



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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March 24, 2025

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Senator Anne Beebe-Center, Chair
Representative Tavis Hasenfus, Chair
Joint Committee on Criminal Justice and Public Safety
5 State House Station, Room 438
Augusta, ME 04333

RE: LD 740: An Act to Establish a Comprehensive Program to Divert Youth from the Criminal Justice System and Address Their Needs

Dear Senator Beebe-Center, Representative Hasenfus, and Honorable Members of the Judiciary Committee:

The Maine Association of Criminal Defense Lawyers is a non-profit organization that has nearly 300 member attorneys who practice criminal defense across the state. Since 1992, MACDL has advocated for its members and the people we are fortunate to represent in courtrooms throughout Maine and at the State House.

We are here today to testify **in support** of LD 740. If Maine is going to give our most vulnerable youth a chance to be healthy, productive, thriving adults, we need to fund and provide the opportunities that steer them away from criminal involvement and towards the resources that will help them heal. Thank you again to Representative Lookner for leading the charge on behalf of young people in this state.

This bill would authorize law enforcement officers to refer a young person for a “needs assessment” by the Department of Health and Human Services, without taking the young person into custody and before placing them under arrest or filing a petition (formal charges). It would allow the young person and the young person’s guardians the opportunity to consent to such an assessment. The assessment proposed would be comprehensive and grounded in evidence-based practices to address a panoply of needs that a young person may have that has brought them to the attention of law enforcement. The report and recommendations that come out of the assessment are shared with the young person, their guardian, the young person’s attorney, and the law enforcement officer or juvenile community corrections officer who recommended referral of the young person to DHHS. If the assessment recommends high-level care for complex behavioral health needs, this bill requires the coordination of services.

Although this bill would not prevent a prosecutor from filing a formal petition against the young person, even after a needs assessment is completed, it would require that prosecutor to consider the needs assessment when making that decision to formally charge the young person. If a petition is filed prior to the assessment, the petitioner (law enforcement, JCCO, or prosecutor) “must identify the reasons for which diversion was not an appropriate disposition prior to seeking court involvement.” This

section is clearly trying to encourage all parties to access all possible resources before reverting to leaning on formal charges and possible incarceration to handle problematic juvenile behavior.

It is an important provision of this bill that statements made by the young person through the evaluation and needs assessment process will not be used against them if a petition is filed and any adjudicatory proceedings are held later on. This encourages the young person to be candid and honest about their needs, which should ensure a more accurate assessment of their needs and the reasons behind their problematic behavior. The report and its recommendations, however, with the consent of the young person, may be used by the court when determining appropriate supports and services for the young person at the dispositional (sentencing) stage.

All this to say: incarcerating children and exposing them to the criminal process is enormously expensive and traumatic. When young people engage in criminal conduct, there is usually (and almost certainly) more going on than meets the eyes. Incapacitation through incarceration is an overused bludgeon response to juvenile transgressions. Allowing DHHS the ability to assess each young person's particularized needs—behavior health, substance use, housing, etc.—could go a long way towards diverting a good number of these young people away from this system and into the treatment and support they need.

Our children are worth this investment of time. If we are willing to spend millions upon millions annually on incarcerating these children, we must be willing to spend a fraction of that money on accurately assessing their needs and addressing their behaviors.

On behalf of our clients, thank you for your consideration, for your attention to this vitally important matter, and for allowing me to present testimony to you all today.

Sincerely,

A handwritten signature in blue ink, reading "Tina Heather Nadeau". The signature is fluid and cursive, with a large loop at the end.

Tina Heather Nadeau, Esq.
MACDL Executive Director