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H.P. 1208

House of Representatives, May 7, 2019

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

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MORALES of South Portland.
Cosponsored by Senator MILLETT of Cumberland and
Representatives: BAILEY of Saco, GATTINE of Westbrook, HARNETT of Gardiner,
MADIGAN of Waterville, McDONALD of Stonington, MOONEN of Portland, O'NEIL of
Saco, PLUECKER of Warren.

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

2 **Sec. 1. 15 MRSA §3101, sub-§2**, as amended by PL 2017, c. 127, §1, is further
3 amended to read:

4 **2. Juvenile Court jurisdiction.**

5 A. The Juvenile Court ~~shall have~~ has exclusive original jurisdiction, subject to
6 waiver of jurisdiction as provided in subsection 4, of proceedings in which a juvenile
7 who has attained 12 years of age is alleged to have committed a juvenile crime, as
8 defined in section 3103.

9 C. Juvenile Courts have jurisdiction over all petitions brought under Title 34-A,
10 chapter 9, subchapter 7 pertaining to juveniles who have been adjudicated as having
11 committed juvenile crimes in other states, but who are found within the territorial
12 jurisdiction of the State.

13 D. Juvenile Courts ~~shall~~ have exclusive original jurisdiction over proceedings in
14 which an adult is alleged to have committed a juvenile crime after having attained 12
15 years of age and before attaining his 18th birthday 18 years of age. For purposes of
16 such proceedings such an adult ~~shall be~~ is considered a juvenile.

17 E. Juvenile Courts ~~shall~~ have jurisdiction concurrent with the District Courts over
18 petitions for emancipation brought under section 3506-A.

19 F. A juvenile who has not attained 12 years of age at the time of the juvenile's
20 alleged crime is not subject to the jurisdiction of the Juvenile Court and may not be
21 prosecuted for any juvenile crime.

22 **Sec. 2. 15 MRSA §3306, sub-§1**, as amended by PL 1977, c. 664, §25, is
23 repealed and the following enacted in its place:

24 **1. Notice and appointment of counsel.** The provisions of this subsection govern a
25 juvenile's right to counsel.

26 A. At a juvenile's first appearance before the court, the court shall fully advise the
27 juvenile and the parents, guardian or legal custodian of the juvenile of their
28 constitutional and legal rights, including the juvenile's right to be represented by
29 counsel at every stage of the proceedings. At every subsequent appearance before the
30 court, the court shall fully advise the juvenile of the juvenile's right to be represented
31 by counsel.

32 B. If the juvenile requests an attorney and the juvenile and the juvenile's parents,
33 guardian or legal custodian are found to be without sufficient financial means, the
34 court shall appoint counsel for the juvenile pursuant to the Maine Rules of Unified
35 Criminal Procedure, Rule 44.

36 C. The court, at any stage of the proceedings, may appoint counsel without being
37 requested to pursuant to paragraph B if the court considers representation by counsel
38 necessary to protect the interests of the juvenile.

1 D. Counsel appointed by the court to represent a juvenile shall continue to represent
2 the juvenile throughout all proceedings, until the court's jurisdiction over the juvenile
3 has ended or counsel is relieved by order of the court.

4 E. For purposes of this subsection, "proceedings" includes, but is not limited to, the
5 following proceedings when conducted at any time during a juvenile's commitment to
6 a secure institution through the conclusion of the juvenile's term of probation and
7 until the court's jurisdiction over the juvenile has ended:

8 (1) Detention, adjudicatory and dispositional hearings; and

9 (2) Post-dispositional proceedings, including appeal, post-conviction review and
10 judicial review of commitment.

11 **Sec. 3. 15 MRSA §3313**, as amended by PL 1995, c. 690, §5, is further amended
12 to read:

13 **§3313. Mandatory criteria for imposing an institutional disposition**

14 **1. Standard.** The court may not issue an order of disposition that involves
15 commitment for any juvenile who has not attained 14 years of age. The court may not
16 issue an order of disposition that involves commitment for a juvenile who has attained 14
17 years of age who has been adjudicated of a juvenile crime that would constitute a Class D
18 or Class E crime unless, based upon both the written agreement of the parties and a court
19 finding, the facts and circumstances of the underlying criminal episode giving rise to the
20 Class D or Class E adjudication generated probable cause to believe the juvenile had
21 committed a juvenile crime that would constitute a Class A, Class B or Class C crime in
22 the course of that criminal episode. The court ~~shall~~ may not enter an order of disposition
23 for a juvenile who has attained 14 years of age and who has been adjudicated as having
24 committed a juvenile crime ~~without~~ by imposing placement in a secure institution as
25 disposition unless, having regard to the nature and circumstances of the crime and the
26 history, character and condition of the juvenile, ~~it finds~~ the State provides and the court
27 finds by clear and convincing evidence that ~~his~~ the juvenile's confinement is necessary for
28 protection of the public because:

29 A. There is ~~undue~~ demonstrable risk that, during the period of a suspended sentence
30 or probation, the juvenile will commit another crime;

31 B. The juvenile is in need of ~~correctional~~ treatment that can be provided ~~most~~
32 effectively only by ~~his~~ his commitment to ~~an~~ a secure institution; or

33 C. A ~~lesser-sentence~~ disposition that does not involve commitment to a secure
34 institution will depreciate the seriousness of the juvenile's conduct.

35 **2. Additional consideration.** The court shall explicitly, on the record and in open
36 court, weigh the following grounds, ~~while not controlling the discretion of the court, shall~~
37 ~~be accorded weight~~ against ordering placement in a secure institution:

38 A. The juvenile's conduct neither caused nor threatened serious harm;

39 B. The juvenile did not contemplate or was incapable of contemplating that ~~his~~ the
40 juvenile's conduct would cause or threaten serious harm;

- 1 C. The juvenile acted under a strong provocation;
- 2 D. There were substantial grounds tending to excuse or justify the juvenile's conduct,
- 3 though failing to establish a defense;
- 4 E. The victim of the juvenile's conduct induced or facilitated its commission;
- 5 ~~F. The juvenile has made or has agreed to make restitution to the victim of his~~
- 6 ~~conduct for the damage or injury that the victim sustained;~~
- 7 G. The juvenile has not previously been adjudicated to have committed a juvenile
- 8 crime or has led a law-abiding life for a substantial period of time prior to the conduct
- 9 ~~which that~~ formed the basis for the present adjudication;
- 10 H. The juvenile's conduct was the result of circumstances unlikely to recur;
- 11 I. The character and attitudes of the juvenile indicate that ~~he~~ the juvenile is unlikely
- 12 to commit another juvenile crime;
- 13 J. The juvenile is particularly likely to respond affirmatively to probation; ~~and~~
- 14 K. The confinement of the juvenile would entail excessive hardship to ~~himself~~ the
- 15 juvenile or ~~his~~ the juvenile's dependents; and
- 16 L. Secure confinement in a juvenile facility demonstrably risks harm to the juvenile
- 17 because of:
- 18 (1) Conditions at the facility with respect to the juvenile's safety, health and
- 19 welfare;
- 20 (2) Inability of the facility to timely provide all medically necessary and
- 21 rehabilitative medical and mental health care to the juvenile;
- 22 (3) Inability of the facility to provide the education to which the juvenile is
- 23 entitled, including under an individualized education plan pursuant to Title 20-A,
- 24 chapter 303; or
- 25 (4) Any other reason related to the juvenile's best interests.

26 **3. Statement of reasons accompanying disposition of commitment for juveniles.**

27 In a disposition for a juvenile crime ~~that if committed by an adult would be murder or a~~
 28 ~~Class A, Class B or Class C crime~~, the court shall state on the record and in open court
 29 the court's reasons for ordering ~~or not ordering~~ placement of the juvenile in a secure
 30 institution. Failure to state these reasons, even if a disposition that includes commitment
 31 is agreed to by the juvenile and the State, is grounds for appeal as a per se abuse of
 32 discretion as an indication that the court has not weighed independently the propriety of
 33 imposing a disposition that involves any period of commitment to a secure institution.

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

36 F. ~~The~~ If the juvenile has attained 14 years of age, the court may commit the juvenile
 37 to a Department of Corrections juvenile correctional facility. Whenever a juvenile is
 38 committed to a Department of Corrections juvenile correctional facility, the court
 39 shall determine whether reasonable efforts have been made to prevent or eliminate

1 the need for removal of the juvenile from the juvenile's home or that no reasonable
2 efforts are necessary because of the existence of an aggravating factor as defined in
3 Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's
4 home would be contrary to the welfare of the juvenile. This determination does not
5 affect whether the court orders a commitment to a Department of Corrections
6 juvenile correctional facility, which continues to be governed by section 3313.

7 **Sec. 5. 15 MRSA §3314, sub-§1, ¶H,** as amended by PL 2007, c. 96, §5, is
8 further amended to read:

9 H. ~~The~~ If the juvenile has attained 14 years of age, the court may order the juvenile
10 to serve a period of confinement that may not exceed 30 days, with or without an
11 underlying suspended disposition of commitment to a Department of Corrections
12 juvenile correctional facility, which confinement must be served concurrently with
13 any other period of confinement previously imposed and not fully discharged or
14 imposed on the same date but may be served intermittently as the court may order
15 and must be ordered served in a facility approved or operated by the Department of
16 Corrections exclusively for juveniles. The court may order such a disposition to be
17 served as a part of and with a period of probation that is subject to such provisions of
18 Title 17-A, section 1204 as the court may order and that must be administered
19 pursuant to Title 34-A, chapter 5, subchapter 4. Revocation of probation is governed
20 by the procedure contained in subsection 2. Any disposition under this paragraph is
21 subject to Title 17-A, section 1253, subsection 2 except that a statement is not
22 required to be furnished and the day-for-day deduction must be determined by the
23 facility, but not to Title 17-A, section 1253, subsection 2, paragraph A, or subsection
24 3-B, 4, 5, 8, 9 or 10. For purposes of calculating the commencement of the period of
25 confinement, credit is accorded only for the portion of the first day for which the
26 juvenile is actually confined; the juvenile may not be released until the juvenile has
27 served the full term of hours or days imposed by the court. When a juvenile is
28 committed for a period of confinement, the court shall determine whether reasonable
29 efforts have been made to prevent or eliminate the need for removal of the juvenile
30 from the juvenile's home or that reasonable efforts are not necessary because of the
31 existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B
32 and whether continuation in the juvenile's home would be contrary to the welfare of
33 the juvenile. This determination does not affect whether the court orders a period of
34 confinement pursuant to section 3313.

35 **Sec. 6. 15 MRSA §3315,** as amended by PL 2013, c. 234, §10, is further amended
36 to read:

37 **§3315. Right to periodic review**

38 **1. Right to review for dispositions that do not involve commitment.** Every
39 disposition pursuant to section 3314 ~~and or~~ 3318-B, other than unconditional discharge ~~or~~
40 commitment or possible commitment to a secure institution, must be reviewed not less
41 than once in every 12 6 months until the juvenile is discharged or has attained 21 years of
42 age, whichever occurs earlier. The review must be made by a representative of the
43 Department of Corrections unless the juvenile has been committed to the custody of the
44 Commissioner of Health and Human Services, in which case such review must be made

1 by a representative of the Department of Health and Human Services. A report of the
2 review must be made in writing to the juvenile and the juvenile's parents, guardian or
3 legal custodian. A copy of the report must be forwarded to the program or programs that
4 were reviewed, and the department whose personnel made the review shall retain a copy
5 of the report in their files. The written report must be prepared in accordance with
6 subsection 2. When a juvenile is placed in the custody of the Commissioner of Health
7 and Human Services, reviews and permanency planning hearings must be conducted in
8 accordance with Title 22, section 4038. Title 22, sections 4005, 4039 and 4041 also
9 apply.

10 **1-A. Judicial review of juvenile in custody of Department of Corrections.** When
11 a juvenile is placed in the custody of the Department of Corrections, the court shall grant
12 a petition for review filed by the juvenile, the parents, guardian or legal custodian of the
13 juvenile or the department; the court may also initiate a review on its own. Prior to the
14 review, the department shall provide notice of the review to the court and to the juvenile
15 and the juvenile's parents, guardian or legal custodian but not to a parent whose parental
16 rights have been terminated pursuant to Title 22, chapter 1071, subchapter 6.

17 The court may convene a prehearing conference to clarify any disputed issues and to
18 review the possibility of a less restrictive alternative to incarceration. The court shall
19 consider the report made by the department in accordance with subsection 1, hear
20 evidence and consider the reason for the original disposition made under sections 3313
21 and 3314 and efforts made by the parties since then.

22 After a hearing or by agreement, the court shall make written findings that determine:

23 A. The safety of the juvenile's placement;

24 B. The continuing necessity for and appropriateness of the juvenile's placement;

25 C. The extent of the involved parties' compliance with the juvenile's individualized
26 plan and the extent of the juvenile's progress with that plan;

27 D. A likely date when the juvenile may be placed in a less restrictive alternative or at
28 home; and

29 E. If the juvenile is at least 16 years of age, whether that juvenile is receiving
30 instructions to aid that juvenile to live independently.

31 The court may make any other order it is authorized to make pursuant to section 3314.

32 **2. Contents of review.** The written report of each periodic review ~~shall~~ must contain
33 the following information:

34 A. A brief description of the services, with the dates and types of service for each
35 provider, provided to the juvenile during the period preceding the review and the
36 results of those services;

37 B. ~~A~~ The current well-being of the juvenile and an individualized plan for the
38 provision of services to the juvenile for the next period;

39 C. A statement showing that the plan imposes the least ~~restricting~~ restrictive
40 alternative consistent with adequate care of the juvenile and protection of the

1 community, including a statement specifying which less restrictive alternatives were
2 considered and at what time and the reasons why those alternatives were rejected; and

3 D. A certification that the services recommended are available and will be afforded
4 to the juvenile.

5 **3. Court review of determination to remove juvenile from home.** Whenever a
6 court makes a determination pursuant to section 3314, subsection 1, paragraph F or
7 section 3314, subsection 2 that reasonable efforts have been made to prevent or eliminate
8 the need for removal of the juvenile from the juvenile's home or that no reasonable efforts
9 are necessary because of the existence of an aggravating factor as defined in Title 22,
10 section 4002, subsection 1-B and that continuation in the juvenile's home would be
11 contrary to the welfare of the juvenile, that determination must be reviewed by the court
12 not less than once every 12 months until the juvenile is discharged or no longer residing
13 outside the juvenile's home or attains 18 years of age. This review does not affect a
14 juvenile's commitment to a Department of Corrections juvenile correctional facility
15 pursuant to section 3313.

16 **4. Court review of determination to impose a disposition involving commitment.**
17 Whenever a court imposes a disposition that involves commitment to a secure institution
18 for a juvenile pursuant to section 3314, subsection 1, paragraph F, or a suspended
19 sentence and an order of probation that could result in a disposition of commitment to a
20 secure institution pursuant to section 3314, subsection 2, no later than 90 days following
21 the imposition of the disposition, and at least every 90 days thereafter, the juvenile must
22 appear before the court with the juvenile's parents, guardian or legal custodian to review
23 the disposition. The Department of Corrections shall provide notice of the reviews and
24 file a copy of each notice with the court prior to the review hearing. The court may
25 convene a prehearing conference to clarify the disputed issues and review the possibility
26 of alternative dispositions specified in section 3314. The court shall determine, in light of
27 the factors set forth in subsections 1-A and 2, section 3002 and section 3313, whether
28 further confinement in a secure institution demonstrably risks harm to the juvenile. The
29 State and any witnesses considered necessary by the State, the juvenile or the court shall
30 appear before the court in order for the court to review whether further commitment of
31 the juvenile is in the juvenile's best interests. The court may also receive evidence
32 regarding the juvenile's commitment from reports, affidavits and other evidence that is
33 sufficiently reliable. If requested by the juvenile, the juvenile's parent, guardian or legal
34 custodian or another party, the court shall require that the person who wrote the report or
35 prepared the material appear as a witness and be subject to examination by the court and
36 any party. In the absence of the request, the court may order the person who prepared the
37 report or other material to testify if the court finds that the interests of justice so require.
38 A juvenile or other party who is indigent is entitled to appointment of counsel pursuant to
39 section 3306, subsection 1 for a review conducted pursuant to this subsection.

40 **Sec. 7. 15 MRSA §3316, sub-§2, ¶A,** as repealed and replaced by PL 1999, c.
41 127, Pt. B, §6, is amended to read:

42 A. A commitment of a juvenile to a Department of Corrections juvenile corrections
43 facility pursuant to section 3314 must be for an indeterminate period not to extend
44 beyond the juvenile's 18th birthday unless the court expressly further limits or

1 extends the indeterminate commitment, as long as the court does not ~~limit the~~
2 ~~commitment to less than one year nor~~ extend the commitment beyond a juvenile's
3 21st birthday ~~and as long as an order does not result in a commitment of less than one~~
4 ~~year, unless the commitment is for an indeterminate period not to extend beyond the~~
5 ~~juvenile's 21st birthday.~~ Nothing in this Part may be construed to prohibit the
6 provision to a juvenile following the expiration of the juvenile's term of commitment
7 of services voluntarily accepted by the juvenile and the juvenile's parents, guardian or
8 legal custodian if the juvenile is not emancipated; except that these services may not
9 be extended beyond the juvenile's 21st birthday.

10 **Sec. 8. 15 MRSA §3402, sub-§1**, as amended by PL 2015, c. 100, §3, is further
11 amended to read:

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

- 14 A. An adjudication, as long as the appeal is taken after an order of disposition;
15 B. An order of disposition, or of any subsequent order modifying disposition, for an
16 abuse of discretion; ~~and~~
17 D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal
18 to alter a detention order upon petition of the juvenile pursuant to section 3203-A,
19 subsection 11, for abuse of discretion; ~~provided that the.~~ The appeal must be handled
20 expeditiously; ~~and~~
21 H. A judicial review decision, pursuant to section 3315, for an abuse of discretion.
22 The appeal must be handled expeditiously.

23 **Sec. 9. 15 MRSA §3405, sub-§2**, as amended by PL 2015, c. 100, §5, is further
24 amended to read:

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

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

31 **Sec. 10. 34-A MRSA §3805, sub-§1**, as amended by PL 1999, c. 583, §31, is
32 further amended to read:

33 **1. Eligibility.** Only a juvenile, as defined in Title 15, section 3003, subsection 14,
34 who is ~~at least~~ 14 years of age or older at the time of commitment may be committed to the
35 facility pursuant to this subchapter and Title 15, Part 6.

36 SUMMARY

37 Currently, Maine has no minimum age at which a child may be prosecuted for a
38 crime. The purpose of this bill is to prevent children under 12 years of age from being

1 prosecuted for crimes, to prevent children under 14 years of age from being incarcerated,
2 to eliminate the current requirement that, if committed, a juvenile must be committed for
3 at least a year and to prevent courts from imposing dispositions against juveniles that
4 involve commitment without exhausting all other less restrictive alternatives. The bill
5 also mandates regular opportunities for judicial review of a juvenile's commitment in
6 addition to providing an appellate avenue for relief from unfavorable reviews.

7 The bill provides that if a court imposes a disposition that involves incarceration, the
8 court must conduct a detailed analysis on the record explaining the rationale for the
9 disposition. Such a disposition is authorized only if the court finds certain criteria by clear
10 and convincing evidence. If the court commits a juvenile to a facility, the bill requires
11 periodic judicial review of the incarceration to ensure that the rehabilitative purposes of
12 incarceration are not being outweighed by the harm caused by incarceration.

13 The overarching goal of this bill is to ensure that fewer children are in the juvenile
14 justice system and that, if and when they do become involved in the system, there is a
15 presumption against incarceration and a requirement for the regular review of any
16 commitment imposed, in order to minimize the harm that incarceration can cause
17 children.

18 This bill amends the statute governing a juvenile's right to counsel to specify that the
19 right to counsel attaches at the juvenile's initial appearance and continues until the court
20 no longer has jurisdiction over the juvenile, including all post-dispositional hearings and
21 during the time of commitment. This bill also requires counsel appointed by the court to
22 continue to represent the juvenile throughout all proceedings concerning the juvenile,
23 unless relieved by the court.