



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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Senator Anne Carney, Chair
Representative Amy Kuhn, Chair
Joint Committee on Judiciary
5 State House Station, Room 438
Augusta, ME 04333

RE: MACDL Testimony in Opposition of LD 535: An Act to Authorize Judicial Disposition of a Juvenile Adjudicated of Murder or a Class A Crime to a Term of Commitment Extending Beyond the Juvenile's 21st Birthday

Dear Senator Carney, Representative Kuhn, and Members of the Joint Committee on Judiciary,

The Maine Association of Criminal Defense Lawyers (MACDL) is a non-profit organization committed to the advancement of justice and the practice of criminal law in Maine and is comprised of nearly 300 member attorneys across the state. Our members represent adults charged in criminal courts and young people charged as juveniles.

It is based on our collective experience in advocating for young people and our knowledge of the Juvenile Code that we **oppose** this misguided and unnecessary proposed bill.

Maine's Juvenile Code, [Title 15 M.R.S. §§ 3001](#), *et seq.*, has been developed and improved upon since its enactment in 1977.

Pursuant to [Title 15 M.R.S. § 3101\(4\)](#), Maine's Juvenile Code has set out an explicit process—called “bind over”—to allow for prosecutors to request—and for a judge to decide—that a young person charged of a serious offense as a juvenile to be “bound over” into adult criminal court.

For those Committee members who may not be as familiar with the Juvenile Code and Juvenile Court procedure as others, this bind over process is employed sparingly in Maine. Prosecutors typically request that a young person be bound over in only very serious matters—including a charge of Murder or Class A offenses, including sex offenses. They are allowed to petition for a bind-over when a young person is charged with an offense that, if an adult had committed that offense, would be a Class A, Class B, or Class C crime—felonies punishable by more than one year in prison.

The factors for a court to consider when deciding whether to bind over a juvenile into adult criminal court are: the seriousness of the offense; the personal characteristics of the juvenile; concerns of public safety; and whether dispositional alternatives (apart from adult imprisonment) would be adequate to address the conduct. [15 M.R.S. § 3101\(4\)\(D\)](#). These considerations already exist and are used effectively and are nearly identical to the factors laid out in Section 2 of this proposed bill.

At a bind over hearing, the State must first establish through testimony and exhibits that probable cause (a very low standard) exists to believe that the juvenile charged committed the offense he is charged with. Once that burden is met, the State and the defense—again through testimony and exhibits, including expert testimony, victim testimony, and more—have an opportunity to establish by a preponderance of evidence (more likely than not),

weighing the factors under subsection (D), that binding the juvenile over into adult court is appropriate for that particular young person.

If the judge declines to bind over the juvenile, the State can automatically appeal that decision to the Maine Law Court. Conversely, if the judge decides that bind over is appropriate for the juvenile—that juvenile can also appeal that decision to the Law Court. These appeals are prioritized for quick resolution—time is of the essence when working with young people in these serious matters.

If a juvenile’s case is not bound over, then it proceeds as any other juvenile matter. A trial would be held before the judge; and, if the judge adjudicates the juvenile as having committed the offense, the judge also determines an appropriate disposition (or juvenile sentence) in light of the purposes of sentencing in the Juvenile Code. 15 M.R.S. §§ [3313](#), [3314](#).

If a juvenile’s bind over is affirmed that juvenile’s prosecution proceeds into adult court—which affords the young person the right to have their case presented to a grand jury for indictment and a jury trial, something that the Juvenile Court does not allow. When, following trial or by plea, a juvenile is convicted of an adult criminal charge in adult criminal court, the judge may impose any lawful sentence—and for cases involving murder, that sentence can be up to life in prison.

The current process—long utilized in Maine’s juvenile courts—from petition to appeal, has necessary checks and balances built into it—and already allows prosecutors to pursue adult prosecution for serious offenses, and, by extension, allows judges to punish juveniles with extended prison terms far beyond what they would typically receive in a juvenile prosecution.

The current legislation is intended to address a problem that does not exist: when young people are bound over to be prosecuted as adults, they are subject to severe adult penalties already. Without that process, it would be giving judges far too much discretion to impose prison terms that extend beyond a young person’s 21st birthday without the due process that would ensure basic fairness in the proceeding.

Do young people sometimes commit serious—even deadly—offenses? Sadly, yes. The Legislature has already implemented a well-established process for addressing the most serious juvenile transgressions in a way that respects and upholds the young person’s rights—while taking heed to the overall purposes of the Juvenile Code.

This proposal would also give the Juvenile Court judge far too much power: when a young person is tried in Juvenile Court, there is no right to a jury trial. The decision regarding whether a young person should be adjudicated of an offense—and the disposition to be imposed—is solely in the hands of the judge. The amount of justice one gets should not be dependent on one’s age.

What this bill proposes would create yet another problematic on-ramp to long periods of incarceration for young people—by taking an end-run around the bind over process and the protections it affords. Maine’s youth incarceration rate is currently one of the lowest in the nation. Creating a process by which more young people could be exposed to the horrors of adult incarceration—without adequate or really any protections—is a step backwards for Maine and for our children.

For these reasons, we ask this Committee to vote “ought not to pass” on LD 535.

Thank you for considering our comments.

Sincerely,



Tina Heather Nadeau, Esq.
MACDL Executive Director