FINAL DRAFT:

JUVENILE CODE COMMENTARY

1979

b.f.

INTRODUCTION TO COMMENTARY

The Commentary which appears under each section should be viewed as a joint product of members and staff of the Commission to Revise the Statutes Relating to Juveniles and the Criminal Law Advisory Commission.

The Commission to Revise the Statutes Relating to Juveniles was set up by the Legislature in 1975 (Private and Special Law c.101) and presented its proposals in 1977 to the first session of the 108th Legislature. That first session enacted the Maine Juvenile Code (P.L. 1977, c.520) with a delayed effective date of July 1, 1978. The second regular session in 1978 enacted an amendment bill (P.L. 1977, c.664) based on further recommendations by the Juvenile Commission.

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During that second session (P.L. 1977, c.671, 36) the Criminal Law Advisory Commission was assigned the duty "to evaluate the operation of the Maine Juvenile Code... and to recommend amendments to that code based on that evaluation."

These comments were prepared during the summer of 1979 under the supervision of Michael E. Saucier, Esq., Assistant Attorney General and Staff Counsel to the Criminal Law Advisory Commission. Further editing was done by Peter G. Ballou, Deputy District Attorney for District 2 and Chairman of the Criminal Law Advisory Commission. A draft was circulated for purposes of comment to the members of the Criminal Law Advisory Commission, many members of the Juvenile Commission and several other interested persons. The "Summary of the Preliminary Report of the Commission to Revise the Statutes Relating to Juveniles", published in October, 1976,

was a primary source for this project and is recommended as a primary source of the Juvenile Commission's general intent as to a number of policy choices. The value of that document is necessarily limited, however, because it is fairly general as to many matters, because little, if any, of the Code had been drafted at the time of its publication and because in some instances the policy choice of the enacted statute varies from the original Juvenile Commission intent.

Other sources include the notes and minutes of the meetings of the Commission to Revise the Statutes Relating to Juveniles and a draft set of notes prepared during the summer of 1978 under the supervision of Joseph J. Jabar, Esq., Chairman of that commission.

These comments should not be considered "legislative history". They were prepared after the enactment of the bills in question and were never before any member of the Legislature for his or her consideration. For the same reasons they cannot be considered as necessarily reflective of the intent to the Juvenile Commission or of the Criminal Law Advisory Commission, which prepared the 1979 amendments appearing in P.L. 1979, c.512. In addition, neither Commission has adopted these comments or taken any other formal action regarding them. The comments are a statement about the purpose and meaning of the provisions of the Juvenile Code by persons involved in or close to the drafting of the Code and the ongoing amendment process. They are offered not as a definitive statement of intent but as an aid to construction.

Special appreciation is due to Nathaniel Gardiner of Gardiner, Maine, a law student at the University of Virginia, for his work

on the research and writing of the comments during the summer of 1979; to Martha Dunlap of Yarmouth, Maine, a student at the University of Maine School of Law, for her research and writing of the earlier draft set of comments prepared in 1978; Janet Mills, Esq., Assistant Attorney General, and Ellerbe P. Cole, Esq., of Maine Criminal Justice Planning and Assistance Agency, for insightful comments about the draft; to Sandy Moores, Mr. Saucier's secretary, for her patience, cheerfulness and skill during the typing of the several drafts; and to Maine Criminal Justice Planning and Assistance Agency, for the funding of the two student summer internship grants which made this project possible.

October 15, 1979.

Joseph J. Jabar
Chairman
Commission to Revise the
Statutes Relating to Juveni

§ 3001. Title

COMMENTARY - 1979

This Part replaces the pre-Code juvenile laws, Title 15, Part 5 (Juvenile Offenders), chs. 401-407, sections 2501-2667. References to Part 5 in other statutes should be construed to refer to the Maine Juvenile Code, Part 6 of Title 15, where they are not inconsistent with the purposes of the code.

§ 3002. Purposes and construction.

COMMENTARY - 1979

Subsection 1. "These purposes continue the goals of rehabilitation and treatment which have historically characterized the juvenile justice system in Maine." State v. Gleason, Me., 404 A.2d 573, 581 (1979). Paragraphs A and D are substantially derived from pre-Code law, 15 M.R.S.A. §2501, which had stated that the purpose of the juvenile justice system was to provide the care, custody, and discipline that would approximate as nearly as possible that which a juvenile would receive from his parents, and 15 M.R.S.A. §2611(4)(A)(4), which required dispositions in the best interests of both the juvenile and the community. The underlying intent of paragraphs B, C, and D is to give priority to the least restrictive release condition (§3203(4)(B)) or disposition (§3313) that is appropriate for these purposes. "The State has the burden of justifying why any given intrusion - and not a lesser one - is called for." Commission to Revise the Statutes Relating to Juveniles, Summary of Preliminary Report (Guiding Principles) at 4 [hereinafter referred to as "Summary of Preliminary Report"].

Punishment, as it is used in paragraph C, is a subsidiary purpose designed to assist the court in choosing a disposition which is appropriate to the particular juvenile, and not determined entirely by reference to the nature of the offense committed. See State v. Gleason, supra, in which the Law Court held that under the Code a juvenile is not treated in an essentially punitive

manner for the violation of a criminal statute. 404 A.2d at 582. Furthermore, the "basic and primary idea of the Legislature is salvation not punishment." Id. at 582 n.10, citing the pre-Code case S....S....v. State, Me., 299 A.2d 560, 568 (1973). See also Wade v. Warden of State Prison, 145 Me. 120, 126, 73 A.2d 128, 131 (1950).

Paragraph E is consistent with the recommendation of the Commission to Revise the Statutes Relating to Juveniles [hereinafter referred to as the "Revision Commission"] that juvenile hearings be conducted in all procedural respects in the same manner as adult criminal proceedings, except for the absence of a jury. Summary of Preliminary Report (Recommendation No. 2) at 40. The introduction of procedural regularity replaces the prior informality in juvenile proceedings, Title 15, section 2510, and is consistent with the recent line of decisions of the United States Supreme Court: See, e.g., McKeiver v. Pennsylvania, 403 U.S. 528 (1970); In Re Winship, 397 U.S. 358 (1969); In Re Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966)

Subsection 2. The Juvenile Code is primarily a procedural statute with remedial rather than punitive purposes. See State v. Gleason, Me., 404 A.2d 573 (1979) 580-81. The purpose of Subsection 2 is to require statutory construction in compliance with the legislative intent. Cf. State v. Heald, Me., 382 A.2d 290, 299 (1978) (penal statutes are to be construed strictly, but not against the obvious will of the Legislature).

§3003. Definitions

COMMENTARY - 1979

This section includes many more definitions than existed under pre-Code law in Title 15, section 2502. Subsection 1 underscores the Code's compliance with the standard of proof beyond a reasonable doubt in juvenile adjudications. In Re Winship, 397 U.S. 358 (1970). See section 3310 (Adjudicatory hearing). By making "adult" and "juvenile" mutually exclusive terms the Code eliminates confusing references to "minority" in pre-Code law. The definition of "juvenile" as a person under 18 follows the raising of the age of adulthood from 17 to 18 in pre-Code law as amended by P.L. 1973, c.351.

Several of the terms defined in this section are more fully defined by further reference to other sections within the Code and the Maine statutes Bind-over hearing (§3101(4); Dispositional hearing (§3312); Informal adjustment (§3301(5)(B)); Probation (§3314(2)); Probation officer (Title 34, c.121, sub.c. V-A). Subsection 11, which had defined "intake", was repealed in 1978 by P.L. 1977,c. 664 because the Revision Commission preferred to leave the definition of an Intake Worker's responsibilities to the functions prescribed by the Code. See sections 3203, 3204, 3301, 3501, 3502. Intake workers were formerly designated as officers of the court who were employed by the Department of Mental Health and Corrections to screen referrals to Juvenile Court. P.L. 1977, c. 518. The law was repealed to avoid statutory conflict with pre-Code procedures prior to the July 1978 effective date of the Juvenile Code. P.L. 1977, c. 607 (Preamble).

§ 3004. Severability

COMMENTARY - 1979

This section is similar to Title 1, section 71. (Statutory Construction).

§ 3005. Forms, other than court forms, reporting formats, and other standardized written materials.

COMMENTARY - 1979

The purpose of this section is to provide state-wide uniformity in both judicial and administrative proceedings. Although two departments are involved, the provision is consistent with the Revision Commission's recommendation that services to juveniles be coordinated and that agency forms be standardized. Summary of Preliminary Report (Recommendation No.1) at 5. See also section 3316(1).

COMMENTARY - 1979

Subsection 1. Subsection 1 is derived from pre-Code law, 15 M.R.S.A. §2551, which provided that the District Court shall be known as the "juvenile court" when hearing the case of a person charged with committing a juvenile crime. The Revision Commission carefully considered the alternative of a separate juvenile court with its own bench and personnel, but resolved to keep the existing structure because it permitted special consideration of juveniles and avoided the isolation generally associated with a separate juvenile forum. Summary of Preliminary Report (Recommendation No. 1) at 39 and(Recommendation No. 6) 46. Since there are unique considerations in juvenile proceedings, the Revision Commission also recommended that judicial salaries be increased and that funding be provided for special seminars and training of the bar and the judiciary. Id.

Subsection 2. The basic requirements of juvenile court jurisdiction are that the alleged offense be committed by an individual before his eighteenth birthday, and that the offense constitute a juvenile crime as defined in section 3103. As under prior law, 15 M.R.S.A. §2551, Paragraph D states that the exclusive original jurisdiction of the juvenile court is determined by the age of the person at the time of the alleged offense, not by his age at the time a petition is filed. See Commentary to section 3105.

Paragraph C is derived in part from section 2553 of Title 15, except that upon a petition to return a juvenile pursuant to 34 M.R.S.A. §185, the Maine Juvenile Court no longer must find that the conduct underlying the original adjudication would have constituted a juvenile crime under Maine law. The deletion of that requirement permits cooperation with other states under the Uniform Interstate Compact on Juveniles. The return of runaways under the Compact is provided for in section 3507. See Commentary to section 3103.

A person who is charged as an adult criminal by another state, although he may be under 18 years old, is subject to return to the other state under the extradition law rather than pursuant to the Compact. See 15 M.R.S.A. §202; 34 M.R.S.A.§183(6).

Subsection 3. This subsection is consistent with section 53 of Title 17-A which requires a separate hearing in a criminal case if it appears that the person charged may have been under 18 years of age at the time of the alleged offense. If it is determined that the person was under 18 years of age, the District or Superior Court lacks jurisdiction and must dismiss the case. Referral can then be made to an intake worker pursuant to section 3301. There is no provision for automatic transfer back to juvenile court because it would be inconsistent with the intake procedures in Chapter 507 which are intended to divert as many cases as possible from the juvenile courts.

Subsection 4. This subsection authorizes the prosecuting attorney to request the juvenile court to waive jurisdiction so that the State can prosecute the juvenile as though he were an adult. Its purpose is to provide for more effective administration of justice with regard to juveniles who have committed serious offenses. Summary of Preliminary Report (Recommendation No. 4)at 41. Although this provision includes all of the considerations suggested by the Supreme Court in the Appendix to Kent v. United States, 383 U.S. 541, 565 (1966), it reduces the findings formerly required by section 2611(3) of Title 15. Thus, the juvenile court must consider, but no longer must find, whether the juvenile's conduct was committed in a violent manner, and whether there is reasonable likelihood thatsimilarfuture conduct will not be deterred by continuing the juvenile under the care, protection and discipline of the juvenile law processes.

The requirement of paragraph B is designed to prevent the problem of Breed v. Jones, 421 U.S. 519 (1974), in which the Supreme Court held that a juvenile is guaranteed the same protections against double jeopardy as an adult so that a bind-over hearing must precede and be separate from an adjudicatory hearing. 421 U.S. at 536. The Law Court has noted approvingly the procedures of this section. State v. Corliss, Me., 379 A.2d 998, 1001 n.8. (1977).

As under prior law, it will be necessary for the State to delay presentation of a bound-over case to the grand jury until after the five day appeal period (under section 3402(5)) has run.

See State v. Knowles, Me., 371 A.2d 624 (1977).

The requirement of a verbatim record for bind-over proceedings permits efficient appeals pursuant to section 3402. Section 3307, as amended by P.L. 1979, c. 512, requires that the bind-over hearings for murder or Class A, B or C crimes be open to the public.

Paragraph F is derived in part from section 2554 of Title 15 which required the Superior Court to function in the same manner and with the same powers and duties as in criminal proceedings. Paragraph G, enacted by P.L. 1979, c. 512, requires that any person once bound-over shall be proceeded against as if he were an adult in any subsequent prosecutions. The mandate of paragraph G is in accord with the bind-over findings relative to the maturity of the juvenile and the availability and propriety of the dispositional alternatives under the Code.

§3102. Venue

COMMENTARY - 1979

This section follows venue requirements in criminal cases and is consistent with ection 155(1) of Title 4 which requires that juvenile proceedings and criminal prosecutions shall be brought in the ivision of the District Court in which the offense charged took place. 4 M.R.S.A. §155(1) is adopted substantially verbatim in District Court Criminal Rule 18.

COMMENTARY - 1979

Subsection 1. This subsection provides the exclusive definition of juvenile crimes and represents a substantial departure from pre-Code law under 15 M.R.S.A. §2552. Moreover, because section 3101 grants the juvenile court exclusive original jurisdiction of proceedings against a juvenile alleged to have committed a crime as defined in this section, there can be no prosecution against juveniles in other courts except against juveniles who have been bound over (§3101(4)), or against juveniles alleged to have committed any civil violation, or against juveniles charged with criminal offenses in Titles 12 and 29 which are specifically excepted by paragraph A of this subsection.

Pre-Code provisions proscribing non-criminal conduct such as truancy, running away from home, incorrigibility, and associations with immoral people were repealed by P.L. 1977, c.420, §8, consistent with the Revision Commission assessment that such definitions were vague and that non-criminal conduct was inappropriate for juvenile court intervention. Summary of Preliminary Report (Recommendations Nos. 1-3), at 11-22.

The purpose of paragraph A is to include within the definition of juvenile crime all conduct which would be criminal if committed by an adult. The broader exclusion from most motor vehicle and conservation offenses was transferred from section 3101(1)(B) of the 1977 law, P.L. 1977, c.520. That transfer was intended to simplify reference to the sources of juvenile crimes. See L.D. 2163, 108th Leg., 2nd Reg. Sess., "Statement of Fact", §7 (1978).

The 1978 law, P.L. 1977, c. 664, further amended paragraph A to include only conduct which would be criminal "if committed by an adult," and to strike express reference to conduct defined as criminal in any "private act or ordinance". The effect of the 1978 amendment is two-fold: first, to include all conduct proscribed by Title 17-A and other statutes outside the Criminal Code which provide criminal penalties as defined by 17-A M.R.S.A. §§ 4 and 4-A; second, to pre-empt all non-statutory definitions of juvenile crime by "delet[ing] private acts or ordinances as reference sources" for the definition of juvenile crime, L.D. 2163, 108th Leg., 2nd Reg. Sess., "Statement of Fact", §11 (1978). To the extent that municipalities have police power under Title 30, Section 2151 to proscribe as civil violations conduct of adults, such conduct, if committed by a juvenile, may be prosecuted in District Court.

Because paragraph A only proscribes conduct which is defined as criminal in sections 4 and 4-A of Title 17-A (punishable by incarceration), the paragraph does not grant juvenile court jurisdiction over civil violations committed by juveniles. The Commission resolved, however, to continue juvenile court jurisdiction

over the violations of possession of marijuana and possession of alcohol by a person under 18 years of age. Summary of Preliminary Report (Recommendation No. 1) at 30. Paragraph B is derived from pre-Code law, 15 M.R.S.A. §2555(1), as enacted by P.L. 1975, c. 499, §4-A.

The purpose of paragraph D, enacted in 1978 by P.L. 1977, c. 664, is to grant the juvenile court a limited power, subject to petition by a prosecuting attorney, to order commitment to a secure institution for conduct which constitutes violation of a court's initial disposition of a juvenile adjudicated to have committed an alcohol or marijuana possession offense in paragraphs B and C otherwise not incarcerable under subsection 2. The definition is a compromise between the provision in subsection 2 which does not permit commitment or other detention for disposition of such offenses and the need to grant the court power to enforce the lesser dispositions in section 3314.

The language of the initial drafts of the 1978 law was "willful refusal to pay a resulting fine or willful violation of the terms of a resulting probation." Commission to Revise the Statutes Relating to Juveniles, Proposed Draft, "Statement of Fact", §9 (Jan. 5, 1978). Apparently the insertion of "and" in the final enactment, P.L. 1978, c. 664, §11 was an oversight in printing the bill (L.D. 2163). See L.D. 2163, 108th Leg., 2nd Reg. Sess., "Statement of Fact", §11 (1978) (Paragraph D offense occurs where adjudication of a paragraph

B or C offense and "refus[al] to pay a resulting fine or willful violat[ion of] the terms of a resulting probation" (emphasis added)). Consistent with the purpose of liberal construction in section 3002(2), the Legislature's intent can be reasonably construed to include offenses in this one paragraph as part of this subsection's listing of juvenile crimes. See 1 M.R.S.A. §71(2); Marshall v. State, 104 Me. 103, 72 A. 873 (1909) (the word "and" may sometimes be interpreted as "or" to effectuate, and not to defeat, the intent of the Legislature). Strict construction of the word "and" would define a peculiar crime which could occur only after a particular type of disposition: a court must have adjudicated a juvenile of committing a Paragraph B or C possession offense and the court must have imposed a fine and suspended it and placed the juvenile on probation; and the juvenile must have willfully refused to pay the underlying fine after the revocation of probation. The above sequence of events seems too remote to comport with legislative intent. See State v. Denis, Me., 304 A.2d 377, 382 (1973). Thus, the purpose of Paragraph D is to create another juvenile crime where a juvenile who possesses sufficient funds chooses not to pay a fine, or knowingly violates probation.

Paragraph E is derived from section 2552 of Title 15, which specifically retained OUI offenses within juvenile court jurisdiction. The legislative history of this paragraph corresponds with that of paragraph A.

Subsection 2. The limitation of incarceration for the possessory offenses under subsection 1, paragraphs B and C is derived from 15 M.R.S.A. §2555(2) (Supp. 1975), as amended by P.L. 1975, c. 499, §4-A. "Detention" in this context is not intended to limit the preadjudicatory detention powers following arrests based on those alleged possessory offenses. Summary of Preliminary Report (Recommendation No. 4)at 37. The reference to section 3314 is to postadjudicatory dispositions.

The Revision Commission originally recommended that the offense of prostitution be treated the same as alcohol and marijuana offenses, namely no incarceration after a first adjudication for these three offenses. See Summary of Preliminary Report (Recommendation No. 1)at 30. The Commission, however, subsequently revised its own recommendation and suggested that prostitution, alcohol and marijuana offenses be subject to incarceration. See L.D. 1581, 108th Leg.,1st Reg. Sess. (1977). The Legislature rejected the Commission's proposal in L.D. 1581 and adopted a modified version of the Commission's original recommendation. Thus, the incorporation of Title 17-A in paragraph A of the substantive crime of prostitution, 17-A M.R.S.A. §853-A, was not intended to limit the dispositional alternatives of juvenile court in the same way that section 853-A prohibits incarceration for adults. A juvenile adjudicated to have committed prostitution may be committed to the Maine Youth Center or subjected to any other disposition authorized in section 3314.

§ 3104. Jurisdiction conferred by general law.

COMMENTARY - 1979

This is a general provision to avoid unforeseen conflicts with existing laws not incorporated or revised in this Part.

There is no express provision for contempt powers in this Code as there was in 15 M.R.S.A. §2610, but such powers are derived from the court's traditionally inherent powers determined by common law. Ex Parte Terry, 128 U.S. 289 (1888); Stern v. Chandler, 153 Me. 62, 64, 134 A.2d 550, 551 (1957). Both pre-Code law, 15 MRSA §2603, and the first draft of the 1977 Juvenile Code, L.D. 1581, 108th Leg., 1st Reg. Sess., §3305, provided for contempt proceedings for failure to appear when summoned. There is no statement of the legislative intent in removing the provision in the 1977 enactment (P.L. 1977, c. 520).

Maine case law, however, provides that a court of record has inherent contempt powers which are not dependent upon statute. Ex parte Holbrook, 133 Me. 276, 177 A. 418 (1935). The District Court is denominated a court of record, 4 M.R.S.A. §151 and accordingly, it exercises contempt powers. H. Glassman, Maine Practice: Rules of Criminal Procedure Annotated, §142.1 (1967). Because the juvenile court is functionally the District Court exercising a particular jurisdiction, see section 3101(1), the juvenile court presumably has contempt powers.

§ 3105. Statute of limitations.

COMMENTARY - 1979

This section provides a statute of limitations for the prosecution of juvenile offenses which did not exist in pre-Code law, 15 M.R.S.A. §2501 et seq. Subsection 1 incorporates by reference the Maine Criminal Code limitation for offenses defined by section 3103(1)(A). The one-year limitation in paragraph A provides an outside limit for even "good cause" extensions to file a petition authorized by section 3303. The limitations provided in this section begin to run from the time the crime is committed, not from the time of referral to an intake worker. A distinct period of six months runs from the date of the referral to the intake worker. See section 3303.

§ 3201. Warrantless arrests.

COMMENTARY - 1979

The purpose of this section is to afford juveniles the rights concerning arrest which are afforded to adults by the Fourth and Fourteenth Amendments of the United States Constitution and by state law. The incorporation of the warrantless arrest procedures of the Maine Criminal Code, Title 17-A, is consistent with Revision Commission intent to subject juveniles to arrest for juvenile crimes by the same process provided for adults. Summary of Preliminary Report (Recommendation No. 3)at 37.

The incorporation by reference of the Criminal Code arrest powers, however, leaves some doubt as to whether there are warrantless arrest powers for the uniquely juvenile crimes of section 3103, subsection 1, paragraphs B-D, because those offenses do not readily fit the arrest classifications of sections 15 and 16 of Title 17-A, in that paragraph B and C crimes are not subject to commitment to a secure institution, section 3103(2).

There is, however, no indication of legislative intent to limit the arrest powers under this section, nor is there intent to treat these crimes for arrest purposes as if they were civil violations. The Revision Commission did recommend warrantless

arrest powers for possession of marijuana or alcohol, Summary of Preliminary Report (Recommendations Nos. 3 & 4) at 37 and the first draft of the Code (L.D. 1581, 108th Leg., 1st Reg. Sess. (1977)), provided in section 3201(1)(B) that arrest for uniquely juvenile crimes would be authorized according to the same standard as arrest for Class D or E crimes when committed in the presence of the arresting officer.

§3202 Arrest warrants for juveniles.

COMMENTARY - 1979

This section is consistent with the Revision Commission's intent that the Maine Criminal Code provisions relating to arrest be adopted for juveniles arrested for juvenile crimes. Summary of Preliminary Report (Recommendation No. 3) at 37. It is not the purpose of this section that the issuance of an arrest warrant predetermine the issue of preadjudicatory detention. Consistent with the purposes of this chapter, if an arrest warrant is issued, then the arresting officer must immediately notify an intake worker pursuant to the intake procedures of section 3203, if the officer believes that detention is necessary. If, pursuant to Rule 4,M.Dist.C.Crim.R., a summons is issued instead of an arrest warrant, then process must be served pursuant to section 3304.

Under Rule 4,M.Dist.C.Crim.R., a warrant of arrest may issue only after the filing of a complaint. By implication, the juvenile petition must also precede an arrest warrant. It appears, however, that a petition may not issue unless there has been a preliminary investigation by the intake worker under section 3301 which anticipates a possible informal adjustment without issuance of a petition. Section 3301 does not expressly require consultation with the juvenile and since a primary purpose of arrest warrants is to obtain personal jurisdiction over a juvenile who might

otherwise abscond, the preliminary investigation should, under such circumstances, be conducted on an ex parte basis, although in general it is sounder policy to conduct the preliminary investigation only with full consultation with the juvenile and his parents.

§3203. Arrested juveniles, release or detention, notification.

COMMENTARY - 1979

This section establishes the procedures for processing a juvenile who has been arrested under the powers authorized in sections 3201 and 3202. Its first purpose is to maintain traditional discretion of law enforcement personnel not to seek juvenile proceedings but to make preadjudicatory detention decisions the responsibility of the intake worker where juvenile court proceedings are sought. This section also requires prompt judicial review of any detention and prohibits any regular contact with adult detainees or inmates in any jail. The provisions for standards of detention, for a judicial finding of probable cause, and for referral to an intake worker constitute a substantial departure from pre-Code law, 15 M.R.S.A. §2608 (Supp. 1975), as amended by P.L. 1975, c. 538, §1.

Subsection 1. The 1977 enactment of subsection 1 (P.L. 1977, c. 520), which required law enforcement officers to notify intake workers immediately of any juvenile arrest, appeared to eliminate the traditional discretion of officers to refer the juvenile to a Youth Aid Bureau or social service agency or to release the juvenile without requesting that juvenile proceedings be instituted. To avoid ambiguity and to be consistent with the discretion of intake workers provided in section 3301, this subsection was amended in 1978 by P.L. 1977 c. 664, to require the officer to refer a case to an

intake worker once he has decided that juvenile court proceedings should be commenced against the juvenile. The amendment also broadens the officer's discretion to make a referral to an intake worker without arrest. See section 3301; cf. section 3501 (Interim care). None of the time periods in this section begins to run until the officer decides to refer the juvenile to the intake worker.

The purpose of this subsection is purely procedural. There is no record of Revision Commission intent to alter the probable cause standard of arrest developed by case law. See, e.g., Wong Song v. United States, 371 U.S. 471, 479-80 (1963).

Subsection 2. Although some of its provisions (notification of the intake worker's name and telephone number) may be inconsistent with the arresting officer's discretion not to refer the juvenile to the intake worker, subsection 2 applies to all arrests. Paragraph A contains the only requirement of a time period, 48 hours, for judicial review of detention pursuant to subsection 5. The purpose of the time limit is to require a hearing within 48 hours of detention or as soon as possible after an intervening weekend or legal holiday. The purpose of paragraph B is to ensure that a mature person close to the juvenile will be informed immediately of the juvenile's situation. This subsection is derived in part from prior law, 15 M.R.S.A. §2607, which required notification "as soon as reasonably possible under all the circumstances."

Subsection 3. The purpose of the written report in subsection 3 is to ensure that any continued detention after arrest will be

based on grounds which would confer jurisdiction on the court pursuant to section 3101 (Jurisdiction). This provision should be read as a requirement that there be probable cause to believe that the juvenile has committed a juvenile crime. It is consistent with the judicial finding of probable cause required for continued detention under subsection 5, paragraph D, as amended by P.L. 1979, c. 512, §3. Because a juvenile under arrest may be diverted from the court petition process by an informal adjustment (section 3301(5)(B)), the written report must be filed before such alternative dispositions are made by intake workers. See section 3301(5)(A).

Subsection 4. Subsection 4 does not require a finding of probable cause prior to the detention hearing, but rather authorizes broad intake worker discretion in the choice of pretrial release conditions and provides in paragraph C both reasons and a standard of review for preliminary detention orders. The purposes of detention in paragraph C are derived from the NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, Juvenile Justice and Delinquency Prevention, Standard 12.7 (1976), and these considerations other than the ensuring of appearance in court have been upheld on the basis of the State's role as parens patriae. State v. Gleason, Me., 404 A.2d 573 (1979)/ 583/ Paragraph B is derived from the NATIONAL ADVISORY COMMISSION standard 12.12, but the Law Court has held that in the absence of a prohibition of

release on bail, section 3203(4)(B)(4) " impliedly empowers the Juvenile Court to release a juvenile on simple money bail." State v. Gleason, 404 A.2d at 582.. Notwithstanding Gleason, however, conditional releases, including placements in group homes, are not reviewed by the Court, which in subsection 5 is authorized only to review detentions.

If a juvenile cannot post the bail which is set then the subsequent detention must be reviewed by the court.

Subsection 5. The detention hearing is the juvenile's first appearance before the court, and he must, therefore, be apprised of his constitutional rights, including the right to counsel pursuant to section 3306. Paragraph D, enacted by P.L. 1979, c. 512,§3, requires a finding of probable cause consonant with an adult's right, prior to detention, to a prompt finding of probable cause before a magistrate. Gerstein v. Pugh, 420 U.S. 103(1975); Moss v. Weaver, 525 F.2d 1258 (5th Cir., 1976). This provision was noted approvingly in State v. Gleason, 404 A.2d at 578-79.

Subsection 6. This subsection is a significant departure from pre-Code law,15 M.R.S.A.§2609, in that it requires the juvenile court always to be available for detention hearings on working days. If the judge is not located in the same division in which the juvenile is detained and the juvenile must be transported to another division, then the court must pay the transportation costs pursuant to 34 M.R.S.A.§268.

Subsection 7. Subsection 7 is derived in part from pre-Code law, 15 M.R.S.A.§2608 (Supp. 1975), as amended by P.L. 1975, c.538, §1, which provided for detention in jails designated by the Department of Mental Health and Corrections as places for the detention of juveniles, segregated from adults. As amended in 1978 by P.L. 1977, c. 664, this section no longer limits detention in jails to only those instances listed in paragraph B. Although the 1977 provision, P.L. 1977, c. 520, was more consistent with the Revision Commission's recommendation that there should be separate juvenile detention and evaluation facilities, Summary of Preliminary Report (Recommendation No. 2) at 35, this subsection still "ordains strict segregation of juveniles from adult offenders in jails or other secure facilities." State v. Gleason, 404 A.2d at 581. The amendment is consistent with the Legislature's decision not to follow the Revision Commission's recommendation to establish separate facilities. See Summary of Preliminary Report at 35-36; L.D. 1581, 108th Leg., 1st Reg. Sess.(1977). Paragraph B provides the same standard for the jailing of bound-over juveniles as for other juveniles, and authorizes review of a detention order upon a petition by the superintendent of the facility.

Subsection 8. This subsection was enacted in 1977 as an amendment (S-388) to L.D. 1984, 108th Leg.,1st Reg. Sess. (1977), enacted as P.L. 1977, c. 520. This subsection was repealed in 1978 by P.L. 1977, c. 664 because the mandatory language "shall be ordered released" was inconsistent with subsections 4 and 5 and in effect would repeal those sections. Rather than prohibit bail, the Legislature merely deleted all express reference to it.

L.D. 2163, 108th Leg., 2nd Reg. Sess., "Statements of Fact", §19(1978). See Commentary to subsection 4. See also State v. Gleason, 404 A.2d. at 577, n.2.

Subsection 9. The purpose of subsection 9, enacted by P.L. 1979, c. 373, §1, is to provide against lengthy detentions. L.D. 1406, 109th Leg.,1st Reg. Sess., "Statement of Facts" (1979). Prior to this law, the length of a preadjudicatory detention depended upon the initiative of the prosecuting attorney in filing a petition for adjudication under section 3301, and was effectively limited only by the 6-month dismissal provision of section 3303. Note, however, that there is no limit on the timing of an adjudication hearing.

§3204. Statements not Admissible in Evidence

COMMENTARY - 1979

The purpose of this section is to provide a privilege for statements made to intake workers which is consistent with the intake worker's function to develop a trusting relationship with the juvenile. As originally enacted in 1977 by P.L. 1977, c. 520, this section had excluded from evidence all statements made by juveniles to law enforcement officers while in an officer's custody, or to intake workers, unless the juvenile was emancipated, section 3506, or unless a parent, guardian or legal custodian or counsel was present. The repeal of that provision in 1978 by P.L. 1977, c. 664 was intended to make the admissibility of statements to officers not made in the presence of a parent subject to "current case law standards." L.D. 2163, 108th Leg.,2nd Reg. Sess., "Statement of Fact", §20 (1978). The recently decided case of Fare v. Michael C., ____U.S.____, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979), allowing admission of a confession obtained despite the denied request of a juvenile to consult with his probation officer, makes reasonably clear that the Supreme Court would not adopt a per se rule requiring a parent's presence as a precondition of admissibility.

It was the Revision Commission's intent to establish a broad privilege for statements made to an intake worker by a juvenile. Commission to Revise Statutes Relating to Juveniles, Minutes of December 1, 1977 Meeting at 4. The extent to which statements to intake workers are excluded from a particular type of hearing by

this provision, however, depends upon the scope of the term "in evidence." There is no record of Revision Commission or legislative intent as to whether this privilege should also apply to detention and bind-over hearings. See Commentary to 3307. As to admissibility in disposition hearings, the sponsor of the 1978 law which included this section (P.L. 1977, c. 664) explained that this section permits the admission of statements to intake workers "in helping the Judge decide about a sentence." Legislative Record, 108th Leg., 2nd Reg. Sess. at 532 (March 9, 1978).

§ 3301. Preliminary investigation, informal adjustment and petition initiation.

COMMENTARY - 1979

This section replaces pre-Code law, section 2601 of Title 15, which provided that any person could make an application to the juvenile court, orally or in writing, and the court then made a preliminary inquiry to decide whether the applicant should file a petition. This section authorizes the intake worker to conduct the preliminary investigation according to administrative procedures promulgated by the Department of Mental Health and Corrections. See section 3303(12). The function of the intake worker is to provide whatever services are necessary to prevent juveniles from coming into contact with the juvenile court system. Summary of Preliminary Report (Recommendation No. 1)at 5. See generally IJA-ABA JUVENILE JUSTICE STANDARDS PROJECT, The Juvenile Probation Function: Intake and Predisposition Investigative Service (1977).

Subsection 1. The exception to preliminary investigations by intake workers, 5 MRSA §200-A, is the statute which confers responsibility on the Attorney General for the prosecution of homicides.

Subsections 2-4. The substantive provisions contained in subsections 2-4 of P.L. 1977, c. 520 were relocated elsewhere throughout this section by the 1978 revision, P.L. 1977, c.664.

Subsection 5. The purpose of paragraph A is to give intake workers discretion to take no further action against the juvenile even if the worker has the law enforcement officer's report which includes facts sufficient to bring the juvenile before the juvenile court pursuant to section 3203(3)(officer's report). This para-

graph gives the Department of Mental Health and Corrections broad discretion, within the standard of "serving the best interests of the juvenile and the public", to promulgate guidelines for not seeking a petition as well as for making voluntary referrals. Under this paragraph, a decision to take no further action does not require a voluntary acceptance of services by the juvenile and his parents, guardian, or legal custodian. The referral alternative is merely listed in accordance with the statutory definition of the function of intake workers pursuant to section 3003(12).

The standard of "practicability" in paragraph B is broad enough to include all the circumstances surrounding the allegations and the situation of the juvenile. See IJA-ABA JUVENILE JUSTICE STANDARDS PROJECT, The Juvenile Probation Function at 57 (1977)(criteria for intake dispositional decisions). Informal adjustments are limited to a period of up to six months in order to preserve recourse to the Juvenile Court prior to a dismissal under section 3303 in case an adjustment proves unsatisfactory to the intake worker. The time limit reflects the understanding of the Revision Commission that six months is sufficient in any case for which informal adjustment would be appropriate; any case requiring a longer adjustment period should be considered by the juvenile court.

Paragraph B provides that a disposition by informal adjustment shall be consistent with the notions of fundamental fairness which are appropriate given the quasi-judicial nature of the intake process. The purposes of the signed, written agreement are to ensure formality to the process, to preserve a record for both parties, and to encourage a juvenile to accept an agreement instead of going to

court. The purpose of the requirement of facts establishing prima facie jurisdiction is to minimize inappropriate intervention by an intake worker. These facts may be supplied by those stated in the law enforcement officer's report pursuant to section 3203(3). The 1978 revision, P.L. 1977, c. 664, §22, which deleted the language of P.L. 1977, c. 420, §3301(3)(B) requiring an admission of facts an informal adjustment ("the facts are admitted and established prima facie jurisdiction") is consistent with the Revision Commission intent that no admission should be required as a condition precedent to an information adjustment. Commission to Revise Statutes Relating to Juveniles, Minutes of Dec. 1, 1977 Meeting at 5. Contrary to IJA-ABA JUVENILE JUSTICE STANDARDS PROJECT, The Juvenile Probation Function, Standard No. 2.4 (E)(7) at 7, this paragraph does not provide that compliance with an informal adjustment is a bar to prosecution, as the prosecuting attorney may petition in derogation of an adjustment under subsection 6. There is no provision for judicial review of informal adjustments, refusal to informally adjust or the prosecutor's decision to file a petition in derogation of an adjustment.

Subsection 6. This subsection provides that the prosecuting attorney can always initiate a petition, even in derogation of an intake worker's decision not to take further action or to make an informal adjustment. In the original version (P.L. 1977, c. 520, §3301(2)), however, the prosecuting attorney's power to overrule an intake worker's decision not to petition was limited to only those instances in which the original complainant and the victim requested a petition. The decision to make the prosecuting attorney's power plenary was made in the process of amending the "and" to "or" to remove the inadvertent requirement that both parties request

the
a petition. Commission to Revise/Statutes Relating to Juveniles, Minutes of Dec. 1, 1977 Meeting at 5.

§ 3302. Petition, form and contents.

COMMENTARY - 1979

This section replaces section 2602 of Title 15 and conforms with the Revision Commission's recommendation that delinquency hearings be conducted in all procedural respects, except jury trials, as are adult criminal hearings. Summary of Preliminary Report (Recommendation No. 2)at 40. By incorporating the form of Rule 3, M.Dist.C.Crim.R., this section, as well as section 3308(1), conforms with the constitutional due process requirements that the juvenile be informed of the nature of the charges against him. In re Gault, 387 U.S. 1, 33 (1967) See also section 3310(2)(procedures for amendment of a petition which supercede M.Dist.C.Crim. R. 3).

§ 3303. Dismissal of petition with prejudice.

COMMENTARY - 1979

This provision was intended to ensure quick processing of juvenile cases and to prevent indeterminate, nonjudicial dispositions. See Commentary to section 3301(5)(B) (Informal adjustments).

The 1978 amendment in P.L. 1977, c. 664, §23, provides some flexibility by authorizing "good cause" extension. Its purpose is to permit extension within a one year period from the time the offense was committed, pursuant to section 3105, not from the time the motion for an extension is filed. Note that this provision deals with a different post-commencement time period than that of section 3105 (Statute of limitations).

§ 3304. Summons

COMMENTARY - 1979

Subsection 1. This subsection, in conjunction with subsection 3, and section 3302 conforms with the constitutional due process requirement that "notice must be given to the parents and the child in writing of the specific charge or factual allegations to be considered at the hearing." In re Gault, 387 U.S. 1, 33 (1967).

Subsection 3. This section complies with due process required by Gault, and replaces section 2603 of Title 15, which required citation only upon the parent or guardian, not the juvenile, and conferred criminal contempt powers on the court to punish any failure to obey a citation. The first draft of the 1977 law (L.D. 1581, 108th Leg.,1st Reg.Sess. (1977) authorized bench warrants to issue for failure to appear pursuant to a summons, but in the deletion of that provision there is no record that the Revision Commission intended to remove contempt powers from the juvenile court. See also Commentary to section 3104.

Subsection 4. The Revision Commission intended this provision to comply with the procedural due process requirement that written notice of the charges "be given at the earliest practicable time, and in any eventsufficiently in advance of the hearing to permit preparation", In re Gault, 387 U.S. 1, 33 (1967). See Summary of Preliminary Report (Recommendation No. 2) at 40. The provision requiring the custodian to produce the juvenile in court follows the pre-Code practice in section 2603 of Title 15.

Subsection 5. The purpose of this subsection is to give the juvenile court some flexibility not to serve process on the parents, but only when it is impossible to do so. The requirement of a

written statement of reasons provides a record and ensures that the proceedings conform with Gault.

Subsection 6 and 7. These subsections are intended to be consistent with the Maine District Court Criminal Rules. See Rules 8 and 17, M.Dist.C.Crim.R.

§ 3305. Answer

COMMENTARY - 1979

This section is analogous to Rule 11 ("Pleas") of the Maine District Court Criminal Rules, but is termed an answer because juvenile proceedings are formally considered civil in nature. Unlike civil proceedings, however, this section does not permit adjudication by default; it only expedites proceedings subject to constitutional standards of an intelligent and knowing waiver. It is a substantial departure from the pre-Code practice of Title 15, section 2610 which did not appear to permit a juvenile or his representative to waive a hearing.

§3306. Right to counsel.

COMMENTARY - 1979

This section follows pre-Code law, 15 M.R.S.A. §2608 (Supp. 1975), as amended by P.L. 1975. c. 538. It is not mandatory that the court appoint counsel, but the assistance of counsel is a constitutional right of juveniles, In re Gault 387 U.S. 1 (1967) and any waiver is subject to case law standards. This approach does not follow the federal law, 18 U.S.C. §§5032, 5034 (Supp. 1978) (right to counsel non-waivable), but conforms with the UNIFORM JUVENILE COURT ACT § 26a (waiver if juvenile has been informed of his right to counsel and knowingly fails to request counsel).

§3307. Hearings, publicity, record.

COMMENTARY - 1979

Subsection 1. The Revision Commission intended this subsection to conform with the recent line of United States Supreme Court decisions, McKeiver v. Pennsylvania, 403 U.S. 528 (1971), In Re Winship, 307 U.S. 358(1970), In Re Gault, 387 U.S. 1 (1967), and Kent v. United States, 383 U.S. 541 (1966), which guarantee to juveniles most of the constitutional safeguards guaranteed to adults except jury trials. Summary of Preliminary Report (Recommendation No. 2)at 40. The legislative denial of a jury trial in juvenile proceedings under the Code has been held constitutional. State v. Gleason, Me., 404 A.2d 573, 583-85 (1979).

The incorporation by reference of the Maine Rules of Evidence indicates that the Legislature intended the Rules apply to juvenile adjudication hearings although Rule 1101(b) states that the rules are inapplicable to proceedings in juvenile cases. There is no indication whether the Legislature or Revision Commission intended the Maine Rules of Evidence to apply in detention, bind-over,or disposition hearings. Although the subsection refers to "hearings under this Part" (Part 6 of Title 15, The Juvenile Code), the reference to hearings being conducted without a jury could only have applicability to adjudicatory hearings. Further, to the extent

that this section's purpose is to conduct juvenile proceedings the same as adult proceedings, see Summary of Preliminary Report (Recommendation No. 2) at 40, it would be inconsistent to apply the Rules of Evidence to the juvenile proceedings analogous to adult bail and sentencing hearings (detention and disposition). Juvenile detention and disposition proceedings fulfill the same function as adult bail and sentencing hearings, to which the Maine Rules of Evidence are also inapplicable under Me.R.Evid. 1101(b).

The probable cause portion of detention hearings was specifically excluded from operation of the Evidence Rules by section §3202(5)(D), added by P.L. 1979, c. 512, §3.

Subsection 2. Subsection 2 opens to the public all hearings on a juvenile crime that would constitute at least a Class C crime if committed by an adult. P.L. 1979, c. 373. Prior to the Code, section 2609 of Title 15 required consent of the court, enforced by contempt powers, before those present at a juvenile hearing could divulge matters which occurred there, or before anyone could publish the name of juvenile who was brought or to be brought before the Court. As first enacted, the Code opened only adjudicatory and dispositional hearings. Prior to the enactment of P.L. 1979 c. 373, Paragraph A, in conjunction with Paragraph B, excluded the public from all but adjudicatory hearings for murder and Class A-C offenses. As a result of P.L. 1979, c. 373, all hearings for murder and Class A-C offenses are open. Paragraph B excludes the public from "all other juvenile hearings," that is, those for Class D & E crimes and the uniquely juvenile offenses, section

3103(1)(B)-(D). This section reflects the Revision Commission's recommendation that there be open hearings for serious crimes because the public's right to information outweighs any benefit gained by protecting the juvenile from public scrutiny. Summary of Preliminary Report at 44.

Paragraph B also prevents exclusion of the public from hearings when the lesser offenses are tried along with murder or a Class A-C crime. The purpose of Paragraph B is to give the juvenile the option of joinder of offenses because he suffers less prejudice from such joinder, being already subject to public proceedings on the pending murder or Class A-C offenses, and he gains the speedy determination of other lesser pending charges.

Although the first draft of the Code also gave a juvenile accused of murder or a Class A-C crime the right to a jury trial in Superior Court (L.D. 1581, 108th Leg., 1st Reg. Sess., §3308 (1977)), a sponsor of the 1977 law stated that the provision was withdrawn due to perceived constitutional problems of granting jury trials to only certain classes of juveniles. Legislative Record, 108th Leg., 1st Reg. Sess., at 2301 (1977).

The purpose of Paragraph C, enacted by P.L. 1979 c. 233 is to ensure full participation to facilitate restitution contracts. See also section 3314(1).

Subsection 3. Although there is no constitutional requirement that juvenile hearings be recorded, In Re Gault, 387 U.S.1 58 (1967), the purpose of this section is to facilitate appeals by providing the basis for a record. The provision relative to detention hearings was briefly repealed by P.L. 1979 c. 373 but then reenacted by P.L. 1979 c. 512 with a special effective date of one day after that of chapter 373. The later enacted provision thereby controls. See L.D. 1661, 109th Leg., 1st Reg. Sess., "Statement of Fact" (1979).

§3308. Court records; inspection.

COMMENTARY - 1979

This section provides greater access to court records than prior law, 15 M.R.S.A § 2609, where permission of the court was necessary even for the parties, and it was considered contempt of court to publish the name of a juvenile who was before the court. See Opinion of the Attorney General (May 23, 1977). Because of the absence of an express penalty, violation of this section would be considered a civil violation. See 17-A M.R.S.A. §4-A

Subsection 6 is derived from section 2606 of Title 15, but it now applies only to "Operating Under the Influence" and homicide offenses involving motor vehicles, see 29 M.R.S.A.§§1312(10) & 1313, because those are the only motor vehicle offenses still within juvenile court jurisdiction. See Commentary to section 3103. The original draft of the Code, L.D. 1581, 108th Leg., 1st Reg.Sess. (1977), had also included procedures and standards for expungement of juvenile court records.

§ 3309. Procedure

COMMENTARY - 1979

This section was amended by P.L. 1979, c. 512, to clarify procedures in the juvenile court. Significantly, the procedures will include discovery, Rules 16 and 16A, M.Dist.C.Crim.R. and search and seizure, Rule 41, M.Dist.C.Crim.R. In the first enactment, this section incorporated only Rule 12 dealing with pretrial motion practice and defenses.

§3310. Adjudicatory hearing, findings adjudication.

COMMENTARY - 1979

Subsection 1. Subsection 1 is consistent with the Revision Commission's intent to make juvenile court procedures comply with those in adult criminal trials. Summary of Preliminary Report (Recommendation No.2) at 40. This subsection is a substantial departure from the prior law of Title 15, section 2606. See State v. Carey,Me., 290 A.2d 839, 840-41(1972).

Subsection 2. Subsection 2 is intended to provide procedures concerning variances between the petition and the proof at adjudicatory hearings. The failure of paragraph B, however, to specify which "event" to which it refers (the evidence varying from the allegations of the petition on the agreement of the parties) creates some doubt regarding the procedure to be followed in the event the parties do not consent to amendment of the petition. It is clear only that there was intent to liberalize pleading and variance practice beyond that permitted bythe criminal rules. M.Dist.C. Crim.R. 3 (d) permits amendment only if "no additional or different offense is charged." If paragraph A allows the court to consider the additional matters, upon consent of the parties, without amendment of the petition, then paragraph B, requiring amendment, has applicability only to those situations where the parties do not consent. On the other hand, if amendment is always required, a departure from traditional practice, then paragraph A would appear to require consent.

Subsection 3. Subsection 3 provides authority for only limited predispositional examinations. Prior to the Code, section 2608 of Title 15 left all preadjudicatory custody or detention to the discretion of the court. A juvenile can now be detained prior to adjudication only for the purposes enumerated in section 3203(4)

or for psychiatric examination pursuant to section 3318. Thus, the Code precludes the former common practice of pre-adjudication detention to the Maine Youth center for "evaluation."

Subsection 4. Subsection 4 is derived from In Re Winship, 397 U.S. 358, 368 (1970), which held that proof beyond a reasonable doubt is a constitutional safeguard to which a juvenile is entitled in any adjudicatory hearing.

Subsection 5. Subsection 5 was originally enacted by P.L. 1977, c. 520, to read "shall adjudge",thereby denying the juvenile court the power to withold an adjudication or, where required by the evidence, a dismissal with prejudice. As amended by P.L. 1977, c.664, this subsection provides that the court "may adjudge." The purpose of the amendment was to retain the juvenile court's traditional discretion to dismiss a case without adjudication, which was a common practice under the informal procedures of the prior law, Title 15, section 2610. See L.D. 2163, 108th Leg., 2nd Reg.Sess., "Statement of Fact" (1977). The revision contained in P.L. 1979, c. 373 no longer requires the court to set forth the basis of its findings in an order of adjudication because the Legislature determined that a verbatim record would be sufficient to facilitate appeals. See L.D. 1406, 109th Leg., 1st Reg.Sess, "Statement of Fact" (1979).

Subsection 6. The purpose of subsection 6 is to protect juveniles from the civil liabilities--exclusion from the Armed Services and public offices, which adult convictions may entail. State v. Gleason, Me., 404 A.2d 573, 581 1979 (reference to this subsection in upholding flexible standards of procedural due process under Juvenile Code). This subsection is derived from prior law, 15 M.R.S.A. §2502(1).

§ 3311. Social study and other reports.

COMMENTARY - 1979

By current practice the Juvenile Probation and Parole officers, authorized under Title 34 section 1681 et seq., are the Department of Mental Health and Corrections personnel who make the social study for the court.

The opportunity for counsel to confirm or dispute any recommendation for disposition regardless of its source is consistent with the constitutional standard of due process in juvenile court proceedings. Kent v. United States, 383 U.S. 541, 563 (1966). The juvenile and his counsel have access to all such records pursuant to section 3308.

§3312. Dispositional hearing.

COMMENTARY - 1979

This section outlines the procedures for a dispositional hearing. Prior law did not provide a separate hearing, see 15 MRSA §§2610, 2611, but it did require a disposition "best serving the interest of the juvenile and the public." 15 M.R.S.A. §2611(4)(H).

Notwithstanding the authorization pursuant to section 3310(5)(B) which limits continuances to not more than 2 weeks, subsection 3, as amended by P.L. 1979, c. 373, provides for continuances up to one month when it is reasonable for the purpose of receiving evidence. The 1979 amendment further provides for a one year continuance of the dispositional hearing where the court places the juvenile in certain programs "or for such purpose as the court in its discretion deems necessary." The effect of the 1979 amendments to Paragraph A may be a return to the prior informal probation under section 2611(2) of Title 15.

§3313. Criteria for withholding an institutional disposition.

COMMENTARY - 1979

The purpose of this section is to implement the Revision Commission's recommendation that juveniles be taken out of the custody of their parents only as a last resort when their welfare and safety or the protection of the public would otherwise be endangered. Summary of Preliminary Report (Guiding Principles) at 4. See also section 3002(1)(c). By listing placement in a secure institution as an exceptional disposition, the Revision Commission intended to minimize its use to cases where the court made one or more of the requisite findings in subsection 1. This section provides statutory standards without restricting the broad range of dispositions traditionally available to the court.

§ 3314. Disposition.

COMMENTARY - 1979

Subsection 1. Most of the dispositions in this section were previously authorized for the juvenile court under 15 M.R.S.A. § 2611(4) (Supp. 1975). Paragraphs B and E authorize restitution and placement in service programs which were not expressly provided for under pre-Code law.

Paragraph H parallels section 1203 of Title 17-A, as amended by P.L. 1979, c. 512, §39, and permits split sentences in which the initial brief "shock" portion must be served at a county jail. The provisions for unconditional discharge in Paragraph I corresponds with the adult sentencing alternative in section 1201(2) of Title 17-A.

The Code allows review and modification of dispositions only under certain circumstances, for example, modification pursuant to section 3317. Under the pre-Code provision in section 2611(5) of Title 15, the Law Court held that the juvenile court lost jurisdiction over the juvenile after an order of disposition committed the person to a state department. State v. Corliss, Me. 379 A.2d 998, 1000-1001 (1977).

Subsection 2. Subsection 2 provides that probation will be administered in accordance with section 1204 of Title 17-A, which proceedings are also incorporated by reference in the probation chapter of Title 34 (c.121, section 1683) who does not permit the imposition of probation prior to adjudication as was authorized by continuance under pre-Code law, 15 MRSA 2611(2). But cf. section 3312(3)(A)(2) (one year continuance of disposition hearing).

§3314-A. Period of probation; modification and discharge.

COMMENTARY - 1979

The purpose of this section is to provide the same limit on juvenile probations as on adult probation where the juvenile crime is defined by reference to the adult code. See Commentary to section 3103. Accordingly, the maximum periods of probation are as follows: for Class A or B offenses, three years; for Class C offenses, two years; for Class D or E offenses, one year. For those crimes which are uniquely juvenile crimes and not covered by the probation classifications of Title 17-A, section 1202, the Legislature set a limit the same as those for Class D and E offenses. Prior to the Code, Title 15 section 2611(2) provided for a one year limit on probations imposed during a continuance of the case.

§ 3315. Right to periodic review.

COMMENTARY - 1979

Due to the indeterminate periods of some juvenile court dispositions, for example, a commitment to the Youth Center pursuant to section 3316, the Revision Commission resolved that the juvenile should have a right to review and evaluation of the services provided to him. Because this review is for dispositions which transfer jurisdiction from the juvenile court, it is an administrative proceeding of the agency to which the juvenile is committed. The Department of Mental Health and Corrections has interpreted this section to mandate a written report containing the information specified in subsection 2 only where a juvenile has been under commitment for over one year. Department of Mental Health and Corrections, Bureau of Corrections Directive, June 12, 1979. Where the commitment is limited to one year, the contents of the Department's reports are limited to that required by paragraph A of subsection 2. Id. In addition to reports required under this section, the Department must evaluate all individuals in its programs every six months, pursuant to section 266(3) of Title 34.

§ 3316. Commitment to the Department of Mental Health or the Department of Human Services.

COMMENTARY - 1979

Subsection 1. The purpose of Subsection 1 is to facilitate the transfer of information and to minimize duplication of effort in obtaining it. Information available to the court after adjudication is also available to the department having custody of a juvenile purusant to section 3308.

Subsection 2. Subsection 2 provides the court with the discretion to limit or extend its indeterminate commitment of the juvenile to the Youth Center while leaving undisturbed the superintendent's statutory discretion to release a juvenile's eighteenth birthday or a court-imposed time period. See 15 M.R.S.A. §2718 (Supp.1978). The purpose of the amendment in P.L. 1979, c. 512, §7 was to eliminate the use of indeterminate commitments with court-imposed limits of less than one year because of the nature of Youth Center programs make such limited commitments inappropriate. The purpose of the limitation or extension provision was to enable the courts to ensure fairness by allowing for some equalization between commitments for a young juvenile and an older juvenile, both of whom would otherwise be subject to indeterminate Youth Center commitments until age 18. The extension or limitation by the court on the indeterminate commitment must be made at the time of commitment. But cf. section 3317 (extension of commitment on good cause petition). See also Commentary to section 3314.

The purpose of the other 1979 amendment contained in P.L. 1979, c. 512, §7, is to make clear that the extension device should not be interpreted to permit imposition of a mandatory minimum amount of incarceration.

§ 3317. Disposition after return to juvenile court.

COMMENTARY - 1979

This section is derived from 15 M.R.S.A. §2611(5)(Supp.1975) as amended by P.L. 1975, c. 538, §7. It provides a mechanism for exceptions to the limits initially imposed by the court at the dispositional hearing. As under prior law, the Superintendent of the Youth Center must petition the court before this express mechanism for redisposition of commitments to the Youth Center is triggered. This section departs from prior law in that it expressly authorizes an extension of commitment, subject to the requirement of section 3314 that the extension of a juvenile's commitment can not exceed his or her twenty-first birthday. The devise is also useful where the Superintendent believes that a lesser disposition is desirable. The provision is analogous to section 1154 of Title 17-A which provides that adult sentences in excess of one year are deemed tentative. The significant distinction between this section and adult resentencing is that in adult proceedings the revised sentence may not be greater than the original sentence.

§ 3318. Mentally ill or incapacitated juveniles.

COMMENTARY - 1979

This section is derived from section 2503 of Title 15 but provides more complete procedures consistent with the Revision Commission's intent to give juveniles the same protections as adults prior to adjudication. The reference in paragraph B of subsection 2 is section 101 of Title 15.

§ 3401. Appeals structure and goals.

COMMENTARY -1979

This chapter was reorganized by P.L. 1979, c. 512 in order to clarify the procedures for three types of appeal by various parties. The revision replaces the first enactment, P.L. 1977, c. 520, which had been substantially derived from the IJA-ABA JUVENILE JUSTICE STANDARDS, Appeals and Collateral Review (1977). It is intended to be more consistent with the other chapters of the Code and with Maine appellate practice generally, particularly in the criminal area. It eliminates the rather piecemeal, interlocutory appeals that were possible under the original chapter. For example, the original chapter allowed appeal of a bindover order all the way to the Law Court prior to grand jury proceedings.

Subsection 1 describes a two-step appellate structure from the juvenile court to the Superior Court, which therefore serves as an intermediate appellate court, and from the Superior Court to the Law Court. Reference must be made to other sections in this chapter in order to determine what parties may appeal which matters.

Under sections 3402-3405, the juvenile or the juvenile's parents or guardians may appeal any matter specified in section 3402(1) from the juvenile court to the Superior Court. The State may appeal from juvenile court to Superior Court only the refusal of the juvenile court to bind over a juvenile.

Further review of the Superior Court's decision on an appeal of an adjudication or disposition is available in the Law Court under section 3207(2), and may be obtained by any party, including the State. See Commentary to section 3407(2). Review of other

matters is final with the Superior Court except that the juvenile or his parents may contest the validity of a bind-over in the course of an appeal from an adult conviction.

Appeals by the State from the juvenile court directly to the Law Court constitute the only exception alluded to in section 3401(1) to the general two-step structure. These appeals, under section 3407(2), of both pre-trial and certain post-trial matters are coextensive with the State's appeals in adult criminal cases under Title 15, section 2115-A.

The revision of this section eliminates the provisions in the first enactment, P.L. 1977, c. 520, §3401(4), which specifically denied a right to jury trial on appeal and which applied the District Court Civil Rules for appeal except where inconsistent with this Part. The first provision was deemed unnecessary in a system involving appellate review rather than de novo proceedings. The second was replaced with section 3403, allowing the Supreme Judicial Court to promulgate special rules.

Subsection 2 was first enacted in P.L. 1977, c.520 and is derived from the IJA-ABA JUVENILE JUSTICE STANDARDS, Appeals and Collateral Review, Standard No. 1.1 at 3. The purpose of paragraph B is to ensure even-handed treatment during the detention and adjudication stages and in the exercise of the juvenile court's dispositional discretion. Paragraph B, however, is not intended to displace the abuse of discretion standard for dispositions. See sections 3402(1)(A) and 3405(1).

§3402. Appeals to Superior Court.

COMMENTARY - 1979

Subsection 1. As first enacted by P.L. 1977, c.520, subsection 1 was derived from the IJA-ABA JUVENILE JUSTICE STANDARDS, Appeals and Collateral Review, Standard no. 2.1 (Final Orders). As revised by P.L. 1979, c. 512, this section enumerates specific appealable orders rather than generalized concepts and deletes matters which did not appear to exist under this Code or under Maine practice generally. The revision, however, is not intended to effect changes in juvenile court procedures. For instance, the reference in paragraph B to appeal for modification of dispositions reflects the limited power of the juvenile court to modify a dispostion, as under section 3317(redisposition upon petition of Superintendent of Maine Youth Center). Similarly, the reference to appeals from a modification of a detention order relects the juvenile court's implied power to modify a detention order pursuant to section 3203(5).

Subsection 2. Subsection 2 is also derived from the IJA-ABA JUVENILE JUSTICE STANDARDS. In the discussion of that standard, the IJA-ABA Commission concluded, in light of the line of United States Supreme Court decisions, including Wisconsin v. Yoder, 406 U.S. 205 (1972) and Prince v. Massachusetts, 321 U.S. 158 (1944), that "parents' custodial rights to their children were so independently significant and so rooted in a citizen's right to family privacy as to mandate an independent right in the parent or custodian to appeal an order which affected custodial rights even though the juvenile may not wish to appeal it". IJA-ABA JUVENILE JUSTICE STANDARDS, Appeals and Collateral Review at 25. See also Danforth v. State

Department of Health and Welfare, Me. 303 A.2d 794 (1973); In Re Edwards Estate, 161 Me. 141, 210 A.2d 17 (1965). The parents' right to independent appeal is consistent with the purpose in section 3002(1)(B). In an appeal allowed in substitution of the juvenile's right, however, the parent presumably would not be allowed to argue a claim which is antagonistic to the juvenile's interest, such as one that the disposition should have been more severe.

Subsection 3. Subsection 3 removed several grounds for state appeals to Superior Court. Section 3407(1), however, expanded the right of the State to appeal other orders directly to the Law Court.

It was the Revision Commission intent that there be no appeal from an intake decision not to detain a juvenile. Commission to Revise the Statutes Relating to Juveniles, Minutes of December 1, 1977 Meeting at 5.

Subsection 4. Subsection 4 replaces the original section 3405, from P.L. 1977, c. 520, which specified that a juvenile or his parents, guardian or legal custodian could request the stay of an order. The purpose of the 1979 revision was to treat such requests in juvenile cases the same as in adult cases. See Rule 38, M.Dist. C.Crim.R. No change was intended by the by the deletion of section 3405(1) of the 1977 enactment. Any person who is a party pursuant to subsection 2 can apply for a stay of judgement.

Subsection 5. Subsection 5 imposes the same time period for appeals to the Superior Court as provided in the original section 3402(5).

§3403. Rules for appeals.

COMMENTARY - 1979

This section was revised by P.L. 1979, c. 512 only to simplify the language. No substantive change was intended. See also Commentary to section 3401.

§3404. Counsel on appeal.

COMMENTARY -1979

As first enacted by P.L. 1977 c. 520, this section had provided the juvenile the right to appointed counsel on appeal if both he and his parent, guardian or legal custodian were indigent; it also provided an indigent parent of the juvenile the right to appointed counsel to effect an appeal against the wishes of the juvenile. P.L. 1977, c. 520,§3404. The assistance of counsel on appeal comports with due process, see Kent v. United States, 363 U.S. 541 (1966), and the recommendations of the IJA-ABA, JUVENILE JUSTICE STANDARDS,Appeals and Collateral Review, at 29-30. The revisions in P.L. 1979 c. 512 simplified the language and, in the case of an appeal by the juvenile, eliminated the requirement that both he and his parents be indigent.

§3405. Scope of review on appeal; record.

COMMENTARY - 1979

This section replaces the original section 3401(1)(C), which provided a similar standard of review and simply stated that the appeal "shall be on the record." Subsection 1 contains a standard of review which is a substantial departure from the prior law contained in 15 M.R.S.A. §2664, requiring a trial de novo on an appeal of an adjudication to Superior Court. State v. L...D..., Me., 320 A.2d 885 (1974). The appeal of a bindover also provided a de novo hearing. 15 M.R.S.A. §2661(1). Subsection 2 elaborates upon the original record reference in section 3401(1)(C)(P.L. 1977, C.520) by specifying the form of that record. Appeals of detention orders should be heard as expeditiously as possible and, therefore, a different form of record is provided for those appeals.

§3406 [Disposition of appeals] Repealed. 1979, c.512, §13, eff. September 14, 1979.

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§3407. Appeal to the Law Court.

COMMENTARY - 1979

Subsection 1. Subsection 1 replaces those portions of section 3402(3) of the 1977 law (P.L. 1977, c.520) not concerned with appeals of refusals to bind over, which are separately appealable Superior Court under section 3402(3). The earlier section 3402(3) allowed appeals by the State from juvenile court to Superior Court of "orders" declaring statutes unconstitutional, finding an absence of jurisdiction, or depriving the prosecution of evidence. It did not specify at what stage of the proceedings in juvenile court such an appeal might be taken. The incorporation of Title 15, section 2115-A, amended by P.L. 1979, c.343, governing appeals by the State in criminal cases, allows appeals of approximately the same subject matters, at least before trial, but makes several other changes. Under section 2115-A, any appeal must take place either before the adjudication hearing or following it, the latter type of appeal being limited by the double jeopardy guarantee. The Attorney General's approval is required. The most significant change, however, is that appeals under the new provision are directly to the Law Court rather than to Superior Court.

A decision not to bind-over, for which there is no analogous criminal proceeding, is not reviewable by the Law Court on appeal from juvenile court under this section because there is already provision for review by the Superior Court of such appeals by the State under section 3402(3). Under subsection 2(B), only the juvenile may thereafter seek review of a bind-over order by the Law Court, and then only as part of the appeal from a conviction as an adult, rather than prior to trial.

Subsection 2.

Paragraph A governs appeals to the Law Court of decisions of the Superior Court on appeal from the juvenile court under section 3402. However, only a decision affirming or reversing an adjudication or disposition may be so appealed. Although under section 3402, the juvenile or his parents or guardians may initially appeal an adjudication or disposition from juvenile court to Superior Court, the State, as a party aggrieved by the Superior Court's reversal of a conviction or modification of a disposition in favor of the juvenile, may appeal such a decision to the Law Court. Appeals by the State from post-trial terminations by the juvenile court in favor of the juvenile are generally restricted by the double jeopardy guarantee, and, to the extent available at all, lie directly to the Law Court under subsection 1 and section 2115-A. There is, however, nodouble jeopardy bar to a prosecution appeal from an adverse intermediate appellate court ruling, because only reinstatement of the original adjudication or disposition, rather than a new hearing, is necessary upon re-reversal by the highest court in a two-tier appellate structure. See United States v. Wilson, 420 U.S. 322, 345, (1975); Forman v. United States, 361 U.S. 416,426 (1960).

Paragraph B limits review of bind-over orders to only one immediate appeal, from juvenile court to Superior Court. The purpose of paragraph B is judicial economy, but it is still consistent with fundamental fairness in that final review of the bind-over decision is permitted upon a conviction, the time at which the juvenile's liberty interest is immediately threatened. Under prior law, the bindover appeal to Superior Court was "not subject to further review." 15 M.R.S.A. §2661(1); State v. Alley,

Me., 385 A.2d 1174, 1176-77 (1978).

Paragraph C is consistent with the Revision Commission's recommendation that juvenile proceedings be conducted in all procedural respects as are adult criminal hearings in accordance with the constitutional standards recently articulated by the United States Supreme Court. Summary of Preliminary Report (Recommendation No.2) at 40. It simply incorporates the procedure used in appeals from the Superior Court to the Law Court in adult criminal cases.

§3501. Interim care

COMMENTARY - 1979

The substantive provisions of this chapter authorize only crisis intervention by the state without a court order in restraint of juveniles who are in danger or who are runaways without the consent of a parent. The purpose of this chapter is to eliminate juvenile status offenses which existed under prior law, for example, "repeatedly deserting one's home without just cause," and "living in circumstances of manifest danger of falling into habits of vice and immorality," 15 M.R.S.A. §2552 (Supp. 1975), and to provide services to a juvenile conditioned on his or her voluntary acceptance. Summary of Preliminary Report (Recommendation Nos. 1 and 2)at 17.

Accordingly, procedures for handling endangered and runaway juveniles included under this chapter are to be distinguished from the procedures in Chapter 505 for the arrest and detention of juveniles. Judicial proceedings referred to in this Chapter, namely, proceedings under 22 M.R.S.A. §3792 (Supp. 1978) (Protective custody), are before the District Court, not the Juvenile Court, because the purpose of interim care is custody, not the adjudication of a juvenile alleged to have committed a juvenile crime. See sections 3003(12) (Definitions) and 3101(2) (Juvenile court jurisdiction). Several sections of this chapter are derived from the Commission's recommendations for runaway children. Summary of Preliminary Report (Recommendations 3 & 4 and Discussion) at 22-26.

Subsection 1. This standard for interim care corresponds with the Commission's intent that there be temporary custody of runaways only as an interim measure for the ultimate purpose of finding a solution to family problems. See Summary of Preliminary Report (Recommendation No. 5)at 27.

The reasonableness standard is a lwer standard than that of probable cause for arrest. To take a juvenile into custody under paragraph A, however, there must be both evidence of danger or abandonment and also

reasonable grounds to believe that there is need of immediate removal from the surroundings for the protection of the juvenile. The conduct and situation of the juvenile described in this section are the basis of the standard of care a law enforcement officer owes a juvenile so as not to falsely imprison or detain him.

"Abandonment" in a child custody proceeding is a question of fact dependent largely upon the parents' intention, Jones v. Thompson, 151 Me. 462, 465, 121 A.2d 366, 367-68 (1956), and it is also an element of an adult crime. 17-A M.R.S.A. §553 (Abandonment of child). To the extent that abandonment has the same meaning in this section, an officer must have reasonable grounds to defeat the presumption that the juvenile is still in the custody of his parents.

Subsection 2. This six-hour limit, which begins to run as soon as the juvenile is restrained by an officer, follows the standard of the IJA-ABA JUVENILE JUSTICE STANDARDS, "Non-Criminal Misbehavior", Standard 2.1, but it does not provide a separate standard for the limited custody of runaways. Id., Standard 3.1 (up to 21 days for runaways). There is statutory provision, however, for longer-term temporary custody, in the best interests of the child, where temporary custody is ordered by a District Court Judge pending a protective custody proceeding pursuant to Title 22, section 3792.

The Legislature requested an opinion from the Attorney General on the question of the constitutionality of the involuntary taking of juveniles into interim care. The Attorney General reasoned that the State's parens patriae interest in the safety of a juvenile, as well as the State's interest in protecting a parent's right to have custody of his child, justify the strict necessity for the interim care restraint upon a juvenile's liberty interest. Opinion of the Attorney General (June 27, 1977). See also

Opinion of the Justices, Me., 339 A.2d 510 (1975). Presumably this provision is consistent with the Revision Commission's guiding principle that "[t]he State has the burden of justifying why any given intrusion - and not a lesser one - is called for." Summary of Preliminary Report (Guiding Principles) at 4.

Subsection 3. The purpose of this provision is to ensure that involuntary custody under interim care shall be disassociated from any juvenile arrest. It is a precaution in addition to the secrecy of records mandated by section 3308 and is commensurate with the greater privacy interest of a runaway juvenile and his family and with the lesser state interest in public records of interim care custody.

Subsection 4. This subsection is analogous to the notification provision of subsection 3203(2). Notification of the whereabouts of the juvenile when in state custody conforms with the constitutional dimensions of the natural right of parents to the custody of their child. Danforth v. State Department of Health and Welfare, Me., 303 A.2d 794, 797 (1973). See also section 3504. The purpose of the language "as soon as possible" is to provide practical guidance in the situation where the juvenile refuses to identify himself or his parents.

This provision follows in part the IJA-ABA JUVENILE JUSTICE STANDARDS, Standard 2.2, but it does not require that the parent and the juvenile be informed of the reasons for the interim care custody.

Subsection 5. The purpose of this subsection is to ensure that an officer taking a juvenile into interim care will notify an intake worker immediately. The legislative intent to mandate immediate referral is evident in the requirement of section 3502 for a twenty-four hour intake referral service; such referral is necessary to comply with the purpose of paragraph A to have the intake worker direct placement during the involuntary custody period; immediate referral also corresponds with the Commission's resolution

that runaway juveniles should not be held in any correctional facility. Summary of Preliminary Report (Recommendation No. 3) at 22.

The purpose of paragraph C is to proscribe referrals to unlicensed facilities. See section 3508(4). A referral under this paragraph, however, is not a placement in custody. Such a referral is only an offer of shelter to the juvenile, and he must voluntarily consent to remain in a licensed shelter facility.

Subsection 7. The policy underlying this subsection is an extension of the requirement in section 3203(7)(A) that arrested juveniles be separated from adult detainees. In accordance with the Code's distinction between juvenile crimes and the status of runaways, this provision prohibits holding runaways even in the sections of jails which are authorized for juveniles only. Paragraph B represents a practical compromise necessitated because of the lack of specialized state juvenile facilities albeit in conflict with the Revision Commission recommendation to the Legislature. Summary of Preliminary Report (Recommendation No. 2) at 35.

Subsection 8. The encouragement of social service referrals corresponds with the function of intake workers to divert juveniles and their families from court proceedings. Summary of Preliminary Report (Recommendation No. 1) at 5. The purpose of the provision is to give necessary guidance and care to the juvenile and to strengthen family ties.

Subsection 9. This subsection was amended in 1978 (P.L. 1977, c. 664, §47) to prohibit the taking of fingerprints of runaways, which the Legislature reasoned, could serve little purpose in helping a parent to identify his child. L.D. 2163, 108th Leg., 2nd Reg. Sess., "Statement of Fact" (1978). As amended, the subsection distinguishes between the purpose of protecting the juvenile's privacy

and the valid function of the State of returning the juvenile to his home. The 1977 Law (P.L. 1977, c.520) did not serve either of these purposes effectively because it did not prohibit the collection or storage of any data, but only the transfer of it.

§3502. The Department of Mental Health and Corrections; 24-hour referral services

COMMENTARY - 1979

Subsection 1.

Because intake workers are employees of the Department of Mental Health and Corrections, this section requires the Department to provide 24-hour service so that the referrals which law enforcement officers make pursuant to sections 3203 (Arrest and detention) and 3501 (Interim care) can be effective.

Subsection 2.

In authorizing administrative responsibilities for the emergency placement of juveniles, this subsection does not distinguish between placement of juveniles under arrest and those in interim care. Although secure detentions are necessarily the responsibility of the Department of Mental Health and Corrections, the location of other placements will depend upon the juvenile's needs and the availability of service. The purpose of this section, therefore, is to require administrative coordination so that there can be a broader range of services to assist intake workers in placing juveniles alleged to have commited crimes or in need of interim care.

§3503. Juveniles, voluntary return home

COMMENTARY - 1979

The purpose of this section is to provide for the release of a juvenile to his parents in the situation where both the juvenile and his parents agree to his return home. The 1978 amendment, PL 1977, ch. 664, §48, made the transportation of the juvenile the primary responsibility of the parents. This provision permitting the State to arrange transportation at the parents' expense is consistent with the legislative policy that parents should provide for the custody of their children. See 22 M.R.S.A. §§3793,&3799 (Recovery of expenditures from parents); 19 M.R.S.A. §302 (Support of child committed to custodial agency).

§3504. Runaway juveniles, shelter and family services needs assessment

COMMENTARY - 1979

The purpose of this section is to authorize as much available State service support for the juvenile and his family as is constitutionally permissible. The purpose of the last paragraph is to make this section merely procedural so as not to change the substantive rights of the parties. In cases where State aid to a juvenile under this section might conflict with a parent's desire for custody, the State must not interfere with the natural right of a parent to the custody of his child because of the "constitutional dimensions" of parental custody rights. Danforth v. State Department of Health and Welfare, Me., 303 A.2d 794, 797 (1974). Moreover,

in light of the purpose of the Code to strengthen family ties, this section should not be construed to nullify a parent's statutory right to the custody of his child. See 19 M.R.S.A. §211 (Parents are joint natural guardians of children).

Upon referral, the Department of Human Services will provide support to improve the juvenile's situation in the home, but this section does not prohibit the Department from subsequently filing a petition for protective custody on behalf of the juvenile pursuant to Title 22, section 3792. See section 3508(2). Danforth held that a protective custody hearing conforms with the constitutional standard of procedural due process in the removal of a child from the custody of his parent.

The purpose of the provision for referral to the available shelter facility nearest the juvenile's home is to prohibit the transfer of a juvenile to a distant part of the State, which would constitute an unfair burden to the parent seeking to assert custody of his child. The provision for an "offer of shelter" does not preclude initial interim case placement in such a non-secure shelter, after which the juvenile could choose to leave; such placements are consistent with the Revision Commission's intent that runaways not be detained in correctional facilities. Summary of Preliminary Report (Recommendation No. 3) at 22. Nor does this section prohibit a voluntary agreement between the parties for shelter outside of the parent's home, in the extreme case in which the juvenile and his parents cannot agree to live together.

§3505. Runaway juveniles, neglect petition

COMMENTARY - 1979

This section, like section 3504, establishes the procedural functions of intake workers consistent with section 3002(12). If a juvenile refuses to accept shelter in a licensed facility, then, as in section 3504, the intake worker cannot order the juvenile held involuntarily longer than six hours. The Department of Human Services, however, in filing a petition for protective custody, may request the District Court to make a temporary custody order pending hearings with the written consent of the parents or guardian or for the child's safety pursuant to Title 22, section 3792.

§3506. Runaway juveniles, emancipation

COMMENTARY - 1979

This section is a departure from the common law concept of emancipation, which did not recognize an emancipation based on any rational act of the child. Lowell v. Newport, 66 Maine 78, 81 (1876). Under this provision any juvenile who is sixteen years of age and whose parents refuse to permit the juvenile to live away from home may request counsel to petition for emancipation.

Although a juvenile must present a plan for care before the court can grant a petition for emancipation, an order granting emancipation does not place the juvenile in the custody of the court. "Indeed, the best test [of emancipation] which can be applied is the separation and resulting freedom from parental and filial ties and duties, which the law ordinarily bestows at the age of

majority." Inhabitants of Camden v. Inhabitants of Warren, 160 Me. 158, 163, 200 A.2d 419, 422 (1964).

§3507. Runaway juveniles returned from another state

COMMENTARY - 1979

The purpose of this section is to guarantee that children of Maine residents who are returned to Maine under a court order of requisition pursuant to the Uniform Interstate Compact on Juveniles, 34 M.R.S.A. §184, shall be processed in the same manner as other juvenile runaways taken into interim care. The destination of the runaway is immaterial to the purposes of this chapter. This section provides, therefore, that the juvenile shall be referred to an intake worker to ensure that there can be appropriate further referral, rather than mere delivery of the juvenile to his home. See section 3504. Because the child is in State custody under a court order, the time limit for interim care in section 3501(2) does not apply. Similarly, the time limit does not apply to an order of protective custody pending hearing. See Commentary to section 3505.

A juvenile who has run away from another state, which is party to the Compact, without the consent of his parents shall be brought before the Maine District Court pursuant to 34 M.R.S.A. §184. Compare section 3101(2)(c) (Juvenile Court jurisdiction over a juvenile apprehended in Maine who has been adjudicated as having committed a juvenile crime in another state). To the extent that this section permits such cooperation under the Compact for the return of runaways, it is inconsistent with the Commission recommendation that Maine withdraw from the Compact. Summary of Preliminary Report at 24.

§3508. Responsibility of the Department of Human Services

COMMENTARY - 1979

This section assigns administrative responsibilities for the handling of runaways, but the purpose of the language "within the limits of available funding" is to prevent these mandates from being attributed as statutory rights or entitlements to beneficiaries of the service. The broad mandate for review of all runaway cases by the Department of Human Services is to ensure that initial referrals by an intake worker pursuant to this chapter will be investigated by the Department. Because of the necessity for inter-departmental cooperation, subsection 3 mandates the promulgation of procedures under Title 34, section 276.