



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1413

H.P. 1039

House of Representatives, April 6, 2011

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

Reported by Representative PLUMMER of Windham for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

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

2 **Sec. 1. 15 MRSA §3309-A, last ¶**, as repealed and replaced by PL 1985, c. 213,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

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

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7 repealed.

8 **Sec. 3. 15 MRSA §3318**, as amended by PL 2009, c. 268, §§6 and 7, is repealed.

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

10 **§3318-A. Determination of competency of a juvenile to proceed in a juvenile**
11 **proceeding**

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) Appreciate the allegations of the petition;

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

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

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

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

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

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

22 (a) Ability to articulate thoughts;

23 (b) Ability to articulate emotions; and

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

25 (6) Display logical and autonomous decision making;

26 (7) Display appropriate courtroom behavior;

27 (8) Testify relevantly at proceedings; and

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

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

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

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

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

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

9 (1) The prognosis of the mental illness; and

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

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

14 **7. Post-examination report and hearing.** Following receipt of the competency
15 examination report from the State Forensic Service examiner, the Juvenile Court shall
16 hold a competency determination hearing. If the Juvenile Court finds that the juvenile is
17 competent to proceed based upon the burden and standard of proof pursuant to subsection
18 8, the Juvenile Court shall set a time for the resumption of the proceedings. If the
19 Juvenile Court is not satisfied that the juvenile is competent to proceed, the Juvenile
20 Court shall determine how to proceed pursuant to section 3318-B.

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

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

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

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

37 **§3318-B. Disposition of a juvenile found incompetent to proceed**

38 **1. Substantial probability that juvenile will be competent in the foreseeable**
39 **future.** If, following the competency determination hearing pursuant to section 3318-A,
40 subsection 7, the Juvenile Court finds that the juvenile is not competent to proceed but

1 additionally finds that there exists a substantial probability that the juvenile will be
2 competent in the foreseeable future, the Juvenile Court shall continue the suspension of
3 the proceedings and refer the juvenile to the Commissioner of Health and Human
4 Services for evaluation and treatment of the mental health and behavioral needs identified
5 in the report of the State Forensic Service examiner under section 3318-A.

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

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

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

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

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

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

36 D. The Juvenile Court shall set a time for resumption of the proceedings if at any
37 point it finds, based upon the burden and standard of proof pursuant to section
38 3318-A, subsection 8, that the juvenile is now competent to proceed.

39 **2. No substantial probability that juvenile will be competent in the foreseeable**
40 **future.** If, following the competency determination hearing provided in section 3318-A,
41 subsection 8, the Juvenile Court finds that the juvenile is incompetent to proceed and that
42 there does not exist a substantial probability that the juvenile will be competent in the
43 foreseeable future, the Juvenile Court shall release the juvenile if detained in a juvenile

1 correctional facility and schedule a hearing to determine whether or not the Juvenile
2 Court should:

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

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

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

11 **Sec. 6. 34-A MRSA §3802, sub-§1, ¶B,** as amended by PL 1995, c. 502, Pt. F,
12 §27, is further amended to read:

13 B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section
14 3309-A, and court-ordered examinations pursuant to Title 15, section ~~3318~~ 3318-A;

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

17 B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section
18 3309-A, and court-ordered examinations pursuant to Title 15, section ~~3318~~ 3318-A;

19 SUMMARY

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

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

38 The bill requires that the State Forensic Service examiner evaluate whether the
39 juvenile appreciates the allegations of the petition, the nature of the adversarial process
40 and the range of possible dispositions that may be imposed in the proceedings against the

1 juvenile, whether the juvenile can disclose to counsel facts pertinent to the proceedings
2 and display logical and autonomous decision making and appropriate courtroom behavior
3 and whether the juvenile can testify relevantly at proceedings.

4 The bill provides that in assessing the juvenile's competency, the State Forensic
5 Service examiner shall compare the juvenile being examined to juvenile norms that are
6 broadly defined as those skills typically possessed by the average juvenile defendant
7 adjudicated in the juvenile justice system. The State Forensic Service examiner shall
8 determine and report if the juvenile suffers from mental illness, mental retardation or
9 chronological immaturity and the severity of the impairment and its potential effect on
10 the juvenile's competency to proceed. If the State Forensic Service examiner determines
11 that the juvenile suffers from chronological immaturity, the examiner shall compare the
12 juvenile to the average juvenile defendant. If the State Forensic Service examiner
13 determines that the juvenile suffers from a mental illness, the examiner must provide the
14 prognosis of the mental illness. The State Forensic Service examiner's report must also
15 state an opinion whether there exists a substantial probability that the deficiencies related
16 to competence identified in the report, if any, can be ameliorated in the foreseeable
17 future.

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

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

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

1 substantial probability that the juvenile will be competent to proceed in the foreseeable
2 future, the proceedings must remain suspended pending further review or hearing.

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

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

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

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

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

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