APRIL 1975

ALERT

CRIMINAL DIVISION

FROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE

JUVENILE LAW

AND PROCEDURE II

MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

The circulation of the ALERT has increased markedly in the last few years. In order to keep printing and postage costs at a minimum, the ALERT mailing list is periodically revised and updated. I am now requesting chiefs of police and other law enforcement agencies receiving ALERT to contact the Law Enforcement Education Section if there has been a turn over in personnel in their departments or agencies within the last year that would require additions, deletions, or other corrections in the mailing list. Also, law enforcement officers and other individuals receiving, but not reading, the ALERT should notify us so that we may delete their names from the mailing list.

Since my announcement in last month's ALERT, our office has received a tremendous response from part-time law enforcement officers and other criminal justice personnel requesting copies of the Law Enforcement Officer's Manual. All requests for Manuals must be submitted to the Law Enforcement Education Section by May 31, 1975, and must include the number of Manuals requested and the reasons why the Manuals are needed. Distribution pursuant to these requests will commence in early June.

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

In last month's ALERT, we discussed the jurisdiction of the juvenile court, initiation of juvenile proceedings, custody of juveniles prior to the hearings and procedures in the juvenile court. This month's ALERT deals with the juvenile court's powers of disposition, review and appeal procedures, and the constitutional rights of juveniles.

JUVENILE COURT'S POWERS OF DISPOSITION

The juvenile court has broad powers in a juvenile proceeding to determine what course of action is in the best interest of the juvenile and the state. The disposition in a juvenile proceeding is similar to sentencing in an adult criminal proceeding, except that the options available to the juvenile court are much greater than those available to the adult criminal courts. The possible dispositions are set out in 15 M.R.S.A. §2611 and are summarized below.

1. Release

The juvenile court has the power to release the juvenile by dismissing the case at any stage of the proceedings. This broad power allows the court to end proceedings whenever it finds that the best interests of the state and of the juvenile will be served by such termination. Reasons for release vary with each case, but the common result is that the juvenile is out of court without a juvenile court record of adjudication.

2. Continuance and Probation

Where circumstances demand, the juvenile court may continue the case for not more than one year and place the juvenile on probation. Continuance and probation may occur before or after the hearing. This differs from the procedure in adult proceedings where probation can occur only after a finding of guilty and after imposition of sentence.

The juvenile court determines the conditions of probation and also retains control over a juvenile in the event he breaks the conditions of probation. Conditions of probation should be designed to meet the particular problems of the juvenile offender. No juvenile record of adjudication is created by putting a juvenile on probation.

[*Continued on page 2*]

3. **Probable Cause**

Another possible disposition is a finding of probable cause by the juvenile court to hold the juvenile for action by the grand jury. The finding of probable cause relieves the juvenile court of its jurisdiction and requires the juvenile court to conduct all subsequent proceedings the same as other adult criminal proceedings before the district court upon the finding of probable cause.

Finding probable cause to hold a juvenile over for action by the grand jury requires more than just finding probable cause that a juvenile offense has been committed and that a particular juvenile committed it. The court must also conclude and state in its probable cause finding that the juvenile, at the time of the finding, is a dangerous person and a menace to the safety of the community. The practice in Maine is not to hold juveniles over for action by the grand jury except in very severe cases, such as homicides.

4. **Adjudge a Juvenile Offense Committed**

In the event that the juvenile court has not made any of the above-mentioned dispositions, the court will adjudge that a juvenile offense has been committed by the juvenile. Once there has been an adjudication of a commission of a juvenile offense, there are a wide range of alternatives for disposition. These alternatives will be discussed individually below.

(a) *Commit to a Correctional Center*

The court may commit the juvenile to the Men's Correctional Center or the Women's Correctional Center if the offense for which the juvenile is being committed would have been an offense under the Maine criminal statutes if perpetrated by a person 18 years old or older. 15 M.R.S.A.§2611 (5). The effect of this limitation is to eliminate the possibility of commitment to a correctional center when a juvenile has engaged in the following conduct:

1. Habitual truancy;
2. Behaving in an incorrigible or indecent and lascivious manner;
3. Knowingly and willfully associating with vicious, criminal or grossly immoral people;
4. Repeatedly deserting one's home without just cause; and
5. Living in circumstances of manifest danger of falling into habits of vice or immorality.

The duration of commitment including time spent on parole cannot exceed 3 years for male juveniles committed to the Men's Correctional Center. 34 M.R.S.A. § 802. The duration of commitment for a female juvenile committed to the Women's Correctional Center pursuant to this section is indefinite. 34 M.R.S.A. § 853. (34 M.R.S.A. § 853 is arguably unconstitutional for discriminating between males and females.)

(b) *Commit to the Boys Training Center or Stevens School*

A juvenile may be committed to the Boys Training Center or the Stevens School with the same limitation as that discussed under (a) *Commit to a Correctional Center*. All commitments of children are to the age of 21, unless sooner discharged by the superintendent of the institution. No child can be committed who is deaf, mute, blind or a proper subject for the Augusta Mental Health Institute, the Bangor Mental Health Institute, or the Pineland Center. 15 M.R.S.A. §§2714, 2718.

(c) *Commit to Custody of Health and Welfare*

The court may commit the juvenile to the custody of the Department of Health and Welfare which gives the Department legal custodial powers over the juvenile. The juvenile then may be placed in a foster home or in some other place which is in the best interests of the child.

(d) *Commit to Custody and Control of State Parole Board*

The court may commit the juvenile to the custody and control of the State Parole Board. The State Parole Board has the power to partially shape the life of a juvenile by imposing regulations and restrictions on the juvenile's conduct. Parole plays a continuing hand in the every day life of the offender without requiring commitment.

(e) *Commit to Care of Family Subject to Supervision by the State Parole Board or by the Department of Health and Welfare*

The court may commit the juvenile to the care of a family subject to supervision by the State Parole Board or by the Department of Health and Welfare. This disposition allows continuing care of the juvenile to remain with the family but still provides some amount of regulation and/or supervision by the appropriate state agency. The family unit remains intact with guidance being additionally provided by the state agency. This approach provides for sensible and flexible juvenile dispositions in appropriate cases.

(f) *Suspend the Imposition of the Sentence, or Continue the Case for Sentence, or Impose Sentence and Suspend its Execution, in Each Case Placing the Juvenile on Probation*

This section is self-explanatory in the possible avenues a court may take. These listed powers are merely a spelling out of powers a court has over adult offenders.

(g) *Dismiss the Action and Refer the Juvenile to the Department of Mental Health and Corrections for Admission to the Pineland Hospital and Training Center in the Manner Provided in Title 34, Section 2152, on the Condition that the Court has Received a Report, as Provided in Section 2503, that the Juvenile is Mentally Retarded or Mentally Ill*

This disposition allows the juvenile court to implement the results of a report filed pursuant to 15 M.R.S.A. §2503. Under 15 M.R.S.A. §2503, the juvenile court

[*Continued on page 3*]

may, if it has cause to believe the juvenile is mentally retarded or mentally ill, require that the juvenile be examined by any qualified psychiatrist. The results of the examination must be reported to the court for its guidance. This examination may be required at any stage of the juvenile proceedings. This procedure resembles the situation in adult criminal proceedings where a defendant may not be mentally fit to stand trial and be held accountable for his acts. The procedure for commitment is set out in 34 M.R.S.A. §2152 et seq. and should be referred to when the situation arises.

(h) *Make Such Other Disposition of the Case as the Court Deems Necessary*

This is the catch-all provision allowing the court an open hand in dealing with the juvenile's case. The section specifically allows the imposition of fines in an amount within limits fixed by statute if the offense had been committed by an adult. Restitution may be justified under this section. However, if the juvenile is not able to pay a fine, the juvenile court is *not* allowed to sentence him to jail for failure to pay the fine. 15 M.R.S.A. §2611 (4) (H).

REVIEW AND APPEAL

Petition for Review

A juvenile may petition for review of a finding of a juvenile court of probable cause to hold the juvenile for action by the grand jury. The petition, presented by the juvenile or someone acting in his behalf or in his interest, must set forth a succinct summary of the proceedings before the juvenile court and ask a Justice of the superior or the Supreme Judicial Court to review the juvenile court's decision and reverse the order holding the juvenile over for grand jury action. The time and place for filing a petition for review is set out in 15 M.R.S.A. §2661. A Justice receiving a petition for review must give the petition his highest priority and must assign a date to hear and decide the issues as soon as reasonably possible. The hearing by the Justice is *de novo,* that is, the Justice is not bound by any findings of fact by the juvenile court and will hear the evidence anew before a decision is made.

After hearing, the Justice may either affirm or vacate the juvenile court's finding of probable cause to hold the juvenile over for action by the grand jury. If the finding is affirmed, the juvenile's case goes to the grand jury. If the finding is vacated, the juvenile's case is sent back to the juvenile court for redisposition with the limitation that the juvenile court may not make a finding of probable cause to hold the juvenile for action by the grand jury.

Appeal

An appeal to the superior court may be taken by any juvenile adjudged to have committed a juvenile offense by a juvenile court. A juvenile's parent or parents, his next friend, guardian or attorney must file written notice of appeal with the juvenile court within five days after the entry of judgment or order of the juvenile court. When notice is given of an appeal from a juvenile court's adjudication that a juvenile has committed a juvenile offense, the juvenile, guardian ad litem, or attorney should request in writing that the juvenile court deliver to the superior court the record of proceedings in the juvenile court. 15 M.R.S.A. §2662. The juvenile court must then transmit the juvenile court record to the superior court in the same manner and form as in appeals from the district court in criminal cases. The appeal will be heard by the superior court sitting without a jury. Pending appeal, a juvenile must be admitted to bail unless the juvenile court makes a finding that the juvenile is a danger to himself or the community. If bail is denied, a juvenile may petition for review in the same manner as a review of a finding of probable cause to hold a juvenile for action by the grand jury 15 M.R.S.A. §2661(3).

Hearings on appeal are informal, private, non-criminal, and are heard separately from other criminal proceedings. The record of the superior court in juvenile cases on appeal must be kept separate from other records of the superior court. The privacy required of juvenile records in the superior court is similar to the privacy required of juvenile records in juvenile court.

On appeal from the judgment of the juvenile court, the Superior Court must make a *de novo* determination as to the commission of the juvenile offense. *State v. L * * * * D * * * * 320* A.2d 885 (Supreme Judicial Court of Maine, 1974). The superior court may affirm the adjudication of commission of a juvenile offense and any order based thereon. Or the superior court may reverse the judgment of the juvenile court and order the proceedings dismissed. If the superior court finds that the juvenile court abused its discretion is disposing of the case, the superior court may affirm the adjudication of commission of a juveile offense but modify any order made by the juvenile court. Abuse of discretion means that the disposition by the juvenile court was:

> "an unreasonable, unconscionable and arbitrary response to the offense committed and the social needs of the youths, and was made without proper consideration of the facts before the court." *State v. L.* * * * *D* * * * 320 A.2d at 890.

When the superior court modifies an order of the juvenile court, it has the same powers of disposition as are conferred on the juvenile court under 15 M.R.S.A. §2611(4). (See 4 above under Juvenile Court's Powers of Disposition.)

Questions of law may be appealed further to the Supreme Judicial Court of Maine.

[*Continued on page 4*]

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

Disposition After Return To A Juvenile Court

After a juvenile has been committed to the Boys Training Center or the Stevens School, the superintendent of either institution may request that the juvenile court review its original disposition and order the juvenile committed to the Men's Correctional Center or the Women's Correction Center. Such request is made when the superintendent considers that the juvenile is incapable of benefiting from the programs at the Boys Training Center or the Stevens School *and* is in need of and can reasonably be expected to benefit from programs and facilities at the Men's Correctional Center or the Women's Correction Center. If, after proper notice and hearing, the juvenile court finds that the juvenile is incapable of benefiting from the programs at the Boys Training Center or the Stevens School and can reasonably be expected to benefit from the programs and facilities at the Men's Correctional Center or the Women's Correction Center, the court may order that the juvenile be committed to the appropriate center. In the event that the juvenile court determines that a correctional center is not an appropriate disposition, the court may dispose of the case pursuant to the other available dispositions under 15 M.R.S.A. §2611.

CONSTITUTIONAL RIGHTS OF JUVENILES

Notice of Charges

A juvenile, like an adult, is constitutionally entitled to adequate notice of the charges brought against him. *In re Gault,* 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (U.S. Supreme Court, 1967). A juvenile and his parents or guardians must be notified in writing of the specific charges or alleged misconduct which brings the juvenile within the jurisdiction of the juvenile court. Specificity of the charges or alleged misconduct is required by due process of law because a juvenile must know precisely what he is being charged with before he can prepare his defense. In addition, specificity protects a juvenile from future prosecution for the same crime, commonly called double jeopardy.

As previously mentioned, 15 M.R.S.A. §2602 demands that a juvenile petition contain a plain statement of the facts which give rise to the application to the juvenile court. By following the command of §2602 in filing a petition, a law enforcement officer is assured of providing the juvenile adequate notice of charges.

Notice of charges must also be timely, that is, given sufficiently in advance of the hearing to allow a juvenile, his parents or his representative a reasonable opportunity to prepare for the hearing. If notice is not given sufficiently in advance, any right to be specifically informed of the charges would be meaningless since there would not be an opportunity to adequately prepare for the hearing. Although 15 M.R.S.A. §2605 requires that the citation be served on a person located in the state only 24 hours before the time set for the hearing, it is suggested that more time be given. 15 M.R.S.A. §2605 also provides that service of a citation on an out-of-state person must be made at least 10 days before the time set for the hearing.

Self-Incrimination

In *In re Gault,* the Court held that the constitutional privilege against self-incrimination is applicable to juveniles as well as adults. The privilege, which protects a juvenile from being compelled to be a witness against himself, is founded in part upon the idea that confessions or admissions are often untrustworthy and unreliable. The privilege against self-incrimination applies both to out-of-court and in-court statements by juveniles. Before a custodial interrogation by law enforcement officers, a juvenile and his parents must be informed of the juvenile's constitutional right to remain silent and that no inference of guilt may be drawn from his silence. This same advice should be given a juvenile at a juvenile hearing, especially if the juvenile is not represented by counsel. It is, therefore, suggested that law enforcement officers, upon taking a juvenile into custody, follow the mandate of *Miranda v. Arizona,* 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed. 2d 694 (U.S. Supreme Court, 1966), in apprising a juvenile of his privilege against self-incrimination. (See Law Enforcement Officer's Manual §IV-B or May 1971 and June 1971 ALERTs.)

Confessions and admissions by juveniles resulting from custodial interrogations by law enforcement officers are admissible in subsequent juvenile hearings if there has been a proper waiver of the privilege against self-incrimination. Waiver, which is not easily inferred, depends upon all of the circumstances surrounding the interrogation. Factors that are significant in determining whether there has been a proper waiver include the age and intelligence of the juvenile, the presence and competence of parents, the period of detention and interrogation, and the presence or absence of counsel. The most important factor is, of course, the presence of counsel. As the Court said in *Gault:*

> "If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair." *In Re Gault,* 387 U.S. at 55, 87 S.Ct. at 1458, 18 L.Ed. 2d at 561.

Therefore, every effort should be made to notify the juvenile's parents when a juvenile is taken into custody as required by 15 M.R.S.A. §2607, and to inform the juvenile and his parents that he has the right to remain silent, that no inference of guilt will be drawn

[*Continued on page 5*]

from silence and that anything he says may be used against him at a subsequent juvenile hearing.

Right to Counsel

In *In Re Gault,* the United States Supreme Court held that whenever there is a hearing to determine delinquency which may result in the commitment of a juvenile to an institution where his freedoms are curtailed, the juvenile and his parents must be notified of the child's right to have counsel, or if they are unable to afford counsel, that counsel will be appointed to represent the juvenile. The parents and child must be expressly informed of this right to counsel.

Gault did not decide whether a juvenile's right to counsel extends to the pre-hearing and dispositional stages of juvenile proceedings. Some courts have extended the juvenile's right to counsel to the pre-hearing and dispositional stages, others have not. As previously mentioned, the presence of counsel during interrogation is a significant factor in determining whether a juvenile has voluntarily waived his privilege against self-incrimination. In light of the importance of counsel in determining voluntariness of waiver and the uncertainty about the right to counsel at pre- and post-hearing stages, law enforcement officers would be well advised to inform the juvenile and his parents of the juvenile's right to counsel under the same circumstances as if he were an adult.

As with other constitutional rights of juveniles, courts look more closely at the waiver of a juvenile's right to counsel than they do at an adult's. The test of waiver is whether there was an intentional relinquishment or abandonment of a fully known right. Factors taken into consideration in determining the validity of the waiver include presence or absence of warnings of his right to counsel, or to appointment of counsel if he is unable to afford counsel; the age, intelligence and maturity of the juvenile; and presence and competence of the parents. Law enforcement officers and judges should make every effort to apprise juveniles and their parents of the right and possible ramifications of a waiver of the right to counsel.

Confrontation and Cross-Examination

A juvenile may be adjudged delinquent and committed to a state institution only upon sworn testimony subjected to the opportunity for cross-examination unless a valid confession adequate to support the adjudication exists. Absent such a confession, a juvenile has the constitutional right at a juvenile hearing where he may be declared a delinquent and committed to a state institution to require that the complaining witnesses be brought into court and sworn before any of their testimony may be used against him. Under 15 M.R.S.A. §2609, the judge of the juvenile court is authorized to swear in witnesses. Once the witnesses have testified, the juvenile, or a person representing him, must be given an opportunity to cross-examine the witnesses to test their truthfulness and accuracy. These constitutional rights are called the right to confrontation and the right to cross-examination and are rooted in the idea that no man shall be tried, convicted and sentenced without having an opportunity to know who is accusing him, to have that person present in court, sworn to truthfulness, and available for cross-examination.

Trial by Jury

The United States Supreme Court has held that a juvenile is not entitled to a trial by jury under the United States Constitution. *McKeiver v. Pennsylvania,* 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed. 2d 647 (U.S. Supreme Court, 1971). Allowing juveniles trial by jury would be disruptive to the informal fact-finding process of the juvenile court and introduce an unnecessary adversary element to the juvenile process.

Burden of Proof

A juvenile is constitutionally entitled to have the state prove its case against him beyond a reasonable doubt. In the landmark case of *in Re Winship,* 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (U.S. Supreme Court, 1970), the United States Supreme Court held that the constitutional standard of proof beyond a reasonable doubt, applicable to adult criminal proceedings, is required also during the adjudicatory stage of juvenile proceedings. Thus, whenever there is a juvenile proceeding which *may* result in the adjudication that a juvenile has committed a juvenile offense and, as a result of his misconduct, he may be committed to a state institution, the case against the juvenile must be proven beyond a reasonable doubt.

Double Jeopardy

The Fifth Amendment of the United States Constitution states that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb; . . ." and this constitutional guarantee is applicable to the State of Maine. *Benton v. Maryland,* 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed. 2d 707 (U.S. Supreme Court, 1969). The double jeopardy provision goes beyond protecting an accused from being punished twice. It also prohibits an accused from being placed in jeopardy twice, that is, being tried twice for the same offense. Double jeopardy problems may arise on two occasions. First, they may arise when there has been a adjudication that a juvenile offense has been committed by the juvenile and the juvenile is later tried in an adult criminal court for the same offense. Secondly, it may arise if a juvenile is subject to two successive juvenile hearings based on the same act.

Although there is some conflict among the courts, a majority seem to hold that successive hearings arising from the same act or offense of the juvenile are prohibited. However, there is no clear opinion

[*Continued on page 6*]

by the courts whether a subsequent criminal trial is prohibited after an adjudication that a juvenile offense has been committed.

CONCLUSION

This concludes our discussion of juvenile law and procedure in Maine. Although the juvenile law was originally intended to provide juveniles with an informal alternative to adult criminal proceedings, the juvenile courts and their procedures have come under close scrutiny by the legislature and courts in recent years. *In Re Gault* injected substantial due process protections into juvenile court procedures and many courts have followed suit in extending additional due process protections into areas not covered by the *Gault* decision. We can reasonably expect additional due process protections for juveniles in the years to come. Hopefully, judicial and legislative wisdom will combine to strike a reasonable balance between the juvenile's need for due process protection and the desire of the state to deal informally with juveniles in need of aid, encouragement, and guidance.

IMPORTANT RECENT DECISIONS

EVIDENCE/WITNESSES:
E§3.3 Cross-Examination
MISCELLANEOUS:
M§2 Law Enforcement Officers

Police responded to a burglar alarm system and found the defendant hiding behind a tree just outside the building. During the trial, the following questioning of the police investigator by the defense attorney took place:

> Defense Counsel: "Q: Wasn't it necessary for you to take this man and interview him before you cound get enough information to charge him with burglary and assault with intent to murder—is that right? Answer yes or no————"
>
> Investigation: "We had————
>
> Defense Counsel: "Answer the question yes not————I want him to answer yes or no."
>
> The Court: "He doesn't have to answer yes or no, he can tell you what he was doing."

The defendent appealed the ruling of the trial justice.

The court on appeal upheld the ruling of the trial justice, saying that the witness could answer the question in his own way as long as the investigator's answer was responsive to the question. *Williams v. State,* 23 So.2d 324 (Court of Criminal Appeals of Alabama, 1974).

SEARCH AND SEIZURE:
A § 2.5 Persons and Places

Defendant was convicted of a violation of federal firearms laws, and he appealed. Officers had obtained an arrest warrant and a search warrant, the validity of which was not in question, for the arrest of defendant and a search of defendant's store for "any intoxicating liquors, apparatus for manufacturing intoxicating liquors or materials used in the manufacture of intoxicating liquors." When the officers arrived to execute the warrants, they immediately arrested defendant. After seizing a small quantity of beer in the store, they proceeded to the upstairs residential area where they found no alcoholic beverages but where an officer noticed two rifles leaning against a wall in a closet. The officer removed the rifles and took them downstairs where he copied down their serial numbers. He then returned them to the closet. The officers later learned the rifles had been stolen, and they obtained a warrant for their seizure. On appeal, defendant argued that the officer's actions in removing the rifles from the closet, examining them, and copying the serial numbers pursuant to a warrant directing the seizure of alcoholic beverages, violated his Fourth Amendment rights.

The court reversed the conviction. The court analyzed the case under the plain view doctrine and noted that the doctrine requires (1) that the officer be in a place where he has a right to be when he views the evidence, (2) that the officer come across the evidence inadvertently, and (3) that it be immediately apparent to the officer that he has incriminating evidence before him. Here, the first two requirements were satisfied since the officer inadvertently discovered the rifles while executing a valid search warrant. However, it was not immediately apparent that the rifles were evidence incriminating the accused. The rifles were not contraband. There was no connection between the rifles and the crimes of selling or possessing intoxicating liquor without a license. Moreover, the officers had no knowledge at the time that the rifles were evidence of any other crime. It was only after the officer had seized the weapons, copied the serial numbers, left the premises, and run the numbers through the National Crime Information Center computer, that the officers learned the rifles were stolen and therefore incriminating. The court concluded that the officer's removing the rifles from the closet and copying down the serial numbers was a seizure which could not be justified under the plain view doctrine. Thus, the rifles should have been suppressed since the second warrant was impermissively tainted by the initial seizure. *United States v. Gray,* 484 F.2d 352 (Sixth Circuit Court of Appeals, August 1973).

ALERT

This bulletin is funded by a grant from the Maine Law Enforcement Planning and Assistance Agency.