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CRIMINAL DIVISION

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

MESSAGE FROM THE
ATTORNEY GENERAL
JOSEPH E. BRENNAN

ACQUISITIONS

THE MAINE JUVENILE CODE

INTRODUCTION

The new Maine Juvenile Code, as enacted by the Legislature in 1977 and amended in 1978, took effect on July 1, 1978. The Juvenile Code repeals almost all of the prior laws pertaining to juvenile offenders and makes several major changes in procedures relating to juveniles. The Code changes the definition of a juvenile crime, redefines the standards for binding over a juvenile as an adult, introduces the intake worker system for screening juvenile cases, makes public juvenile hearings in major cases, and sets forth procedures and standards in ordering pretrial detention, in sentencing, and in taking appeals. In addition, the Code details procedures for dealing with runaways and with children who are lost, abandoned or found in dangerous circumstances.

In some respects the new Code treats the juvenile as a social problem requiring special handling by "intake workers" trained in juvenile matters. In other respects, however, and especially with regard to court procedures, the Code recognizes that juvenile proceedings are of an adversary nature and should be accorded the same importance and formality as adult criminal proceedings.

This ALERT will explain the provisions of the new Juvenile Code in the order in which they appear in the Code. It will cover the definition of a juvenile crime; pretrial and trial

procedures; disposition and appeals; and interim care and runaways. Except when otherwise indicated, statutory citations included in the text of this ALERT refer to provisions of Title 15 of the Maine Revised Statutes.

DEFINITION OF JUVENILE CRIME

With a few exceptions, the Juvenile Code provides that any conduct which is criminal for an adult is a juvenile crime if committed by a person under the age of eighteen at the time of the alleged conduct. By the same token, conduct which is a traffic infraction or civil violation if committed by an adult is also a traffic infraction or civil violation for a juvenile. Thus, if the conduct of the juvenile would be criminal for an adult, the law enforcement officer may arrest and/or refer the juvenile to an intake worker, as described later in this article. If the conduct constitutes a traffic infraction or other civil violation, the officer may issue a Uniform Traffic Ticket and Complaint or other civil citation and treat the juvenile in all respects as an adult.

There are some exceptions to the above rules. Certain crimes committed by a juvenile are treated automatically as adult crimes. Included in this category are motor vehicle crimes in Title 29 of the

In response to numerous questions my office has received regarding the Juvenile Code and in view of the need for a comprehensive guide to the Code for law enforcement officers, we are devoting a substantial amount of space in the ALERT to a detailed discussion of the new Juvenile Code.

This Code is the product of two years work by the Juvenile Law Revision Commission, chaired by District Attorney Joseph Jabar, and of debate and hearings during two sittings of the Legislature. The Code will require the careful cooperation of all members of the criminal justice community for it to work effectively. For this reason, it is important that law enforcement officers become thoroughly familiar with the relationship between the courts, the police, the prosecutor, and the intake worker and their various roles in juvenile matters. I hope that the ALERT will facilitate this educational process.

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Attorney General

Maine statutes and conservation law crimes in Title 12 of the Maine statutes. A juvenile who commits any of these crimes is treated in the same manner as an adult offender in adult court and need not be referred to a juvenile intake worker. The only exceptions are operating a motor vehicle under the influence (29 M.R.S.A. §1312), operating a snowmobile under the influence (12 M.R.S.A. §1978 (2)), and operating a watercraft under the influence (12 M.R.S.A. §2703(2)). These three crimes are treated as juvenile offenses which must be referred to the intake worker prior to prosecution.

Certain conduct which would **not** be criminal if committed by an adult is expressly declared to be a juvenile crime if committed by a person under the age of 18. Included in this category are the following:

- 1) possession of a useable amount of marijuana, in violation of 22 M.R.S.A. §2383; and

- 2) purchase, consumption or possession of liquor, in violation of 28 M.R.S.A. §303.

Although these two types of offenses are juvenile crimes and are thus referable to juvenile court through the intake worker and the prosecutor, the penalty of incarceration is not available for juveniles adjudicated to have committed these crimes. However, a juvenile adjudicated to have committed either of these crimes who then willfully refuses to pay a fine or willfully violates the terms of his probation is guilty of a separate offense for which the juvenile may be sentenced to the Maine Youth Center or other detention. The willful refusal to pay a fine or to obey the terms of probation following adjudication for a marijuana or liquor offense is a separate juvenile crime which must be alleged and proved in juvenile court and should not be confused with a revocation of probation proceeding.

The juvenile accused of this

separate offense must first be referred to an intake worker. The State may then try the juvenile at a juvenile hearing where, unlike a probation revocation proceeding, the strict "beyond a reasonable doubt" standard of proof and the Maine Rules of Evidence apply, and evidence taken pursuant to an unlawful search or seizure will be excluded.

In sum, incarceration is available as a punishment for this separate and uniquely juvenile crime **only** when the State pleads and proves the following elements: 1) a prior adjudication for possession of marijuana or purchase, consumption or possession of liquor; 2) the imposition of a fine or probation following that adjudication; and 3) the willful failure to pay the fine or to obey the terms of the probation.

With regard to possession of marijuana, it should be noted that if the juvenile possesses the drugs with the intent to furnish, then he or she may be prosecuted for the juvenile crime of unlawful furnishing of marijuana, defined in 17-A M.R.S.A. §1106. Furthermore, the presumption that a person who intentionally or knowingly possesses more than 1½ ounces of marijuana is unlawfully furnishing applies to juveniles as well as adults. Adjudication of this juvenile crime, unlike the juvenile crime of simple possession, carries a possible penalty of commitment to the Maine Youth Center.

With regard to liquor offenses, because minors are now defined as persons under the age of twenty for purposes of the liquor laws, some offenses will be dealt with differently, depending on whether the offender is a juvenile under eighteen, a minor between the ages of eighteen and twenty, or an adult over twenty. The chart in the appendix outlines the status of various liquor offenses for these three age groups. For further information concerning liquor offenses, the officer should consult pp. 4-5 of the September-October

1977 ALERT and the relevant statutes.

PRETRIAL PROCEDURES

Juvenile Intake Worker

The intake worker is an agent of the Department of Mental Health and Corrections who screens juveniles referred to him by a law enforcement officer and who refers the juvenile for social services or for court action. There are presently 21 juvenile intake workers statewide, and a list of their names and addresses, along with the areas they cover, is provided at the end of this article. Each intake worker will serve as "duty intake worker" on a rotating basis, so that at any given time, night or day, an intake worker will always be available during the hours that the regular area intake worker is not available. The duty intake worker is accessible through the 24-hour Human Services telephone number: 1-800-452-1999.

The intake worker performs three functions. One of these functions involves the placement of runaways and other juveniles taken into "interim care." That role will be discussed later in this article. The other two functions relate to juveniles accused of crime. First, the intake worker orders the release or further detention of a juvenile who is under arrest. Second, the intake worker screens complaints against juveniles referred for prosecution and can make an "informal adjustment," decide to take no action, or request the filing of a petition.

Arrest and Detention

The law enforcement officer who suspects a juvenile is involved in a crime may question and detain the juvenile for brief periods of time, release the juvenile, or refer the juvenile to a Youth Aid Bureau or social service agency, without bringing criminal charges. At the point when the law enforcement officer feels that the juvenile should be prosecuted for a crime, however,

the Code requires that the officer first refer the juvenile to an intake worker, whether or not the juvenile is arrested. The only exception to this requirement applies to murder cases and other investigations conducted by the Attorney General. See §§3203 and 3301; 5 M.R.S.A. §200-A.

Arrest procedures and arrest warrant requirements for juveniles are the same as for adults. See §§3201 and 3202; 17-A M.R.S.A. §§15 and 16; and Rule 4, Me. Dist. Ct. Crim. Rules. An additional provision requires that a person who makes a warrantless citizen's arrest of a juvenile must immediately contact the local police or sheriff's department. See §3201 (2). Warrantless arrest for a uniquely juvenile crime, such as possession of intoxicating liquor or possession of a useable amount of marijuana, is not authorized by the Code. See §§3201 and 3202; 17-A M.R.S.A. §§15 and 16. Following the arrest of a juvenile, the officer may fingerprint, photograph and/or take palm prints of the juvenile in custody. See 25 M.R.S.A. §1542.

The law enforcement officer may interrogate a juvenile before, during, or after making an arrest. However, the safeguards of **Miranda** must be carefully followed when dealing with juveniles, the same as when dealing with adults. The officer should keep in mind that the exclusionary rules for confessions as well as for searches and seizures apply equally to juvenile courts as to adult proceedings and that courts may be particularly wary about allowing into evidence statements by juveniles made without the presence of a lawyer. Factors which will be considered are: whether one or both of the juvenile's parents or some other "friendly adult" were present at the time the statement was made; whether the waiver of **Miranda** and the statement itself were reduced to writing and signed by the juvenile, the parent or

parents, and any other witnesses; the age, maturity, intelligence and education level of the juvenile; any prior record of the juvenile which might show the juvenile's familiarity with **Miranda** rights and with police and court procedures; the juvenile's mental and physical condition at the time of the questioning; the time of day; and other physical & psychological circumstances of the questioning.

A juvenile may not be detained in a jail or other detention facility for adults unless the facility has a separate section for juveniles, does not allow regular contact between juvenile and adult inmates, and has an adequate staff to monitor the juvenile's activities at all times. See §3203 (7). A list of the county jails currently approved for the detention of juveniles by the Department of Mental Health and Corrections is found at the end of this article.

When a juvenile is arrested, the arresting officer must notify an intake worker immediately. The officer or intake worker must then inform the juvenile's parent, guardian or custodian of the juvenile's whereabouts and the intake worker's name and telephone number "without unnecessary delay." See §3203. The person notified must be informed that a detention hearing will be held within 48 hours of the time the juvenile is placed in a detention facility. If the officer or intake worker cannot locate the parent, guardian or custodian, the information may be passed on to a "person of sufficient maturity" with whom the juvenile resides. See §3203(2)(B). The officer must exercise caution in these situations, in order to make sure that the information as to the arrest and whereabouts of the juvenile and notice of the detention hearing will be brought to the attention of a responsible adult, so that the juvenile's rights will be protected.

Within 24 hours of referring a juvenile to an intake worker the

officer must file with the intake worker a brief written report with the reasons for the referral. See §3203(3). This report should include a short summary of the facts known to the officer; the date, time, and place of the offense; and any prior history of which the officer has knowledge. The purpose of this report is to give the intake worker some background with which to begin an investigation and to show that a juvenile crime has been committed, thereby establishing the territorial and subject matter jurisdiction of the juvenile court.

After the officer files the 24-hour report, in the case of a juvenile in custody, the intake worker must decide whether or not the juvenile should be released or further detained pending court proceedings. See §3203 (4). The intake worker must decide whether the juvenile can be released either unconditionally or upon the juvenile's written or oral promise to appear for court proceedings. If unconditional release is inappropriate, the intake worker must choose the least onerous conditions for release likely to ensure the juvenile's appearance in court. Such conditions, as recommended by the Code, include the written promise of a parent, guardian, or legal custodian to produce the juvenile in court; placement of the juvenile in the care of "a responsible person or organization" pending court proceedings; restrictions on the juvenile's activities, associates, residence, or travel; and any other prescribed conditions "reasonably related to securing the juvenile's presence in court." See §3203(4)(B)(1)-(4). The latter provision could include the posting of money bail, where bail would help ensure the juvenile's presence in court; although, under the Code, bail commissioners, as such, are no longer involved in processing juvenile cases.

According to the Code, the

intake worker may order detention only when it is necessary to:

"(1) Ensure the presence of the juvenile at subsequent court proceedings;

(2) Provide physical care for a juvenile who cannot return home because there is no parent or other suitable person willing to supervise and care for him adequately;

(3) Prevent the juvenile from harming or intimidating any witness, or otherwise threatening the orderly progress of the court proceedings;

(4) Prevent the juvenile from inflicting bodily harm on others; or

(5) Protect the juvenile from an immediate threat of bodily harm." See §3203 (4) (C).

Officers should keep these criteria in mind and bring to the attention of the intake worker any information which may have a bearing on the detention decision, so that the intake worker can make an informed judgment as to the necessity for retaining a juvenile in custody.

When the intake worker orders further detention, such detention must be in "the least restrictive residential setting that will adequately serve the purposes of detention." See §3203(4)(C). Again, detention may be ordered in a jail or other secure adult facility only when the facility has a separate section for juveniles, when it is one which prevents regular contact between juvenile and adult inmates, and when there is adequate staff to monitor the juvenile's activities at all times. See §3203 (7).

The intake worker should order detention or release as soon as possible after receiving the referral. In order to permit intake workers to make the most informed judgment, law enforcement officers should impart to the intake worker as early as possible everything known about the in-

cident which might bear on this decision.

Upon ordering detention, the intake worker must petition the juvenile court for a review of the detention decision. See §3203(5). This review hearing should be held on the same day or the next business day. The hearing need not wait until the next official court day, since the Code requires that a judge be available to conduct these hearings on all business days, even if the judge is not of the same division where the juvenile is being held. See §3203(6). The court applies the same detention criteria as the intake worker and must either release the juvenile or find by **a preponderance of the evidence** that detention is necessary to satisfy one of the factors discussed above. The court can modify the intake worker's order, uphold it entirely, reject it entirely, or add to it, in order to ensure that the standards of the Code are met. It is important to note that there is no provision for review of an intake worker's decision **not** to detain a juvenile; court review takes place only when there has been a decision by the intake worker to detain the juvenile.

The Code requires that the court hearing take place within 48 hours of the time the juvenile is first placed in a detention facility, except that, if the end of the 48 hour period falls on a weekend or holiday, the hearing is held on the following business day. See §3203 (2). Thus, if a juvenile is incarcerated at noontime Saturday and the intake worker orders further detention, the intake worker must petition the court for a hearing and the juvenile court must hold a hearing by noontime Monday. If the juvenile is incarcerated at 5 p.m. Friday, the court hearing must be held Monday morning; and if the juvenile is incarcerated at 10 a.m. Tuesday, the hearing must be held by 10 a.m. Thursday.

Intake Worker's Investigation and Pretrial Alternatives

Once a juvenile is referred to the intake worker, and after the decision is made to further detain or release a juvenile in custody, the intake worker must conduct a preliminary investigation. See §3301(1). The purpose of this investigation is to determine whether a juvenile court petition should be filed charging the juvenile with a juvenile crime; or whether an "informal adjustment" is practicable without having to file a petition; or whether, in some cases, no official action should be taken against the juvenile at this time.

The preliminary investigation may consist of interviews with the juvenile, the juvenile's family, the victim or complainant, appropriate law enforcement officials, and any other interested persons. Taking into consideration all the facts, attitudes and opinions gathered from these sources, the intake worker will recommend a course of action to best accommodate the interests of the community and the public at large and the welfare of the juvenile.

The intake worker may do one of three things: request the prosecutor to file a petition; decide to take no further action; or make an "informal adjustment." See §3301.

If the law enforcement officer's report and the intake worker's preliminary investigation show that a crime has been committed which warrants criminal prosecution, the intake worker may request the prosecutor to file a petition with the court charging the juvenile with one or more juvenile crimes. In making this decision, the intake worker may weigh the gravity of the offense, the juvenile's prior record, the interests of the community, the juvenile's age and prospects for rehabilitation, the dispositions available to the court, and the likelihood of success of any efforts at pretrial diversion or "informal

adjustment." If the intake worker refers the case for prosecution, the prosecuting attorney is then free to make an independent evaluation of the case and to choose to prosecute all of the suggested charges, some of the charges, or none of the charges.

In some instances the intake worker may determine that no further action is necessary in the interests either of the public or of the juvenile, even though the facts in the officer's report are sufficient to charge a crime. In such cases, the intake worker may refer the juvenile and his or her parents for voluntary services in the community. When the intake worker determines that the matter should not be pursued, he or she will notify the victim of the crime, where there is an identifiable victim; the complainant, if different from the victim; and the appropriate law enforcement officer of the reasons for the decision, as soon as practicable after the decision is reached. See §3301(6). The law enforcement officer, complainant, or victim may then submit the complaint to the prosecuting attorney, who then decides whether or not to file a petition in court charging the juvenile with a juvenile crime.

If, following a preliminary investigation, the intake worker decides that a petition should not be brought at this time but that the juvenile may need some sort of extended supervision, the intake worker may make an "informal adjustment," with the written consent of the juvenile and, if the juvenile is not emancipated, with the written consent of the juvenile's parents, guardian or legal custodian. See §3301(S)(B). An "informal adjustment" may extend up to six months and may include an agreement to make restitution, public service work, counseling, placement in a foster home, periodic reports to the intake worker, and restrictions on the juvenile's activities. Before entering

into an informal adjustment, however, the intake worker must inform the juvenile and his or her parents of certain rights, must determine that a juvenile crime has been committed, and must confirm that the juvenile has not been adjudicated of a juvenile crime or been the subject of another informal adjustment within the last twelve months.

The informal adjustment procedure is one of the most important and creative tools which the intake worker has in dealing with a juvenile in trouble. Informal adjustment is like a contract between the State and the juvenile, whereby the juvenile promises to live up to certain conditions for a definite period of time and the State agrees to forego prosecution for that time. If the juvenile fails to uphold his or her end of the bargain, the intake worker can refer the case for prosecution, since no jeopardy has yet attached.

The intake worker is free to explore the case with the juvenile in order to fashion a reasonable and effective disposition short of trial. The juvenile can talk freely with the intake worker for this purpose because the Code provides that statements made by a juvenile to an intake worker cannot be used against the juvenile in court. See §3204. Of course, the effectiveness of informal adjustment depends in part on available resources within the community and on the creative use of those resources. Law enforcement officers can play a role in this procedure by contributing ideas about appropriate dispositions and by helping monitor those juveniles placed on informal adjustment status, in cooperation with the intake worker.

When the intake worker chooses to place a juvenile on informal adjustment status, the intake worker must notify the victim of the crime, the complainant and the appropriate law enforcement officer at the earliest

opportunity. If any of these people disagree with the intake worker's decision not to prosecute, they may submit the complaint to the prosecutor, who then may override the intake worker's decision. See §3301 (6). In any case, even without a specific complaint, the prosecuting attorney may review a case, consult with the intake worker, and independently decide whether or not to file a petition.

The Code provides that prosecution must be initiated — that is, the petition must be filed with the court — within six months of the date the juvenile was referred to an intake worker. See §3303. Since an informal adjustment may last no longer than six months, this provision ordinarily will mean that once a juvenile successfully completes the period of informal adjustment, the threat of criminal prosecution will cease. The six month limit on bringing a petition, however, is not absolute. **Either before or after the time limit has expired**, the prosecutor may request the court for an extension of time for filing a petition, and the court "for good cause" may grant an extension. See §3303. Thus, for instance, if a juvenile appears to be doing well on informal adjustment, but on the last day of the informal adjustment period he or she breaches the conditions of the informal adjustment, the prosecuting attorney, with approval of the court, may file a petition after the expiration of the six month period.

COMMENCING COURT PROCEEDINGS

Petition, Venue, and Statute of Limitations

A petition alleging a juvenile crime is substantially the same in form and content as a complaint in an adult criminal proceeding. See §3302. To meet the legal requirements, therefore, the petition must contain a "definite written statement of the essential facts

constituting the offense charged" and must be signed and sworn to by the complainant. See Rule 3, Me. Dist. Ct. Crim. Rules. A sample Juvenile Petition is contained in the appendix of this article.

Venue (place of trial) and statutes of limitations provisions are the same as for adults. See §§3102 and 3104; 17-A M.R.S.A. §8; and Rules 18, 21, and 22, Me. Dist. Ct. Crim. Rules. The statute of limitations is an outer time limit on the commencement of prosecution, and this limit should be distinguished from the six-month limitation discussed earlier. Both of these provisions are time limits for filing a petition. However, the statute of limitations runs from the time the crime is committed, whereas the six-month limitation runs from the date a case is referred to an intake worker. The statute of limitations, with certain exceptions for excusable delay, is six years for a juvenile crime which would be a Class A, B or C crime if committed by an adult, and three years for an act which would constitute a Class D or E crime. See 17-A M.R.S.A. §8. For operating under the influence and for offenses, such as possession of liquor, which are uniquely juvenile crimes, the statute of limitations is one year. See §3105 (1)(A). There is no statute of limitations for the crime of murder.

Unlike the six-month limitation on filing a petition, the statute of limitations is an **absolute bar** to prosecution. The statute of limitations, however, rarely comes into play unless the crime remains unsolved or the suspect remains at large for a long period of time. When a juvenile is arrested for a crime or suspected of a crime and referred to an intake worker, as required by §3203, the statute of limitations continues to run and at that time the Code's six-month limitation on filing a petition begins to run as well. However, this six-month period and any extension of it cannot exceed

the original statute of limitations period.

Summons, Appointment Of Counsel, and Answer

Upon the filing of a petition by the prosecuting attorney, the juvenile court will promptly issue a summons to the juvenile and the juvenile's parents, guardian or legal custodian, if the juvenile is not emancipated, and any other persons deemed necessary to the action. See §3304. The summons requires the person to appear and/or to produce the juvenile at a hearing at a specified time and place. The hearing must be scheduled for a time not less than two days after service of the summons. In addition to the notice of hearing, the summons will include a summary of the allegations and a statement of the constitutional rights of the juvenile, including the right to counsel and the right to appointed counsel if indigent. A copy of the petition should be attached to the summons. A person may appear in court voluntarily without being served with a summons or may waive service of summons, but a copy of the summons and petition should be given such person upon appearance in court or upon request. See the sample summons in the appendix to this article.

At the juvenile's first appearance in court, the judge must advise the juvenile and his or her parents, guardian or legal custodian of their constitutional rights, including the juvenile's right to counsel and the right to appointed counsel if indigent. See §3306. At this point the court will appoint counsel if the parties request it and if they are indigent, or without any request if the court deems it necessary to protect the interests of the juvenile.

The juvenile need not respond to a petition by pleading not guilty or otherwise. Unlike prior law, however, the Code specifically authorizes a guilty plea in accordance with

Rule 11, M.R. Crim. P. See §3305. The guilty plea in the case of a juvenile is called an answer admitting the allegations of the petition, and the procedure is the same as for adults. Before accepting an answer admitting the allegations, the court must satisfy itself that there is a factual basis for the allegations and that the answer is made voluntarily, with an understanding of the nature of the charge. After accepting the answer, the court schedules and conducts a dispositional hearing, as discussed later in this article. If the court does not accept the answer, an adjudicatory hearing is held. The proceeding at which a juvenile offers an answer admitting the allegations is not open to the public. See §3307 (2) (B).

Bind-over

When the petition alleges an act which would be murder or a Class A, B or C crime if committed by an adult, the prosecuting attorney may request the juvenile court to schedule a "bind-over hearing" to determine whether the juvenile should be treated as an adult and be subject to the same penalties as an adult. See §3101 (4). Upon such a request from the prosecuting attorney, the court will advise the juvenile and his or her parents of their legal rights and of the possible consequences of a bind-over hearing. The court will then continue the case for further investigation, which might include a family history and a psychological examination, and will schedule a bind-over hearing, which is to take place before any adjudicatory hearing.

At the bind-over hearing the judge must consider the record and previous history of the juvenile; the aggressive, violent, premeditated, or willful nature of the crime, with greater weight being given to offenses against the person than to property offenses; and whether the juvenile's emotional attitude and

pattern of living indicate that the sentencing dispositions available to the juvenile court might not deter further criminal conduct. After considering these factors, in order to bind the juvenile over for action in the Superior Court, the juvenile court must (1) find that there is probable cause to believe that the juvenile committed what would constitute murder or a Class A, B or C crime if committed by an adult; (2) find, by a preponderance of the evidence, that the juvenile's maturity indicates that the juvenile would be more appropriately prosecuted as an adult; and (3) find, by a preponderance of the evidence, that the nature and seriousness of the crime indicate that the protection of the community will require detention in a facility which is more secure than the juvenile detention facilities. See §3101(4)(E).

When a serious crime or a series of crimes is committed by a juvenile for which it might be appropriate to try the juvenile as an adult, law enforcement officers should keep in mind the above considerations and required findings and bring to the attention of the prosecutor any background information bearing on these matters. For instance, in a case involving bind-over, it is often useful to interview neighbors, friends, family, and teachers of the juvenile soon after the event to record their reaction and their knowledge of any prior antisocial conduct which might be further documented later.

It should be noted that, unlike the prior procedures, if the State succeeds in binding over a juvenile at the District Court level, the State is not required to present another full bind-over hearing in Superior Court. The Code authorizes an appeal from the District Court bind-over hearing by either party. See §§3402 (1) (B) and 3402 (2) (D). However, a District Court bind-over hearing is required to be recorded, see §3307(3); and appeals from those hearings which

are recorded must be on the record only and must be confined to matters of law, rather than requesting new factual findings. See §3401 (1) (C). Thus, the Code eliminates "de novo" appeals of bind-over decisions and permits the State as well as the juvenile to take an appeal from a bind-over hearing.

It should be noted also that, unlike **adjudicatory** hearings in major crimes, bind-over hearings are not open to the public. This fact is due at least in part to the confidential nature of the subject matter involved. Law enforcement officers and other witnesses and officials should, of course, always respect the private nature of the testimony at bind-over hearings.

ADJUDICATION AND DISPOSITION

Adjudicatory Hearing

Once the intake worker refers a juvenile for prosecution and the prosecutor decides to pursue the matter in court, and the prosecutor chooses not to request a bind-over hearing or is unsuccessful in binding over a juvenile, and the juvenile has not filed an answer admitting the allegations, then the case is scheduled for an "adjudicatory hearing."

The adjudicatory hearing is conducted pursuant to the Maine Rules of Evidence and in all respects is the same as the trial of an adult, except that there is no right to a jury trial. See §§3307 (1) and 3310(1). The adjudicatory hearing is recorded, as are detention, bind-over, and dispositional hearings. See §3307(3).

Unlike prior law, which made all juvenile proceedings private, the Code provides that adjudicatory and dispositional hearings involving offenses that would be murder or Class A, B or C crimes if committed by an adult shall be open to the public. A juvenile

charged with two offenses, one of which is murder or a Class A, B or C crime and the other of which is a lesser crime, can elect to have the charges tried together or separately, and if the charges are tried together, the entire proceeding will be open to the public. See §3307 (2).

Motions and amendments to the petitions are authorized to be made in the same manner as motions and amendments in adult criminal proceedings. See §§3309 and 3310 (2); Rules 3 and 12, Me. Dist. Ct. Crim. Rules. The burden is, of course, on the State to prove each element of the crime beyond a reasonable doubt. See §3310 (4). If at any time the juvenile appears to be mentally ill or incapacitated, the court may suspend the proceedings and order a psychological examination and/or commitment to an appropriate facility. See §§101, 3310 (3) and 3318; 34 M.R.S.A. §§2251 (5), 2333, 2616 (1), and 2659.

Dispositional Hearing

Following an adjudication of a juvenile crime, the court will schedule a dispositional hearing to determine the disposition which will best serve the interests of both the juvenile and the public. See §3312 (1). To make this determination, the juvenile court may order reports to be prepared concerning the juvenile's "mental, physical and social history" and may order a physical or psychological examination and/or placement in a hospital or other residential or nonresidential facility for evaluation. See §§3311 (1) and 3312 (2). Unless waived by the court, the Department of Mental Health and Corrections will automatically prepare a written social history to be considered by the juvenile court at the dispositional hearing. See §§3311 (3) and 3312 (1). The person preparing the report, upon the request of the court or of a party, may be required to appear and be subject to cross-examination at the dispositional hearing. See §3311 (1).

Dispositional Alternatives

The Code authorizes a wide range of dispositional alternatives for a juvenile adjudicated of a juvenile crime. See §3314. The major alternatives are: a suspended sentence with probation, subject to the same conditions as may be imposed for adults on probation — §3314 (2); a supervised work program, with or without monetary restitution to the victim — §3314 (1) (A); simple restitution — §3314 (1) (E); commitment either to the Department of Mental Health and Corrections or to the Department of Human Services for provision of services in the juvenile's home or for placement in a foster home or halfway house; a sentence of up to 30 days served consecutively or intermittently in a county jail approved for juveniles or in a group care home or halfway house, with or without an additional probationary period — §3314 (1) (H); a fine — §3314 (1) (G); and commitment to the Maine Youth Center — §3314 (1) (F).

Commitments to the Youth Center, and all other commitments to the Department of Mental Health and Corrections, are for an indeterminate period, as under the prior law. See §§2718 and 3316 (2) (A). All commitments to the Department of Mental Health and Corrections or to the Department of Human Services are indeterminate and extend to the juvenile's 18th birthday, unless further limited by the court. See §3316 (2). For instance, the court might commit a 15-year-old offender to the Youth Center or to a home under the supervision of Human Services for an indeterminate time not to exceed the juvenile's 17th birthday, rather than his or her 18th birthday. The superintendent of the Youth Center retains the authority to discharge the juvenile at any time during the period of commitment when the juvenile has benefitted optimally from the services of the Youth

Center and when such discharge would be in the best interests of the juvenile. See §2718 of Title 15. Also, in the case of a commitment to the Maine Youth Center or to the Department of Mental Health and Corrections generally, the judge can order an indeterminate commitment up to the juvenile's 21st birthday. Unless specifically so extended, however, the maximum period of commitment is to the juvenile's 18th birthday. The maximum period of commitment to the Department of Human Services is always to the age of eighteen.

Unlike the prior law, the Code specifically spells out the criteria the juvenile court should use in deciding whether to incarcerate a juvenile offender. See §3313. These criteria include a broad range of factors, from the nature of the offense to the character, record, and attitude of the juvenile and the likelihood of the juvenile committing another crime. The officer should become familiar with these criteria and be prepared to present any information bearing on them to the probation officer in charge of compiling the disposition report for the juvenile court.

All dispositions, whether made before or after the effective date of the Code, are to be reviewed at least once a year, for as long as they are in effect. See §3315. This review will be done by the Department of Mental Health and Corrections or, if a juvenile has been committed to the Department of Human Services, by the Department of Human Services. A report of this annual review will be made and filed with the reporting department, the programs reviewed, and the juvenile's parents, guardian or legal custodian. This report must contain, among other things, an individualized plan for the juvenile and a statement showing that the plan represents "the least restrictive alternative consistent with adequate care of the juvenile and protection of the community." See §3315 (2).

APPEALS

The Code spells out methods and occasions for appeals by either the juvenile, the juvenile's parents, guardian or custodian, or the State. See §3402. These provisions differ from the prior law, in that appeals, including appeals from bind-over hearings, are "on the record" only, rather than "*de novo*," and the State's right of appeal is expanded. The State may appeal an order of the juvenile court refusing to bind over a juvenile, an order of the court finding that it has no jurisdiction over the juvenile, an order suppressing evidence, or an order holding a statute unconstitutional. See §3402 (3). Appeals from orders of the juvenile court are taken to the Superior Court, and appeals from the Superior Court's decisions may be taken to the Maine Supreme Judicial Court on questions of law. See §3407. As in adult criminal procedure, the juvenile may request a stay of the disposition order and release from custody pending an appeal. See §3405. The Superior Court, on appeal, may affirm, reverse, direct an acquittal, dismiss the charges, or modify an order of disposition.

INTERIM CARE; RUNAWAYS

The Code introduces into the law of Maine the concept of "interim care," defined as "the status of temporary physical control of a juvenile" by a law enforcement officer when that law enforcement officer has reasonable grounds to believe either that: 1) the juvenile is abandoned, lost, or seriously endangered in his or her surroundings and that immediate removal is necessary for the juvenile's protection; or 2) the juvenile has left the care of his or her legal custodian without the consent of the custodian. See §§3003 (13) and 3501 (1). Interim care is solely to protect the welfare of the juvenile and is not the same as an arrest for a crime. See §3501 (3). A juvenile may not be held

involuntarily in interim care for more than six hours. See §3501 (2). This time limit, however, would not apply to a young child who protests this temporary custody but who is not old enough to look out for his or her own safety and who therefore would continue to be "seriously endangered" without interim care.

After taking a juvenile into interim care, the law enforcement officer should attempt to verify the juvenile's identity and to contact the parents, guardian or legal custodian of the juvenile. The officer should also contact an intake worker, who will designate an appropriate placement, if necessary, and who will offer social services to the family and to the juvenile where necessary. See §3501 (5) and (8). The officer should contact the family of the juvenile or, if the family is unavailable, a person with whom the juvenile resides, and inform them of the juvenile's whereabouts and the name and telephone number of the intake worker if one has been contacted. See §3501 (4).

The Code prohibits law enforcement officers from fingerprinting a juvenile who has been taken into interim care. However, they may photograph the juvenile and obtain and transmit to other agencies information, such as the juvenile's name, age and address, in order to help locate the juvenile's family and residence. See §3501 (9).

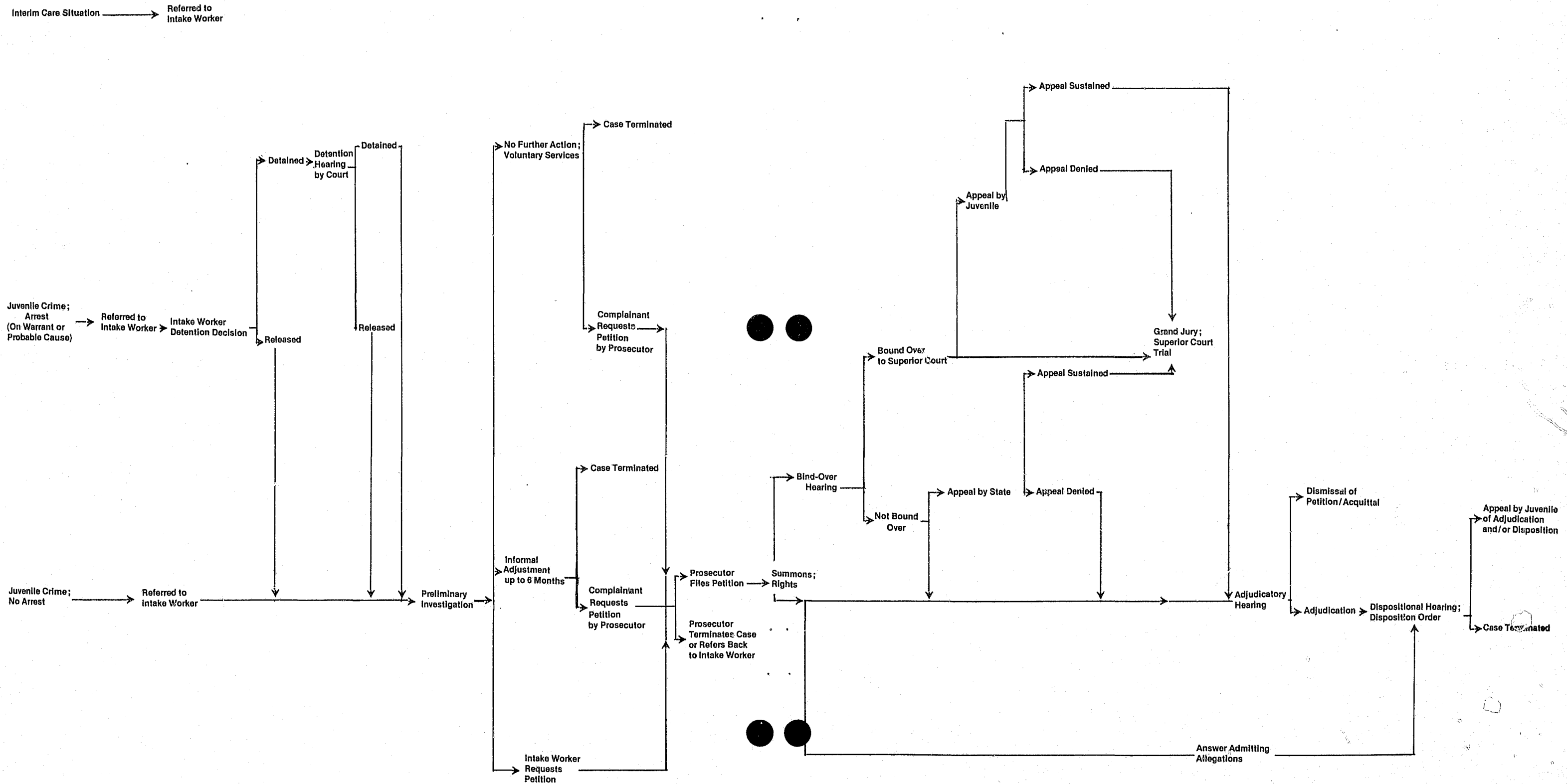
The Code also states that juveniles in interim care should not be detained in the secure section of a jail or other correctional facility, and that, to the extent practicable, they should not be transported in a police vehicle along with any adult under arrest. See §3501 (7). The purpose of this provision is to ensure that a juvenile in interim care is not treated as a person accused of crime and does not come into contact with criminal offenders.

The Code also specifies that it is the parents' or guardian's res-

pensibility to arrange for transportation home for the juvenile, and if they do not make arrangements on their own, that the juvenile may be transported home at their expense. See §3503.

The Code spells out specific procedures for dealing with runaway youths. See §§3504-3507. Runaways, like other juveniles taken into interim care, should be referred to an intake worker. Depending on the age of the juvenile and the attitude of the juvenile and the parents, the intake worker may simply return the juvenile to his or her home, offer emergency shelter placement, or refer the case to the Department of Human Services for the filing of a neglect petition, pursuant to 22 M.R.S.A. ch. 1055. The handling of juveniles who have run away from another state is governed by the "Uniform Interstate Compact on Juveniles," 34 M.R.S.A. ch. 9.

JUVENILE PROCEDURE FLOW CHART



APPENDIX
VIOLATIONS OF LIQUOR LAWS BY JUVENILES/MINORS/ADULTS

Section of Title 28	Offense	Juvenile (under 18)	Minor Between Age of 18 and 20	Person Over 20
§ 1	General Penalty	Juvenile Crime	Class E Crime	Class E Crime
§ 4 (8th & 9th ¶s)	Purchase or Sale of Liquor on Sunday	Juvenile Crime	Class E Crime	Class E Crime; or Administrative Court Action
§ 9 (2d ¶)	Drinking under Common Roof of Licensed Retail Store	Civil Violation- \$50 fine	Civil Violation- \$50 fine	Civil Violation- \$50 fine
§ 155	Sale of Liquor in State Store to Minor (under 20)	— — — —	— — — —	Class E Crime; or Administrative Court Action
§ 303 (2d ¶)	Sale of Liquor by Licensee to Intoxicated or Mentally Ill Person or to Minor (under 20)	— — — —	— — — —	Class E Crime; or Administrative Court Action
§ 303 (3d ¶)	Purchase, Consumption, or Possession of Liquor by Minor (under 20); or Presenting False Identifi- cation to Buy Liquor by Minor	Juvenile Crime, w/o Penalty of Incarceration	Civil Violation- \$100 Fine	— — — —
§ 502	Illegal Manufacture of Liquor	Juvenile Crime	Class E Crime	Class E Crime
§ 751-A	Employment of Minors Under 17 in Retail Store	— — — —	— — — —	Class E Crime; or Administrative Court Action
§ 756	Sale/Delivery of Malt Liquor/Table wine w/o Invoice	— — — —	— — — —	Class E Crime; or Administrative Court Action
§ 801	Unlawful Sale for off Premises	— — — —	— — — —	Class E Crime; or Administrative Court Action
§ 806	Sale in Original Container	— — — —	— — — —	Class E Crime; or Administrative Court Action
§ 852	Employment of Minors Under 17/18 in Premises Licensed for on- Premises Consumption	— — — —	— — — —	Class E Crime; or Administrative Court Action
§§ 951-952	Sale to or Consumption by Minor of Food W/High Alcoholic Content	Juvenile Crime	Class E Crime	Class E Crime

§ 1001	Transportation of Liquor by Minors	Traffic Infraction; w/License Suspension	Traffic Infraction; w/License Suspension	_____
§ 1051	Possession w/Intent to Sell	Juvenile Crime	Class E Crime	Class E Crime
§ 1052	Importation of Liquor	Juvenile Crime	Class E Crime	Class E Crime
§ 1053 (1)	Transportation of Liquor w/Intent to Sell	Juvenile Crime	Class E Crime	Class E Crime
§ 1053 (2)	Importation or Illegal Transportation of Malt Liquor/Table Wine	Juvenile Crime	Class E Crime	Class E Crime
§ 1054	Illegal Delivery of Liquor	Juvenile Crime	Class E Crime	Class E Crime
§ 1055	Illegal (non-licensed) Sale of Liquor	Juvenile Crime	Class E Crime	Class E Crime
§ 1056	Aiding Children Under 16 in Illegal Possession or Sale of Liquor	_____	Class E Crime	Class E Crime
§ 1057	Common Seller of Liquor	Juvenile Crime	Class E Crime	Class E Crime
§ 1058	Furnishing Liquor to Minor (under 20)	_____	_____	Class E Crime
§ 1059	Furnishing Liquor to Prisoners	Juvenile Crime	Class E Crime	Class E Crime
§ 1060	Fraudulent Procurement or Misuse of Identification Card	Juvenile Crime	Class E Crime	Class E Crime
§ 1061	Transportation onto or off Premises	Juvenile Crime	Class E Crime	Class E Crime
§ 1203	Keeping Liquor for Unlawful Sale/ Dumping of Evidence	Juvenile Crime	Class E Crime	Class E Crime
17 M.R.S.A. § 2003	Drinking in Public Place	Civil Violation- \$50 fine	Civil Violation- \$50 fine	Civil Violation- \$50 fine
17-A M.R.S.A. § 554	Endangering the Welfare of a Child Under 16 (e.g. by Furnishing Liquor)	_____	Class D Crime	Class D Crime
29 M.R.S.A. § 1312	Operating Motor Vehicle Under the Influence	Juvenile Crime; w/License Suspension	Crime- \$1000/90; days; w/License Suspension	Crime- \$1000/90 days; w/License Suspension
12 M.R.S.A. § 1978 (2)	Operating Snowmobile Under the Influence	Juvenile Crime	Class E Crime	Class E Crime
12 M.R.S.A. § 2073 (2)	Operating Watercraft Under the Influence	Juvenile Crime	Class E Crime	Class E Crime

SAMPLE SUMMONS

MAINE DISTRICT COURT

JUVENILE SUMMONS

Docket No.		County	Division
STATE OF MAINE vs.	Juvenile's Name		Address
Summons Issued To JUVENILE	Guardian	Address	
YOU ARE HEREBY SUMMONED TO APPEAR BEFORE A JUDGE OF THE DISTRICT COURT FOR THIS DIVISION ON THE DATE AND AT THE TIME AND PLACE SHOWN BELOW TO ANSWER A PETITION CHARGING YOU WITH THE OFFENSE DESCRIBED HEREIN.			
Juvenile Offense:			
Statute(s) Violated			
↓ THE TIME, DATE AND PLACE OF HEARING ↓			
Time	Date	Location	
M			
↓ CONSTITUTIONAL RIGHTS ↓			
YOU HAVE THE CONSTITUTIONAL RIGHT TO REMAIN SILENT; HOWEVER, IF YOU DO SAY ANYTHING IT MAY BE USED AGAINST YOU IN COURT.			
YOU HAVE THE CONSTITUTIONAL RIGHT TO CONSULT A LAWYER AND IF YOU CANNOT AFFORD ONE THE COURT WILL APPOINT ONE.			
IF YOU FAIL TO APPEAR AND ANSWER A WARRANT WILL BE ISSUED FOR YOUR ARREST.			
	Date	Clerk-Judge	
		X	

DCJ-3(a) Rev. 8/78

This summons was received by me at _____
on _____, 19____.

Juvenile

Docket No. _____

SUMMONS
(Juvenile's Parents/Guardian)

Name _____

Address _____

(OPTIONAL SERVICE)

By virtue of the within precept, I, this day, summoned the within named _____
_____ to appear as herein directed.

Authorized Officer

SAMPLE PETITION

MAINE DISTRICT COURT

JUVENILE PETITION

Docket No.		County		Division	
STATE OF MAINE vs				Residence	
Petitioner		Petitioner's Address/Agency			
Date of Offense	Location of Offense			Date Referred	
Statute(s) Violated				DOB	
<p>TO ANY COMPLAINT JUSTICE, JUDGE, OR CLERK OF THE DISTRICT COURT: THE ABOVE NAMED PETITIONER, BEING DULY SWORN, DEPOSES AND SAYS (UPON INFORMATION AND BELIEF) THAT ON THE DATE AND AT THE LOCATION STATED ABOVE THE JUVENILE DID:</p>					
<p>Allegation</p>					
				<p>Sworn to Before: Clerk/Judge</p>	
Complainant X		Date		X	
↓ INITIAL APPEARANCE ↓					
Appearance Date		Parent/Guardian Pres. <input type="checkbox"/> yes <input type="checkbox"/> no		Attorney <input type="checkbox"/> retained <input type="checkbox"/> assigned	
Reading <input type="checkbox"/> held <input type="checkbox"/> waived		Answer: <input type="checkbox"/> denied <input type="checkbox"/> admitted <input type="checkbox"/> no answer		Name Hearing Set For:	
Conditions of Release				Date	Judge X
↓ PROBABLE CAUSE HEARING ↓					
Hearing Date		Probable Cause Found <input type="checkbox"/> yes <input type="checkbox"/> no		Jurisdiction <input type="checkbox"/> waived <input type="checkbox"/> kept	
				Bound Over To: Date	
Conditions of Release				Date	Judge X
↓ ADJUDICATION HEARING ↓					
Amend. Comp. <input type="checkbox"/> yes <input type="checkbox"/> no		New Complaint <input type="checkbox"/> yes <input type="checkbox"/> no		Cont. to: Trial Held <input type="checkbox"/> yes <input type="checkbox"/> no	
Ans. Retracted <input type="checkbox"/> yes <input type="checkbox"/> no		New Answer <input type="checkbox"/> guilty <input type="checkbox"/> not guilty		Finding <input type="checkbox"/> Pet. dism. <input type="checkbox"/> Off. committed	
Condition of Release				Date	Judge X
↓ DISPOSITION ↓					
Hearing Date				Appeal to S.C. <input type="checkbox"/> yes <input type="checkbox"/> no	
				Date Appealed Conditions of Release	
				Date	Judge X

INTAKE WORKERS AND AREAS ASSIGNED

(as of August 1, 1978)

Name and Address	Area Covered
1. Wayne Libby Rte. 115, North Windham Tel: 892-8939	Kittery, Eliot, York, South Berwick, Berwick, North Berwick, Wells, Sanford, Kennebunk, Kennebunkport, Arundel, Alfred, Acton, Shapleigh, Waterboro, Newfield
2. Edmund J. Toohar Josiah Norton Rd., Cape Neddick Tel: 646-7876	Old Orchard Beach, Saco, Biddeford, Dayton, Buxton, Hollis, Limerick, Limington, Cornish, Parsonsfield, Porter
3. Patricia A. Riley-Smith 95 Kent St., Portland Tel: 772-4418	Gorham, Scarborough, South Portland, Cape Elizabeth, Portland, Westbrook, Falmouth
4. Greg Masalsky General Delivery, No. Windham	Windham, Gray, New Gloucester, Cumberland, Yarmouth, North Yarmouth, Pownal, Freeport, Brunswick, Harpswell
5. Allen V. Wright Camp Winaco - Hogfat Hill West Baldwin Tel: 787-3470	Standish, Steep Falls, Baldwin, Sebago, Hiram, Brownfield, Denmark, Naples, Fryeburg, Stowe, Lovell, Sweden, Bridgton, Harrison, Otisfield, Casco, Raymond
6. Joan Dawson Box 806, Farmington Tel: 778-4550	Franklin Cnty., Leeds, Livermore, Livermore Falls, Turner, Gilead, Bethel, Milton Pkt., Canton and all towns north of these towns in Oxford County
7. Holly J. Hannon 46 Gothic St., So. Paris Tel: 743-7957	Stoneham, Waterford, Norway, Otisfield, Oxford, Hebron, Buckfield, Hartford, Sumner, Woodstock, Greenwood, Albany, Mason Twnshp., Batchelders Grant, West Paris, Paris, Norway, Poland, Mechanic Falls, Minot, Auburn
8. Pauline A. Greateon 46 Third St., P.O. Box 206 Auburn Tel: 784-9225	City of Lewiston
9. Kevin E. Chute Rte. 3, Gorham Tel: 929-5560	A portion of Lewiston, Greene, Wales, Sabattus, Lisbon, Durham, and all of Sagadahoc County

- | | |
|--|--|
| 10. Randolph E. Brown
186 Maine Ave., Farmingdale
Tel: 582-1640 | All of Lincoln Cnty., Augusta, Gardiner, Litchfield, Pittston, Randolph, Chelsea, Togus, Windsor, Winthrop, Manchester, Monmouth, Readfield, Hallowell, Wayne |
| 11. Elizabeth J. Pineau
4 West St., Waterville
Tel: 872-6043 | All remaining towns in Kennebec Cnty. not covered by Intake Worker No. 10, Mt. Vernon, Kents Hills, Fayette, Belgrade, Vienna, Sidney, Oakland, Rome, Vassalboro, China, Albion, Benton, Winslow, Waterville |
| 12. Mark R. Boger
RFD #1, B-74, Albion
Tel: 453-6554 | All of Somerset Cnty. and Clinton |
| 13. Janette Small
RFD #1, B-147,
Rockland
Tel: 596-6203 | All of Knox County and all of Waldo County |
| 14. Karla Kurry
61A-3rd Ave., Madawaska
Tel: 728-6037 | All of Piscataquis Cnty. and all towns in Penobscot Cnty., including and north of LAGRANGE, Edinburg, Passadumkeag, Lowell, Burlington, and Lakeville Plt. |
| 15. J. Charles O'Roak
P.O. Box 354
69 Main St., Patten
Tel: 528-2096 | All of Aroostook south of and including Portage, Portage Lake, Nashville Plt., Ashland, Castle Hill, Mapleton, Presque Isle, and Fort Fairfield |
| 16. Sandra Griffin
Caribou | All of Aroostook Cnty. north of and including Winterville Plt., Wade, Washburn, Caribou, and Limestone |
| 17. Lewis E. Frey
North Rd., Campobello
Tel: 506-752-2117 | All of Washington County |
| 18. Michael J. Dale
19 Greenway Dr., Falmouth
(Temporary)
Tel: 781-5660 (Temporary) | All of Hancock County |

19. Karen Hartnagle
Rt. 2, Box 918
Hinckley Hill Rd., Carmel
Tel: 848-5359

Dexter, Corinna, Newport, Plymouth, Dixmont, Garland, Exeter, Stetson, Etna, Charleston, Corinth, Levant, Carmel, Newburgh, Bradford, Hudson, Kenduskeag, Glenburn, Hermon and Hampden

20. Ann T. Therrien
P.O. Box 253
Clark Rd., Kenduskeag
Tel: 884-7294

Alton, Argyle, Old Town, Orono, Veazie, Brewer, Greenbush, Milford, Bradley, Eddington, Clifton, Holden and Orrington

21. Alison B. Smith
32 Norway Rd., Bangor
Tel: 942-0176

The City of Bangor

**24-Hour Human Services
Telephone No.: 1-800-452-1999.**

**County Jails Approved by the
Department of Mental Health and
Corrections for the Incarceration of
Juveniles:**

Aroostook
Piscataquis
Penobscot
Waldo
Knox
Androscoggin
Cumberland

Hancock—When new jail becomes
operational

Oxford—When new jail becomes
operational

York—When new jail becomes
operational

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RECENT COURT DECISIONS

Confessions

B§1.1 Voluntariness

B§1.3 Miranda

In October, 1976, police officials were investigating the disappearance of a Volkswagen Van. Two officers went to the defendant's home, where they found the defendant sitting in a tree house with his girlfriend. One of the officers questioned the defendant about the missing van, and at some point in time turned to his fellow officer and stated that he had reason to believe that the defendant was involved in a theft of a vehicle. Shortly after, the defendant descended from the tree house and offered to make some phone calls for the police. Five or ten minutes later the defendant stated that he knew where the van was and he would take the police to it. The police found the van and discovered a blanket and some clothing (later linked to the defendant) in it. No **Miranda** warnings were ever given to the defendant.

At trial, the presiding Justice admitted the items found in the van, as well as testimony to the effect that the van was discovered near the defendant's home. However, the presiding Justice excluded evidence of the defendant's statements and conduct which led the police to the van, on the ground that the defendant had not been properly advised of his **Miranda** rights. On appeal, the defendant claimed that the evidence admitted against him should have been excluded as "fruit of the poisonous tree."

The Law Court held that the presiding Justice should not have excluded the defendant's statements. The duty to give **Miranda** warnings arises only when a suspect has been subjected to "custodial interrogation." Here, the defendant

was questioned on his own property during the day. He was not coerced or threatened in any way, and the evidence clearly showed that he was not deprived of his liberty in any way. The defendant had complete freedom of movement at all times and his decision to speak to the police and to lead the police to the stolen van was the product of his own free will. The Law Court therefore concluded that the defendant was not entitled to any **Miranda** warnings, and evidence of his statements and his conduct should have been admitted at trial. *State v. Craney, Me., 381 A.2d 630 (1978).*

Arrest

A§3.3 Resisting Arrest-Force

Defenses

D§3.6 Self-Defense

After being arrested for disorderly conduct, defendant had several altercations with police officers enroute to the police station and was subsequently charged with assault.

In appealing his assault conviction, defendant insisted he had a right to use a reasonable amount of force in resisting an illegal arrest.

The Law Code acknowledged that §108(1) of the Criminal Code generally permits a person to defend himself from what he reasonably believes to be the imminent use of unlawful non-deadly force by another person. The Court emphasized, however, that §108 must be interpreted in light of §107 (Physical force in defense of a person) and §752 (Assault on an officer). §107 of the Code allows a law enforcement officer to use a reasonable degree of nondeadly force to effect an arrest, **unless he knows that the arrest is illegal.** This section was intended to discourage people from a violent response to what they see as an illegal arrest.

When construed in light of these other statutes, §108 does not justify the use of force against a police

officer merely because the arrested person reasonably believes the arrest to be illegal. That section makes the arrested person's use of force depend upon the unlawfulness of the force used by the officer, and absent knowledge that the arrest is illegal, the officer's force in making the arrest, if not excessive, is legal. *State v. Austin, Me., 381 A.2d 652 (1978).*

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine 04333.

ALERT

The matter contained in this bulletin is intended for the use and information of all those involved in the criminal justice system. Nothing contained herein is to be construed as an official opinion or expression of policy by the Attorney General or any other law enforcement official of the State of Maine unless expressly so indicated.

Any change in personnel or change in address of present personnel should be reported to this office immediately.

Joseph E. Brennan	Attorney General
Richard S. Cohen	Deputy Attorney General
	In Charge of Law Enforcement
William R. Stokes	Ass't Attorney General
Stephen L. Diamond	Ass't Attorney General
Janet T. Mills	Ass't Attorney General
Sandra T. Moores	Secretary

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END