

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

'An Act To Amend the Laws Governing the Plea of Not Criminally Responsible by Reason of Insanity in Juvenile Cases'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 15 MRSA §3305, 3rd ¶ is enacted to read:

A juvenile may enter an answer of not criminally responsible by reason of insanity or not criminally responsible coupled with a denial of the charges. For the purposes of this section, "insanity" has the same meaning as established in Title 17-A, section 39, except that the term "mental disease or defect" does not include, in and of itself, the fact that a juvenile has not attained the level of mental and emotional development normally associated with persons 18 years of age or older.

Sec. 2. 15 MRSA §3309-A, sub-§3, as amended by PL 1995, c. 690, §3 and affected by §7, is further amended to read:

3. By consent of the parties. When the juvenile and the prosecuting attorney consent and the court finds that such an evaluation may be of assistance to it in carrying out the purposes of the Maine Juvenile Code; ~~or~~

Sec. 3. 15 MRSA §3309-A, sub-§4, as amended by PL 1999, c. 65, §1, is further amended to read:

4. Juvenile adjudicated of gross sexual assault. After adjudication and before disposition when a juvenile is adjudicated of a juvenile crime that if committed by an adult would be gross sexual assault under Title 17-A, section 253, subsection 1, the court shall order the juvenile to undergo a diagnostic evaluation and may order the evaluation to take place at a detention facility described in section 3203-A, subsection 7, paragraph B; ~~or~~

Sec. 4. 15 MRSA §3309-A, sub-§5 is enacted to read:

5. Not criminally responsible by reason of insanity. When the juvenile has entered an answer of not criminally responsible by reason of insanity pursuant to section 3305 or certifies in writing to the court that the results of such an evaluation are required in order to determine whether or not to so answer.

Sec. 5. 15 MRSA §3310-B is enacted to read:

§ 3310-B. Commitment of a juvenile found not criminally responsible by reason of insanity

1. Not criminally responsible by reason of insanity. When it is determined by a preponderance of the evidence that a juvenile is not criminally responsible by reason of insanity, the court record must so state. The court shall order the juvenile immediately committed to the custody of the Commissioner of Health and Human Services for an indeterminate period. The Commissioner of Health and Human Services shall immediately place the juvenile in an appropriate secure treatment facility. Under the guidance of a psychiatrist, the commissioner shall assess the juvenile and develop a treatment plan. A copy of this plan must be submitted to the court that committed the juvenile, the State Forensic Service, the attorney for the juvenile, the office of the attorney for the State who prosecuted the juvenile, the juvenile and the parents, guardian or legal custodian if the juvenile has any. The court shall review the treatment plan. If the treatment plan involves absences from the secure treatment facility, release to a community setting or discharge from the custody of the Commissioner of Health and Human Services, the court shall schedule a hearing within 30 days and shall provide notice of the hearing to the State Forensic Service, the attorney for the juvenile, the office of the attorney for the State who prosecuted the juvenile, the juvenile and the parents, guardian or legal custodian if the juvenile has any. Following the hearing, the court shall make findings and issue an order pursuant to subsection 7. Hearings pursuant to this section are not open to the public.

For the purposes of this section, the term "Commissioner of Health and Human Services" includes any designee of the commissioner, and the term "psychiatrist" means the psychiatrist under whose guidance the Department of Health and Human Services is providing treatment to the juvenile committed under this section.

2. Notice of placement. Upon placement of a juvenile committed under this section in an appropriate secure treatment facility, or in the event of transfer from one facility to another of a juvenile committed under this section, notice of the placement or transfer must be given by the Commissioner of Health and Human Services to the court that committed the juvenile.

3. Indeterminate commitment. The commitment of a juvenile to the custody of the Commissioner of Health and Human Services must continue until terminated by the court. At its discretion, the court that committed the juvenile may appoint a guardian ad litem.

4. Periodic review. The psychiatrist shall every 6 months conduct a review of the juvenile to address issues related to the mental status of the juvenile and shall compile a report based on this review. The report of the psychiatrist must address whether the juvenile is ready for participation in a treatment plan involving absences from the secure treatment facility, release to a community setting or discharge from the custody of the Commissioner of Health and Human Services.

The report must be submitted to the Commissioner of Health and Human Services, the State Forensic Service and the court that committed the juvenile. The court shall then forward copies of the report to the attorney for the juvenile, the office of the attorney for the State who prosecuted the juvenile, the juvenile and the parents, guardian or legal custodian if the juvenile has any.

The report must address whether the juvenile requires continued secure treatment or is ready for release back into the community without likelihood that the juvenile will cause injury to self or others due to mental disease or defect, with reasons supporting the opinion. The report must outline all treatment efforts undertaken on behalf of the juvenile.

5. Petition for review. Upon the petition of the juvenile, the Commissioner of Health and Human Services or the attorney for the State who prosecuted the juvenile asserting that the juvenile is ready for participation in a treatment plan involving absences from the secure treatment facility, release to a community setting or discharge from the custody of the Commissioner of Health and Human Services, the court shall immediately schedule a hearing upon the petition and provide notice to the Commissioner of Health and Human Services, the State Forensic Service, the attorney for the juvenile, the office of the attorney for the State who prosecuted the juvenile, the juvenile and the parents, guardian or legal custodian if the juvenile has any. Upon notice of a petition pursuant to this subsection, the psychiatrist shall file with the court a report outlining the current treatment plan and all treatment efforts provided to the juvenile. The report must include an opinion as to whether or not the juvenile continues to present a risk of harm to self or others due to mental disease or defect to the extent that continued placement in a secure treatment facility is required. A copy of the report must be submitted by the psychiatrist to the State Forensic Service. The State Forensic Service shall file a report with the court no later than 10 days prior to the hearing. Petitions pursuant to this subsection may not be filed with the court more frequently than once every 6 months.

6. Hearing on petition. The court shall review the reports referenced in subsection 5 and provide a copy of the reports to the office of the attorney for the State who prosecuted the juvenile, the office of the district attorney in whose district the release petition was filed or in whose district release may occur and the attorney for the juvenile. At the hearing, the psychiatrist shall present testimony in support of the opinion. Additional testimony from a member of the State Forensic Service, testimony of an independent psychiatrist or a licensed psychologist who has examined the juvenile and is employed by the prosecutor's office, testimony of an independent psychiatrist or licensed psychologist who has examined the juvenile and is employed by the juvenile and any other relevant testimony must also be considered.

The juvenile bears the burden of proving by a preponderance of the evidence that the juvenile is ready for participation in a treatment plan involving absences from the secure treatment facility, release to a community setting or discharge from the custody of the Commissioner of Health and Human Services and that the juvenile no longer presents a risk of harm to self or others due to mental disease or defect.

7. Findings and order of the court. If after hearing the court finds that the juvenile may, without likelihood of harm to the juvenile or to others due to mental disease or defect, be granted participation in a treatment plan involving absences from the secure treatment facility, be released to a community setting or be discharged from the custody of the Commissioner of Health and Human Services, the court shall so order. A treatment plan involving absences from the secure treatment facility or release to a community setting may include conditions necessary to ensure that the plan can be implemented without likelihood of harm to the juvenile or others due to mental disease or defect.

8. Notification of victim. Upon request of the victim, the Commissioner of Health and Human Services shall notify the victim of the juvenile crime whenever the juvenile is allowed absences from the secure treatment facility, is released from a secure treatment facility to a less restrictive residential placement, is returned to the community with or without conditions imposed by the court or is discharged from the custody of the Commissioner of Health and Human Services.

9. Return to a secure treatment facility upon the commissioner's order. The Commissioner of Health and Human Services may order any juvenile released pursuant to subsection 7 who fails to comply with the conditions of the juvenile's court-approved treatment plan to return to the secure treatment facility from which the juvenile was released. The court shall hold a hearing for the purposes of reviewing the order for release within 7 days of the juvenile's return if the juvenile will be detained for 7 or more days. At the hearing, the court shall receive testimony of the psychiatrist, any member of the State Forensic Service who has examined the juvenile upon the juvenile's return and any other relevant testimony. Following the hearing, the court may reissue or modify the previous order of release.

10. Return to a secure treatment facility due to likelihood of causing injury. A juvenile released pursuant to subsection 7 whose return to a secure treatment facility is considered necessary due to failure to comply with the conditions of the juvenile's court-approved treatment plan or who due to a deterioration in functioning now presents a likelihood of harm to self or others due to mental disease or defect, upon the verified petition of any interested person, may be brought before any judge of the District Court upon the judge's order. The court shall hold a hearing for the purpose of reviewing the mental condition of the juvenile and the order for release. The court may order the juvenile detained for observation and treatment, if appropriate, at a secure treatment facility pending the hearing. The detention may not exceed 14 days. The psychiatrist shall report to the court prior to the hearing as to the mental condition of the juvenile, indicating specifically whether the juvenile may return to the community without likelihood that the juvenile will cause injury to self or others due to mental disease or defect. The court shall receive the testimony of the psychiatrist who observed or treated the juvenile during the period of detention, any member of the State Forensic Service who has examined the juvenile during the period of detention and any other relevant testimony. Following the hearing, the court may reissue, modify or rescind the previous order of release.'

SUMMARY

This amendment replaces the bill and does the following.

1. It clarifies definitions of the juvenile defense of not criminally responsible by reason of insanity by making language consistent with the defense as it applies to adult criminal matters.
2. It creates procedures similar to those that exist for adults found not criminally responsible by reason of insanity for the review by the juvenile court of a juvenile's placement, transfer, release and discharge from the custody of the Department of Health and Human Services.
3. It specifies that subsequent hearings for juveniles found not criminally responsible by reason of insanity may not be open to the public.

4. It provides a mechanism for notice to the victim when a juvenile is released from secure treatment.
5. It allocates the procedures governing findings and hearings related to juveniles found not criminally responsible by reason of insanity to the sequence of sections in the Maine Juvenile Code governing adjudicatory hearings, findings and adjudication, thereby clarifying that a finding of not criminally responsible by reason of insanity precludes adjudication of a juvenile crime.
6. It provides procedures by which a juvenile may enter an answer of not criminally responsible by reason of insanity alone or coupled with a denial of the charges.
7. It provides authority to the juvenile court to order a diagnostic evaluation of a juvenile who enters an answer of not criminally responsible by reason of insanity alone or coupled with a denial of the charges.
8. It provides that copies of treatment plans, reports and petitions must be distributed to all parties, including the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile has any.