

**OFFICE OF POLICY AND LEGAL ANALYSIS**  
**Bill Analysis**

**To:** Joint Standing Committee on Judiciary

**From:** Peggy Reinsch, Legislative Analyst

**LD 27 An Act To Provide and Immediate Opportunity To Appeal for a Juvenile Bound Over into Criminal Court**

**Public Hearing Date:** February 4, 2021

**SUMMARY**

This bill amends the Maine Juvenile Code to grant a juvenile the opportunity to immediately appeal an adverse bind-over decision into criminal court from the juvenile court.

**TESTIMONY**

**Proponents**

- Senator Bailey, sponsor (written testimony)
- Jonathan Ruterbories (written testimony, report)
- Walter McKee, Maine Association of Criminal Defense Lawyers (written testimony)
- John Pelletier, Criminal Law Advisory Commission (written testimony and PROPOSED COMMITTEE AMENDMENT)
- Michael Israel Mosley (written testimony)
- Ned Chester (written testimony)
- Janet Drew (written testimony only)
- Marguerette Seguin (written testimony only)
- Daria Cullen (written testimony only)
- Dominic Sylvester (written testimony only, prepared by Ruterbories and Mizzi)
- Will Smith (written testimony only, prepared by Ruterbories and Mizzi)
- Attorney General Aaron Frey (written testimony only)
- Michael Kebede, ACLU Maine (written testimony only)
- Christine Thibeault, Maine Prosecutors Association (written testimony only)
- Organizations (combined letter of support)
  - The juvenile justice system is very different than adult criminal court in recognition of the fact that children should not be treated the same as adults when they have potentially broken the law
  - When the Court has made its decision after the "bind-over" hearing, it is only immediately appealable by the prosecution
  - The only opportunity for the defense to have the bind over decision reviewed is after the adult criminal court has rendered its decision on guilt or innocence and, if found guilty, has rendered its sentence
  - This bill seeks to address this inequity and allow either the prosecution or the defense to immediately appeal to the Law Court the bind over decision by the Juvenile Court
  - Juveniles who are bound over and can't appeal until after conviction in an adult court feel like it is best to accept a plea deal with a set amount of time of imprisonment rather than chance spending the rest of their lives incarcerated

- A juvenile who is bound over and accepts a plea deal cannot appeal the bind-over decision (if part of the plea deal)
- Compelling reasons to provide an opportunity for an immediate appeal:
  - The appellate right's alignment with the purposes of the Juvenile Code
  - The balancing of the bargaining power between the parties
  - The procedural clarity offered by an immediate appeal of a bind-over decision
- Our system fails to help victims heal, instead oppressing accused individuals, their families and communities
- The decision to bind over is one that involves a whole host of consideration including whether there would be adequate time in the juvenile system for the juvenile to be rehabilitated – but if the juvenile is bound over, the case may take years before there is a final decision in the adult court after a plea or trial
- The delay in the process alone severely impacts the juvenile's ability to prevail on any decision with respect to bind over because there is such little time left to allow for rehabilitation in the juvenile system in the first place
- While it is always better to have one appeal that unifies all issues with respect to a case, here, because the bind over decision cannot be appealed until after the conclusion of the entire case, the juvenile loses out
- Allowing for an appeal of the bind over decision right after it is made, in the usual manner of expedited appeals for juvenile cases, would be fair and appropriate and consistent with the purposes of the juvenile code which focuses on the rehabilitation of the juvenile who committed what would otherwise be adult crimes
- CLAC: A juvenile subject to an order of bind-over should have the opportunity to challenge that order before having to face trial in adult court
- The juvenile should have the option to proceed to trial in adult court right away, and then appeal the bind-over decision
- Require Supreme Judicial Court schedule appeal in expedited fashion?
- Without right to appeal immediately, the juvenile really doesn't really have a right
- If can't appeal until adult conviction, then no time left to make use of juvenile services
- Standard of review? Because so many considerations, might be best to allow Supreme Judicial Court develop
- Bind over is the most punitive consequence we can impose on a juvenile
- Juveniles in adult system are more likely to commit more crimes and more serious crimes
- Purpose of the juvenile justice system is to do well for the juvenile, balanced with community safety
- After a child is bound over, they are much less likely to receive developmentally appropriate treatment
- We should make sure that binding over a juvenile is the only option left for the community and that we are ready to bear the cost of that decision
- Trials are stressful and expensive – we should not force a case to go to trial unless we have a final determination by the Supreme Judicial Court that the transfer of the juvenile to the adult system is valid and appropriate
- Review on all appeals from juvenile court to the Supreme Judicial Court is for **errors of law or abuses of discretion** 15 MRSA §3405, sub-§1

### Opponents

- None

### Neither for nor against

- Julia Finn, Judicial Branch (written testimony)
  - Judicial Branch takes no position on policy
  - Very few cases are bound over to the adult criminal docket: between 2007 and 2020 (13 years), 19 cases were bound over
  - Questions for consideration
    - Are there double jeopardy issues and if so, how to resolve?
    - Is it a right to appeal or a discretionary appeal?
    - What is the standard of review?
    - If a juvenile is bound over and tried as an adult, would he/she be precluded from appealing the bind-over decision once convicted?

### **FISCAL IMPACT:**

Not determined as of February 20, 2021

### **BACKGROUND**

Under **current law**, the Juvenile Code provides for the prosecutor to request that a juvenile be tried as an adult in certain circumstances. That proceeding, held before a District Court judge acting as the Juvenile Court, is called a bind-over hearing.

At a bind-over hearing, the court considers:

1. Whether there is probable cause to believe the juvenile committed a juvenile crime that would constitute murder or a Class A, Class B or Class C crime if committed by an adult; and
2. After a consideration of the seriousness of the crime, the characteristics of the juvenile, the public safety and the dispositional alternatives available, whether it is appropriate to prosecute the juvenile as if the juvenile were an adult.

(15 MRSA §3101, sub-§4, ¶E)

If the Juvenile Court determines that the juvenile should be tried as an adult, the juvenile is "bound over" and is then treated as an adult in the criminal justice system. If the Juvenile Court decides the juvenile should be treated as a juvenile and kept in the juvenile justice system, the prosecution may appeal that decision to the Supreme Judicial Court. If the Juvenile Court does determine that the juvenile should be treated as an adult, the juvenile cannot appeal the bind-over decision until after the case is concluded with the juvenile being convicted of the crime charged.

This bill allows both the prosecution and the juvenile to appeal the bind over determination, whatever it is, immediately.

The Criminal Law Advisory Commission has proposed an amendment to allow the juvenile to appeal immediately after the bind over decision, or after conviction and sentencing, but only once.

No specific rule of Appellate Procedure applies.

Title 15, section 3405, subsection 1 provides: Review on all appeals from juvenile court to the Supreme Judicial Court is for errors of law or abuses of discretion. The Supreme Judicial Court may affirm, reverse or modify any order of the juvenile court or remand for further proceedings. The Supreme Judicial Court may enter a new order of disposition if it finds that the juvenile court's disposition was an abuse of discretion.