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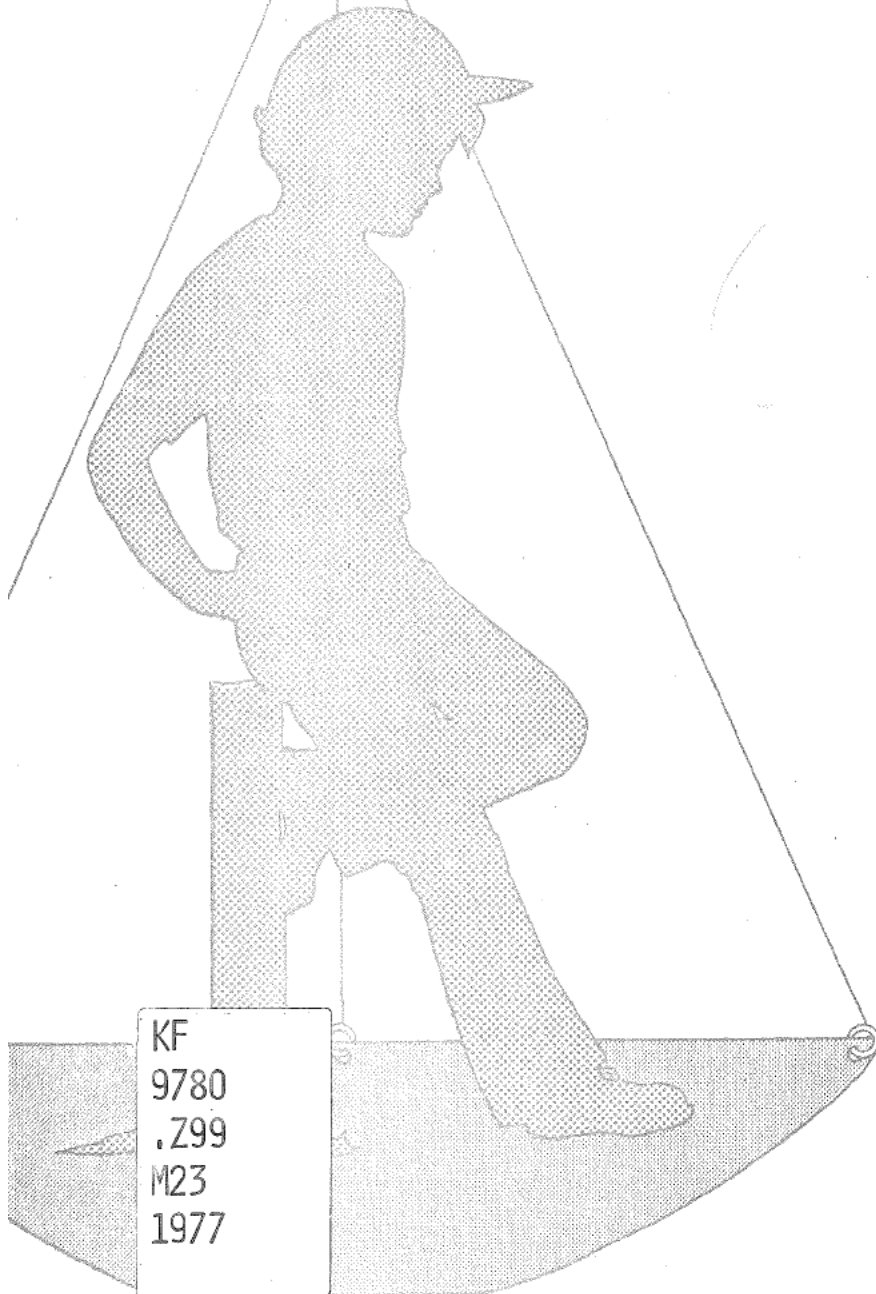
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Maine's Commission to Revise
the
Statutes Relating to Juveniles

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MAINE COMMISSION TO REVISE
STATUTES RELATING TO JUVENILES

FINAL REPORT
OF
RECOMMENDATIONS

This report describes the final recommendations of the Maine Commission to Revise Statutes Relating to Juveniles. These recommendations have been translated into a new comprehensive juvenile code for the State of Maine, introduced in the 108th Legislation as LD 1581 for the Commission by Representatives Gauthier, Hobbins, Kane, and Spencer.

For an extensive discussion of the analyses which preceded the formulation of these recommendations, the reader is referred to the Commission's Preliminary Report of Recommendations and Analysis (October, 1976) and its supporting documents.

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The Commission is staffed by the following consultants from Developmental Research Center: Joan FitzGerald, Peter DuBois, Dale Carter, Katherine Carter, and Yvonne Sprowl.

The Commission's technical advisor is Mr. David Els, Maine Criminal Justice Planning and Assistance Agency. In addition, Mr. Peter Goranitis, State Attorney General's office and Ms. Elizabeth Belshaw, State Court Administrator, assisted the Commission in formulating the recommendations outlined in this report.

The Commission's staff is also grateful to Mr. Kevin Concannon of the Children and Youth Services Planning Project, Mr. Bob Frates of the Abuse and Neglect Task Force of the Maine Human Services Council, and Mr. Mike Petit of the Portland United Way Substitute Care Task Force for their assistance.

The views expressed herein are those of the Commission and not of any person or organization it consulted in the course of its work.

MEMBERS OF THE COMMISSION TO REVISE STATUTES RELATING TO JUVENILES

Joseph J. Jabar, Esq., Chairman
District Attorney
Kennebec-Somerset County

F. Woodman Jones, Esq., Vice Chairman
Attorney-at-Law
Portland, Maine

Dr. Thomas J. Kane, Director
York County Counselling Services
Saco, Maine

Mr. Donald Allen, Superintendent
Maine Youth Center
South Portland, Maine

Chief William MacDonald
Maine Chiefs of Police Association
Gardiner Police Department

Mr. Wallace M. Delahanty
School Guidance Counselor
Millinocket, Maine

Mr. Edgar J. Merrill
Department of Human Services
Augusta, Maine

Hon. Roland Gauthier
State Representative
Sanford, Maine

Hon. Arthur J. Nadeau, Jr.
Judge, Maine District Court
Caribou, Maine

Dr. Adair Heath
Child Psychiatrist
Portland, Maine

Ms. Jeanne Rosse, Director of Youth Aid
Cumberland County Sheriff's Department
Portland, Maine

Hon. James S. Henderson
State Representative
Bangor, Maine

Mr. Charles Sharpe, Director
Children & Youth Services Planning Project
Augusta, Maine

Hon. Barry J. Hobbins
State Representative
Saco, Maine

Mr. John Weldon
Maine Principals' Association
Lisbon Falls, Maine

1. SUMMARY

The guidelines for the Commission's work, which were established by the 107th Legislature, require that the Commission submit its proposed juvenile code to the Legislature at this time.

Essentially the proposed code would reorganize Maine's juvenile justice system so that juveniles who commit acts which would be felonies (Class A, B, or C crimes) if they were adults will be handled in almost all respects as if they were adults. Juveniles who commit acts which would be misdemeanors (Class D or E crimes) or "juvenile crimes" - i.e., possession of marijuana, alcohol or engaging in prostitution will be handled in some, but not all, respects as if they were adults. For example, under the proposed code a hearing on a delinquency petition that alleges felony conduct will be open to the public; a hearing about alleged misdemeanor conduct will not. On the other hand, once a juvenile is adjudicated delinquent for a "juvenile crime" or misdemeanor, the juvenile court judge will have a full spectrum of dispositional alternatives available to him -- not simply a fine as is the case under Maine's criminal code for certain drug and alcohol related offenses.

The proposed code would decriminalize behavior that is not delinquent -- e.g., "incorrigibility", running away from home, and truancy. Instead, it mandates the provision of services to these children and their families by the Departments of Human Services, Mental Health and Corrections, and Educational and Cultural Services. Most of the services it would mandate take advantage of existing services and facilities and have been worked out by the Commission in collaboration with Commissioners David Smith, George Zitnay, and H. Sawin Millett. For example: The Code would require that Pupil Evaluation Teams, which are already functioning in Maine, assume responsibility for working out an educational program to keep habitually truant children in school.

Under the proposed code, hearings in juvenile court would be conducted in all procedural respects, except jury trials, as are adult criminal proceedings. A transcript of all juvenile court hearings would be required and appeal of a juvenile matter to the Superior Court would be on the record instead of de novo (or retrying the whole case) as is often current practice.

Finally, the procedures for "binding over" a juvenile to Superior Court would be changed, giving juvenile court judges more discretion about which youths the juvenile justice system can serve and which would be better handled by the adult system.

II. History

A. Establishment of the Commission

The Commission to Revise Statutes Relating to Juveniles was established on July 1, 1975 by an act of the Maine Legislature.¹ It was charged with responsibility for preparing a proposed juvenile code for Maine, with particular emphasis on the areas of education, community-based corrections, institutional corrections, policing agencies, and the court system.²

B. Chronological History of the Commission's

Work to Date

Governor Longley convened the first Commission meeting on October 2, 1975. Subsequently, the Commission has met at least once a month. Additionally, the Commission conducted three series of public hearings throughout the state,³ and coordinated its work with the activities of other committees and projects that have worked in Maine during the past fifteen months.

¹ H.P. 1271-L.D. 1975.

² H.P. 1271-L.D. 1975, Section 1.

³ On May 25, 26, and 27 in Portland, Bangor, and Augusta; June 1, 2, and 3 in Saco, Lewiston, and Presque Isle; and November 4, 5, 6, and 8 in Portland, Presque Isle, Bangor, and Augusta.

In response to its enabling legislation, opinions expressed at the public hearings, activities of other committees and projects currently working in Maine,⁴ comments of Maine's Superior Court⁵ justices and District Court⁶ judges, the experience and concerns of individual Commission members, and the parameters of time and budget, the Commission decided to narrow the scope of its inquiry to four areas: prevention, non-criminal behavior, criminal behavior, and juvenile courts.⁷

4

Including the Children and Youth Services Planning Project; Criminal Law Advisory Committee, Project on Standards and Goals of the Maine Criminal Justice System; Correctional Economics Project; Child Abuse and Neglect Task Force, Maine Human Services Council; Criminal Code Impact Project; Substitute Care Task Force, Greater Portland United Way; and Community Justice Project.

5

The Commission met with Justices McCarthy and Roberts on September 25, 1976.

6

The Commission met with Judges Batherson, Briggs, Clark, Devine, Henry, MacDonald, Ross, Smith, and Spill on September 24, 1976.

7

For an extended discussion of the procedure by which these four areas were selected see, FitzGerald, et al, "Goals of Maine's Juvenile Justice System: Report on Task I," February, 1976.

C. Procedures Employed to Reach the Recommendations
Outlined in This Report

After meeting with the Commission as a whole, staff extensively interviewed each Commissioner individually. The results of this process, of interviews with members of the Children & Youth Services Planning Project, and of interviews with the Commission's advisors are outlined in "Goals of Maine's Juvenile Justice System: Report on Task 1" which staff prepared for the Commission in February, 1976. On March 5 and 6, 1976, the Commission, after extended discussion, began to concentrate on the areas of prevention, non-criminal misbehavior, criminal behavior and juvenile courts.

A series of Commission meetings were then held, each of which focused on one of these four areas. Before each session, Commissioners received a packet of materials, prepared by staff, to read as background material. Each meeting began with a staff presentation based on available demographic information; relevant sections of Maine's existing statutes⁸ and regulations⁹

8

See, "Statutes of Maine's Juvenile Justice System: Report on Task 3," prepared in March, 1976.

9

See, "Regulations of Maine's Juvenile Justice System: Report on Task 4," prepared in July, 1976.

and available model legislation where appropriate.¹⁰ The goal of each of these work sessions was to provide Commissioners with the information necessary to make tentative decisions about recommendations for change in Maine's juvenile justice system and to achieve a consensus among Commissioners about preliminary recommendations in the four areas.

As a result of that process, the Commission issued a two-volume "Preliminary Report of Recommendations and Analysis" in October, 1976.¹¹ A fifty page summary of the Preliminary Report was prepared and mailed to over eight hundred interested citizens in all parts of the state. The Commission's final round of public hearings focused on its Preliminary Report.

¹⁰

For background material on each of the four topic areas see, "PREVENTION" prepared for the Commission meeting held on August 5, 1976; "CRIMINAL BEHAVIOR" prepared for the Commission meeting held on September 10, 1976; "NON-CRIMINAL MISBEHAVIOR" prepared for the Commission meeting held on September 24, 1976; and "JUVENILE COURTS" prepared for the Commission meeting held on September 25, 1976.

¹¹

On July 1, 1976, the Commission had voted unanimously that if four or more Commissions disagreed with any resolution, they could submit a minority report of their findings and such report would be included in the Preliminary Report. In fact, no recommendation included in the Preliminary Report or in the proposed Juvenile Code was opposed by four members.

Based on public reaction gathered during these hearings; and input from Commissioners Smith, Zitnay, and Millett, members of the Children and Youth Services Planning Project, the Substitute Care Task Force of the United Way of Greater Portland, and the Child Abuse and Neglect Task Force of the Maine Human Services Council, the Commission made final decisions about its recommendations and then prepared a draft of a proposed Juvenile Code that reflects these decisions.¹²

12

It should be noted here that toward the conclusion of the Commission's final round of state-wide public hearings, concern was raised by some educational organizations about the need for more opportunity to input into the Commission's work. The Commission responded by extending the period of its deliberations on educational issues by an additional six weeks and inviting the concerned groups to submit written statements of their views. Written responses to the Commission's invitations were received from: Maine School Superintendent's Association signed by Hamilton Giberson, President; Joint Educational Policies Committee of the State Elementary Principals Association and the State Principals Association signed by Thomas Perry, Chairman; Maine School Boards Association and Maine School Management Association (press release from Donald Taverner, staff).

In addition, written comments have been received from a number of school principals and superintendents from different parts of the state.

The Commission has also consistently received valuable input on educational issues from Commission members Wallace Delahanty (School Guidance Counselor in Millinocket) and John Weldon (Junior High School Principal in Lisbon Falls) and from meetings with State Department of Education leadership. Additionally, Commission members have attended some recent regional meetings of superintendents, principals, and teachers throughout the state.

III. STATEMENT OF COMMISSION PHILOSOPHY

The Commission's recommendations are intended to implement its basic philosophy that --

- (1) youth who are accused of criminal behavior should be treated by the justice system in a manner that clearly acknowledges the gravity of their crime and that adequately protects the public and the accused; and
- (2) children who do not commit criminal offenses but who are "incorrigible," truant from school or run away from home should not be referred to juvenile courts but rather should be served by the social and educational agencies better equipped to deal with their behavior than are courts of law.

IV. SUMMARY OF LEGISLATION

15 M.R.S.A. Part IV is enacted to read:

Chapter 501. General Provisions.

This chapter includes three sections that: outline the title, purposes, and construction of the juvenile code and define its significant words and phrases.

Chapter 503. Jurisdiction.

This chapter includes five sections that: outline the jurisdiction conferred on district courts when they hear juvenile cases by this act and by the general law; define venue for juvenile cases; describe the jurisdiction and powers of Superior courts with respect to juveniles before it on a grand jury indictment; and describe the acts that, although not necessarily criminal for adults, are criminal for children.

Chapter 505. Arrest, Temporary Custody, Shelter and Detention.

This chapter contains seven sections that: outline the procedures to be followed in warrantless arrests of juveniles by law enforcement officers and by private persons; describe the procedure for obtaining an arrest warrant for a juvenile; outline the procedures for taking a

juvenile into temporary custody (as distinct from arrest); and mandate and describe the functioning of a twenty-four hour temporary placement referral service for juveniles arrested or taken into custody to be operated by the Department of Mental Health and Corrections.

Chapter 507. Petition, Adjudication, and Disposition.

This chapter contains eighteen sections that describe in detail the procedure to be followed in deciding whether or not a delinquent petition should be filed against an arrested child - who makes that decision?, on what basis?, can it be appealed?, to whom?, how?; what a delinquent petition must contain; the procedure to be followed during proceedings and hearings on a delinquency petition - summons, answer, right to counsel, publicity, court records, findings, adjudication; the dispositional hearing - what evidence must be considered?, what dispositional alternatives are available?; right to periodic review of disposition; right to a new hearing; and procedures to be followed when a juvenile accused of delinquent behavior is found to be mentally ill, mentally retarded, or otherwise developmentally disabled.

Chapter 509. Appeals.

This chapter contains six sections that describe the juvenile appellate structure, the procedure for appeals, counsel on appeal, stays of order, release on bond, and bail for juveniles.

Chapter 511. The Department of Mental Health and Corrections (DMHC).

This chapter contains eleven sections that describe the expended responsibility of DMHC for services to juveniles and mandate the establishment, and describe the functioning, of a Bureau for Juveniles' Services in DMHC.

Chapter 513. Juvenile Probation Services.

This chapter contains two sections that describe the powers and duties of juvenile probation officers in the Department of Mental Health and Corrections.

Chapter 515. Runaways.

This chapter contains five sections that outline the procedure to be followed when a runaway youth is taken into custody, when they are returned from another state, when a petition of emancipation is filed for them; and when a neglect petition on their behalf may be filed.

Chapter 517. Truants.

This chapter contains eight sections that mandate that Pupil Evaluation Teams assume responsibility for habitually truant juveniles and describe the composition, powers, duties, and procedures to be followed by these teams when they review the cases of habitually truant juveniles.

Chapter 519. Miscellaneous Provisions.

This chapter contains three sections dealing with juveniles adjudicated under prior law; with the severability of each of the provisions of the proposed code, and with its effective date which is July 1, 1978.

Section 2 of the proposed Code contains the repealers and amendments necessary to effect the purposes of the Code.