage in an adult correctional facility if:

A. That person intentionally conveys or attempts to convey an alcoholic beverage to a person confined in an adult correctional facility; or

B. That person is confined in an adult correctional facility and the person intentionally makes, obtains or possesses an alcoholic beverage.

2. As used in this section, "adult correctional facility" means a county jail or correctional facility other than a juvenile facility under the control of the Department of Corrections.

3. Trafficking of an alcoholic beverage in an adult correctional facility is a Class E crime.

Sec. 3. 17-A MRSA §760 is enacted to read:

§760. Failure to report sexual assault of person in custody

1. A member of the staff of a hospital, prison or other institution who knows that a person detained in that institution is the victim of a crime of sexual assault that occurred while the person was in the institution but does not report that crime to an appropriate criminal justice agency is guilty of failure to report a sexual assault of a person in custody.

2. For purposes of this section, "sexual assault" means a crime under chapter 11.

3. Failure to report a sexual assault of a person in custody is a Class E crime.

Sec. 4. 17-A MRSA §1256, sub-§1, as amended by PL 1999, c. 458, §1, is further amended to read:

1. Other provisions of this section notwithstanding, when a person subject to an undischarged term of imprisonment is convicted of a ~~violation of section 752 A, 755 or 757 or of any other crime against the person of a member of the staff of the institution in which the convicted person was imprisoned or of a violation of section 806 involving government property in the institution in which the convicted person was imprisoned or any other crime against government property in the institution in which the convicted person was imprisoned, or of an attempt to commit any of the crimes mentioned in this subsection~~ crime committed while in execution of any term of imprisonment or of an attempt to commit a crime while in execution of any term of imprisonment, the sentence is not concurrent with the ~~any~~ undischarged ~~terms~~ term of imprisonment. The court may order that ~~the~~ any undischarged ~~terms~~ term of imprisonment be tolled and service of the nonconcurrent sentence commence immediately and the court shall so order if any undischarged term of imprisonment is a split sentence. No portion of the nonconcur-