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An Act To Amend the Maine Juvenile Code To Address the Issue of Competency

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

Sec. 1. 15 MRSA §3309-A, last ¶, as repealed and replaced by PL 1985, c. 213, is amended to read:

Nothing in this section may be construed to limit court-ordered examinations pursuant to section 3318 sections 3318-A and 3318-B.

Sec. 2. 15 MRSA §3310, sub-§3, as amended by PL 2001, c. 471, Pt. F, §2, is repealed.

Sec. 3. 15 MRSA §3318, as amended by PL 2009, c. 268, §§6 and 7, is repealed.

Sec. 4. 15 MRSA §3318-A is enacted to read:

§ 3318-A. Determination of competency of a juvenile to proceed in a juvenile proceeding

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chronological immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation.

B. "Mental illness" means any diagnosable mental impairment supported by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

C. "Mental retardation" means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

2. Competency to proceed in a juvenile proceeding. A juvenile is competent to proceed in a juvenile proceeding if the juvenile has:

A. A rational as well as a factual understanding of the proceedings against the juvenile; and

B. A sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding.

3. Determination of competency. The issue as to a juvenile's competency to proceed may be raised by the juvenile, by the State or sua sponte by the Juvenile Court at any point in the juvenile proceeding after a finding of probable cause and prior to the imposition of a final order of disposition. A competency determination is necessary only when the Juvenile Court has a reasonable doubt as to a juvenile's competency to proceed.

4. Competency examination. If the Juvenile Court determines that a competency determination is necessary, it shall order that a juvenile be examined by the State Forensic Service to evaluate the juvenile's competency to proceed. The examination must take place within 21 days of the court's order.

5. Suspension of juvenile proceedings. Pending a competency examination, the Juvenile Court shall suspend the proceeding on the petition. The suspension remains in effect pending the outcome of a competency determination hearing pursuant to subsection 7. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile pursuant to section 3203-A, subsection 5.

6. Criteria for State Forensic Service examiner's report. The following provisions govern criteria for the State Forensic Service examiner's report.

A. The State Forensic Service examiner's report must address and evaluate the juvenile's capacity and ability to do each of the following:

(1) Appreciate the allegations of the petition;

(2) Appreciate the nature of the adversarial process including:

(a) Having a factual understanding of the participants in the juvenile's proceeding, including the judge, defense counsel, attorney for the State and mental health expert; and

(b) Having a rational understanding of the role of each participant in the juvenile's proceeding;

(3) Appreciate the range of possible dispositions that may be imposed in the proceedings against the juvenile and recognize how possible dispositions imposed in the proceedings will affect the juvenile;

(4) Appreciate the impact of the juvenile's actions on others;

(5) Disclose to counsel facts pertinent to the proceedings at issue including:

(a) Ability to articulate thoughts;

(b) Ability to articulate emotions; and

(c) Ability to accurately and reliably relate to a sequence of events;

(6) Display logical and autonomous decision making;

(7) Display appropriate courtroom behavior;

(8) Testify relevantly at proceedings; and

(9) Demonstrate any other capacity or ability either separately sought by the Juvenile Court or determined by the examiner to be relevant to the Juvenile Court's determination.

B. In assessing the juvenile's competency, the State Forensic Service examiner shall compare the juvenile being examined to juvenile norms that are broadly defined as those skills typically possessed by the average juvenile defendant adjudicated in the juvenile justice system.

C. The State Forensic Service examiner shall determine and report if the juvenile suffers from mental illness, mental retardation or chronological immaturity.

D. If the juvenile suffers from mental illness, mental retardation or chronological immaturity, the State Forensic Service examiner shall report the severity of the impairment and its potential effect on the juvenile's competency to proceed.

E. If the State Forensic Service examiner determines that the juvenile suffers from chronological immaturity, the examiner shall report a comparison of the juvenile to the average juvenile defendant.

F. If the State Forensic Service examiner determines that the juvenile suffers from a mental illness, the examiner shall provide the following information:

(1) The prognosis of the mental illness; and

(2) Whether the juvenile is taking any medication and, if so, what medication.

G. The State Forensic Service examiner's report must state an opinion whether there exists a substantial probability that the deficiencies related to competence identified in the report, if any, can be ameliorated in the foreseeable future.

7. Post-examination report and hearing. Following receipt of the competency examination report from the State Forensic Service examiner, the Juvenile Court shall hold a competency determination hearing. If the Juvenile Court finds that the juvenile is competent to proceed based upon the burden and standard of proof pursuant to subsection 8, the Juvenile Court shall set a time for the resumption of the proceedings. If the Juvenile Court is not satisfied that the juvenile is competent to proceed, the Juvenile Court shall determine how to proceed pursuant to section 3318-B.

8. Allocation of the burden of proof; standard of proof. The burden of proof of competence is on the State if the juvenile is less than 14 years of age at the time the issue of competence is raised. If the juvenile is at least 14 years of age at the time the issue of competence is raised, the burden of proof is on the juvenile. In the event the State has the burden of proof, it must show by a preponderance of the evidence that the juvenile is competent to proceed. In the event the juvenile has the burden of proof, the juvenile must show by a preponderance of the evidence that the juvenile is not competent to proceed.

9. Statements made in the course of competency examination. Statements made by the juvenile in the course of a competency examination may not be admitted as evidence in the adjudicatory stage for the purpose of proving any juvenile crime alleged.

10. Competency to proceed after bind over. Notwithstanding a finding by the Juvenile Court that the juvenile is competent to proceed in a juvenile proceeding, if the juvenile is subsequently bound over for prosecution in the Superior Court or a court with a unified criminal docket pursuant to section 3101, subsection 4, the issue of the juvenile's competency may be revisited.

Sec. 5. 15 MRSA §3318-B is enacted to read:

§ 3318-B. Disposition of a juvenile found incompetent to proceed

1. Substantial probability that juvenile will be competent in the foreseeable future. If, following the competency determination hearing pursuant to section 3318-A, subsection 7, the Juvenile Court finds that the juvenile is not competent to proceed but additionally finds that there exists a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall continue the suspension of the proceedings and refer the juvenile to the Commissioner of Health and Human Services for evaluation and treatment of the mental health and behavioral needs identified in the report of the State Forensic Service examiner under section 3318-A.

A. At the end of 60 days or sooner, at the end of 180 days and at the end of one year following referral, the State Forensic Service shall examine the juvenile and forward a report of the examination to the Juvenile Court relating to the juvenile's competency to proceed and its reasons. Upon receipt of the report the Juvenile Court shall forward the report to the parties and without delay set a date for a conference of counsel or, upon a motion of any party, set a hearing on the question of the juvenile's competency to proceed. If the Juvenile Court finds that the juvenile is not yet competent to proceed, but there exists a substantial probability that the juvenile will be competent to proceed in the foreseeable future, the proceedings must remain suspended pending further review or hearing.

B. If one year after suspension of the proceedings the Juvenile Court determines that the juvenile is not competent to proceed, the Juvenile Court shall immediately release the juvenile if detained in a juvenile correctional facility unless any party presents clear and convincing evidence that there exists a substantial probability that the juvenile will be competent in the foreseeable future. If the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall schedule a hearing to determine whether or not the court should:

(1) Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or

(2) Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.

C. If during the suspension of the proceedings the juvenile reaches 18 years of age, the Juvenile Court may evaluate the appropriateness of placing the juvenile in an appropriate institution for the care and treatment of adults with mental illness or mental retardation for observation, care and treatment.

D. The Juvenile Court shall set a time for resumption of the proceedings if at any point it finds, based upon the burden and standard of proof pursuant to section 3318-A, subsection 8, that the juvenile is now competent to proceed.

2. No substantial probability that juvenile will be competent in the foreseeable future. If, following the competency determination hearing provided in section 3318-A, subsection 8, the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall release the juvenile if detained in a juvenile correctional facility and schedule a hearing to determine whether or not the Juvenile Court should:

A. Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or

B. Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.

Sec. 6. 34-A MRSA §3802, sub-§1, ¶B, as amended by PL 1995, c. 502, Pt. F, §27, is further amended to read:

B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section 3309-A, and court-ordered examinations pursuant to Title 15, section 33183318-A;

Sec. 7. 34-A MRSA §4102-A, sub-§1, ¶B, as enacted by PL 2005, c. 328, §22, is amended to read:

B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section 3309-A, and court-ordered examinations pursuant to Title 15, section 33183318-A;

SUMMARY

This bill repeals provisions regarding suspension of juvenile proceedings for mentally ill or incapacitated juveniles and enacts provisions establishing criteria to determine whether a juvenile is competent to proceed in a juvenile proceeding. The bill specifies that a juvenile is competent to proceed in a juvenile proceeding if the juvenile has a rational as well as a factual understanding of the proceedings against the juvenile and a sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding. The issue as to a juvenile's competency to proceed may be raised by the juvenile, by the State or by the Juvenile Court at any point in the juvenile proceeding after a finding of probable cause and prior to the imposition of a final order of disposition. A competency determination is necessary only when the Juvenile Court has a reasonable doubt as to a juvenile's competency to proceed.

The bill provides that if the Juvenile Court determines that a competency determination is necessary, it shall order that a juvenile be examined by the State Forensic Service to evaluate the juvenile's competency to proceed. The examination must take place within 21 days of the court's order. Pending a competency examination, the Juvenile Court shall suspend the proceeding on the petition. The suspension remains in effect pending the outcome of a competency determination hearing. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile.

The bill requires that the State Forensic Service examiner evaluate whether the juvenile appreciates the allegations of the petition, the nature of the adversarial process and the range of possible dispositions that may be imposed in the proceedings against the juvenile, whether the juvenile can disclose to counsel facts pertinent to the proceedings and display logical and autonomous decision making and appropriate courtroom behavior and whether the juvenile can testify relevantly at proceedings.

The bill provides that in assessing the juvenile's competency, the State Forensic Service examiner shall compare the juvenile being examined to juvenile norms that are broadly defined as those skills typically possessed by the average juvenile defendant adjudicated in the juvenile justice system. The State Forensic Service examiner shall determine and report if the juvenile suffers from mental illness, mental retardation or chronological immaturity and the severity of the impairment and its potential effect on the juvenile's competency to proceed. If the State Forensic Service examiner determines that the juvenile suffers from chronological immaturity, the examiner shall compare the juvenile to the average juvenile defendant. If the State Forensic Service examiner determines that the juvenile suffers from a mental illness, the examiner must provide the prognosis of the mental illness. The State Forensic

Service examiner's report must also state an opinion whether there exists a substantial probability that the deficiencies related to competence identified in the report, if any, can be ameliorated in the foreseeable future.

If the Juvenile Court finds that the juvenile is competent to proceed, the Juvenile Court shall set a time for the resumption of the proceedings. The burden of proof is on the State if the juvenile is less than 14 years of age at the time the issue of competence is raised. If the juvenile is at least 14 years of age at the time the issue of competence is raised, the burden of proof is on the juvenile. In the event the State has the burden of proof, it must show by a preponderance of the evidence that the juvenile is competent to proceed. In the event the juvenile has the burden of proof, the juvenile must show by a preponderance of the evidence that the juvenile is not competent to proceed. Statements made by the juvenile in the course of an examination may not be admitted as evidence in the adjudicatory stage for the purpose of proving any juvenile crime alleged.

Even if the Juvenile Court has found the juvenile to be competent to proceed in a juvenile proceeding, if the juvenile is subsequently bound over for prosecution in the Superior Court or a court with a unified criminal docket, the issue of the juvenile's competency may be revisited since the juvenile is then being treated as an adult rather than as a juvenile.

If the Juvenile Court finds that the juvenile is not competent to proceed but additionally finds that there exists a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall continue to suspend the proceedings and refer the juvenile to the Commissioner of Health and Human Services for evaluation and treatment of the mental health and behavioral needs identified in the report of the State Forensic Service examiner. At the end of 60 days or sooner, at the end of 180 days and at the end of one year following referral, the State Forensic Service shall forward a report to the Juvenile Court relative to the juvenile's competency to proceed and its reasons. Upon receipt of the report the Juvenile Court shall forward the report to the parties and without delay set a date for a conference of counsel or, upon a motion of any party, set a hearing on the question of the juvenile's competency to proceed. If the Juvenile Court finds that the juvenile is not yet competent to proceed, but there exists a substantial probability that the juvenile will be competent to proceed in the foreseeable future, the proceedings must remain suspended pending further review or hearing.

If one year after suspension of the proceedings, the Juvenile Court determines that the juvenile is not competent to proceed, the Juvenile Court shall immediately release the juvenile if detained in a juvenile correctional facility unless any party presents clear and convincing evidence that there exists a substantial probability that the juvenile will be competent in the foreseeable future. If the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall schedule a hearing to determine whether or not the court should order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile or order the juvenile into the custody of the Commissioner of Health and Human Services for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.

If during the suspension of the proceedings the juvenile reaches 18 years of age, the Juvenile Court may evaluate the appropriateness of placing the juvenile in an appropriate institution for the care and treatment of adults with mental illness or mental retardation for observation, care and treatment.

The Juvenile Court shall set a time for resumption of the proceedings if at any point it finds, based upon the burden and standard of proof, that the juvenile is now competent to proceed.

If following the competency determination hearing the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall release the juvenile if detained in a juvenile correctional facility and schedule a hearing to determine whether or not the Juvenile Court should order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile or order the juvenile into the custody of the Commissioner of Health and Human Services for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.