

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 224 - L.D. 320

An Act To Provide the Right to Counsel for Juveniles and Improve Due Process for Juveniles

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §3003, sub-§14, as enacted by PL 1977, c. 520, §1, is amended to read:

14. Juvenile. "Juvenile" means any a person who has not attained the age of 18 years of age and a person 18 years of age or older during the period of a disposition that includes probation or commitment to a Department of Corrections juvenile facility who was adjudicated before 18 years of age. This definition does not apply to a person whose disposition includes probation or commitment to a Department of Corrections juvenile correctional facility when that person engages in new criminal conduct and is 18 years of age or older at the time of the new criminal conduct.

Sec. 2. 15 MRSA §3203-A, sub-§4, ¶G is enacted to read:

G. Notwithstanding any provision of law to the contrary, a juvenile who has not attained 12 years of age may not be detained at a secure detention facility for more than 7 days except by agreement of the parties.

Sec. 3. 15 MRSA §3203-A, sub-§5, as amended by PL 2003, c. 706, Pt. A, §§2 and 3, is further amended to read:

5. Detention hearing. Upon petition by a juvenile community corrections officer who ordered the detention or an attorney for the State who ordered the detention, the Juvenile Court shall review the decision to detain a juvenile within 48 hours following the detention, excluding Saturday, Sunday and legal holidays, except that if a juvenile is detained pursuant to subsection 7, paragraph B-5, the Juvenile Court shall review the decision to detain the juvenile within 24 hours following the detention, excluding Saturday, Sunday and legal holidays. When a petition to review detention is filed, the Juvenile Court shall assign counsel to represent the juvenile. The assignment must be reviewed at the juvenile's first appearance before the Juvenile Court. If a juvenile petition with charges based on the conduct at issue in the detention hearing is filed, the assignment continues with respect to

the petition to review detention but must be reviewed at the juvenile's first appearance on the juvenile petition.

A. A detention hearing must precede and must be separate from a bind-over or adjudicatory hearing. Evidence presented at a detention hearing may include testimony, affidavits and other reliable hearsay evidence as permitted by the ~~court~~ Juvenile Court and may be considered in making any determination in that hearing.

B. Following a detention hearing, ~~a court~~ the Juvenile Court shall order a juvenile's release, in accordance with subsection 4, unless it finds, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention provided in that subsection. The Juvenile Court shall ensure, by appropriate order, that any such continued detention is otherwise in accordance with the requirements of subsection 4. The ~~court~~ Juvenile Court may order that detention be continued pending further appearances before the ~~court~~ Juvenile Court or pending conditional release to a setting satisfactory to the juvenile community corrections officer.

C. Continued detention or conditional release may not be ordered unless a Juvenile Court Judge or justice of the peace has determined pursuant to subsection 4-A or the Juvenile Court determines at the detention hearing that there is probable cause to believe that the juvenile has committed a juvenile crime.

D. When ~~a court~~ the Juvenile Court orders detention or a conditional release that authorizes, even temporarily, the juvenile's removal from the juvenile's home, the ~~court~~ Juvenile Court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the ~~court~~ Juvenile Court orders detention or a conditional release, which continues to be governed by the other provisions of this section.

Sec. 4. 15 MRSA §3301, sub-§6, as amended by PL 2011, c. 580, §1, is further amended by enacting a new 3rd blocked paragraph to read:

If the attorney for the State files a petition, the court, upon the motion of the attorney for the State, the motion of the juvenile or the court's own motion, may assign counsel for the juvenile. The assignment must be reviewed at the juvenile's first appearance before the court.

Sec. 5. 15 MRSA §3306, sub-§1, as amended by PL 2019, c. 525, §15, is further amended to read:

1. Notice and appointment. The provisions of this subsection address a juvenile's right to counsel.

A. At a juvenile's first appearance before the court, the juvenile and the juvenile's parent or parents, guardian or legal custodian must be fully advised by the court of their constitutional and legal rights, including the juvenile's right to be represented by counsel at every stage of the proceedings. At every subsequent appearance before the court, the juvenile must be advised of the juvenile's right to be represented by counsel.

B. If the juvenile requests an attorney and if the juvenile and the juvenile's parent or parents, guardian or legal custodian are found to be without sufficient financial means, counsel must be appointed by the court.

C. The court may appoint counsel without a request under paragraph B if the court determines representation by counsel necessary to protect the interests of the juvenile.

D. The court shall appoint counsel to represent the juvenile upon the entry of a dispositional order that includes commitment to a Department of Corrections juvenile correctional facility. A juvenile's right to counsel under this paragraph continues until the juvenile is discharged from the disposition. Counsel appointed under this paragraph may be in addition to any other counsel representing the juvenile.

This subsection does not limit the court's authority to appoint counsel for a juvenile at any time beginning with the detention of the juvenile under this Part.

Sec. 6. 15 MRSA §3313, sub-§2, ¶F, as amended by PL 2019, c. 474, §1 and c. 525, §26, is repealed and the following enacted in its place:

F. The juvenile has made or has agreed to pay restitution to the victim of the juvenile's conduct for the damage or injury that the victim sustained in an amount that the court has determined is within the juvenile's ability to pay pursuant to section 3314-C;

Sec. 7. 15 MRSA §3313, sub-§2, ¶J, as amended by PL 1979, c. 663, §119, is further amended to read:

J. The juvenile is particularly likely to respond affirmatively to probation; ~~and~~

Sec. 8. 15 MRSA §3313, sub-§2, ¶K, as amended by PL 2019, c. 525, §26, is further amended to read:

K. The confinement of the juvenile would entail excessive hardship to the juvenile or the juvenile's dependents;

Sec. 9. 15 MRSA §3313, sub-§2, ¶L is enacted to read:

L. The juvenile had not attained 14 years of age at the time of the alleged conduct; and

Sec. 10. 15 MRSA §3313, sub-§2, ¶M is enacted to read:

M. The juvenile crime would be considered a Class D or Class E crime if committed by an adult and, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying juvenile criminal episode giving rise to the adjudication did not generate probable cause to believe the juvenile had committed what would be considered a Class A, Class B or Class C crime if committed by an adult.

Sec. 11. 15 MRSA §3314, sub-§1, ¶F, as amended by PL 2001, c. 696, §4, is further amended to read:

F. The court may commit the juvenile to a Department of Corrections juvenile correctional facility, except that, beginning October 1, 2021, the juvenile must be at least 12 years of age at the time of commitment to be committed to such a facility. Whenever a juvenile is committed to a Department of Corrections juvenile correctional facility, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no

reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B; and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a commitment to a Department of Corrections juvenile correctional facility, which continues to be governed by section 3313.

Sec. 12. 15 MRSA §3315, sub-§3, as amended by PL 2003, c. 503, §3, is further amended to read:

3. Court review of determination. Whenever a court makes a determination pursuant to section 3314, subsection 1, paragraph F or section 3314, subsection 2 that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and that continuation in the juvenile's home would be contrary to the welfare of the juvenile, that determination must be reviewed by the court not less than once every 12 months until the juvenile is discharged or no longer residing outside the juvenile's home ~~or attains 18 years of age~~. This review does not affect a juvenile's commitment to a Department of Corrections juvenile correctional facility.

A. A juvenile who has not attained 21 years of age must be represented by counsel at this review.

B. If an appropriate treatment or appropriate and less restrictive placement is not being provided or offered to the juvenile, the court may order the Department of Corrections or the Department of Health and Human Services, or both, to demonstrate the reasonableness of the current treatment or placement provided or offered.

Sec. 13. 15 MRSA §3316, sub-§2, ¶A, as repealed and replaced by PL 1999, c. 127, Pt. B, §6, is amended to read:

A. A commitment of a juvenile to a Department of Corrections ~~corrections~~ correctional facility pursuant to section 3314 must be for an indeterminate period not to extend beyond the juvenile's 18th birthday unless the court expressly further limits or extends the indeterminate commitment, as long as the court does not ~~limit the commitment to less than one year nor extend the commitment beyond a juvenile's 21st birthday and as long as an order does not result in a commitment of less than one year, unless the commitment is for an indeterminate period not to extend beyond the juvenile's 21st birthday~~. Nothing in this Part may be construed to prohibit the provision to a juvenile following the expiration of the juvenile's term of commitment of services voluntarily accepted by the juvenile and the juvenile's parent or parents, guardian or legal custodian if the juvenile is not emancipated; except that these services may not be extended beyond the juvenile's 21st birthday.

Sec. 14. 15 MRSA §3317, as amended by PL 1997, c. 752, §26 and PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

§3317. Disposition after return to Juvenile Court

In instances of commitment of a juvenile to the Department of Health and Human Services or a Department of Corrections juvenile correctional facility or when the juvenile is under a specified period of probation, the Commissioner of Health and Human Services or the commissioner's designee or the Commissioner of Corrections or the commissioner's

designee, or the juvenile following the disposition may for good cause petition the Juvenile Court having original jurisdiction in the case for a judicial review of the disposition, including extension of the period of commitment or period of probation. For a petition initiated by the juvenile, the Department of Health and Human Services or the Department of Corrections shall provide information including, but not limited to, the information in reports required for periodic review pursuant to section 3315. In all cases in which a the juvenile is returned to a Juvenile Court, the Juvenile Court may make any of the dispositions otherwise provided in section 3314 and Title 34-A, section 3805, subsection 2. When reviewing a commitment to the Department of Health and Human Services, the court shall consider efforts made by the Department of Corrections and the Department of Health and Human Services to reunify the juvenile with the juvenile's parents or custodians, shall make a finding regarding those efforts and shall return custody of the juvenile to a parent or legal custodian if the return of the juvenile is not contrary to the welfare of the juvenile. A petition for judicial review of a disposition committing the ~~child~~ juvenile to the Department of Health and Human Services must be served on the parents at least 7 days prior to the hearing. Absent extraordinary circumstances, the juvenile may file a petition no more than once every 180 days. A juvenile who has not attained 21 years of age must be represented by counsel at this review.

Sec. 15. 15 MRSA §3402, sub-§1, as amended by PL 2021, c. 23, §§1 to 3, is further amended to read:

1. Matters for appeal. Appeals of the following matters may be taken from the ~~juvenile court~~ Juvenile Court to the Supreme Judicial Court by a party specified in subsection 2:

- A. An adjudication, as long as the appeal is taken after an order of disposition;
- B. An order of disposition, or of any subsequent order modifying disposition, for an abuse of discretion;
- D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal to alter a detention order upon petition of the juvenile pursuant to section 3203-A, subsection 11, for abuse of discretion, ~~provided that the~~ The appeal must be handled expeditiously; ~~and~~
- H. An order binding a juvenile over for prosecution as an adult, which may be taken following issuance of the bind-over order, or, at the election of the appellant, following a judgment of conviction as an adult, but not both; and
- I. A judicial review decision pursuant to section 3317.

Sec. 16. 15 MRSA §3405, sub-§2, as amended by PL 2015, c. 100, §5, is further amended to read:

2. Record on appeals. In appeals taken pursuant to section 3402, subsection 1, paragraphs A ~~and~~ B ~~and~~ H, review must be on the basis of the record of the proceedings in ~~juvenile court~~ the Juvenile Court. In the interest of justice, the Supreme Judicial Court may order that the record consist of:

- A. The untranscribed sound recording of the proceedings; or
- B. An agreed or settled statement of facts with the consent of the parties.

Sec. 17. 34-A MRSA §3805, sub-§1, as amended by PL 1999, c. 583, §31, is further amended by enacting a new first blocked paragraph to read:

This subsection is repealed October 1, 2021.

Sec. 18. 34-A MRSA §3805, sub-§1-A is enacted to read:

1-A. Eligibility. Beginning October 1, 2021, only a juvenile, as defined in Title 15, section 3003, subsection 14, who is 12 years of age or older at the time of commitment may be committed to the facility pursuant to this subchapter and Title 15, Part 6.