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MAINE DEPARTMENT OF CORRECTIONS

February 24, 2025

In Opposition to:

LD 535, An Act to Authorize Judicial Disposition of a Juvenile Adjudicated of Murder or a Class A Crime to a Term of Commitment Extending Beyond the Juvenile's 21st Birthday

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, I am Christine Thibault, Associate Commissioner for the Maine Department of Corrections (DOC) Division of Juvenile Services, providing testimony today in opposition to LD 535, An Act to Authorize Judicial Disposition of a Juvenile Adjudicated of Murder or a Class A Crime to a Term of Commitment Extending Beyond the Juvenile's 21st Birthday.

As drafted, LD 535 conflates elements of Maine's juvenile justice and criminal justice systems without answering crucial procedural questions or resolving inconsistencies between the purposes and procedures of the Maine Juvenile Code and Maine Criminal Code, gives rise to questions of constitutionality, and creates an unnecessary parallel track to the current bind-over process.

1. The bill contains conflicting language regarding whether the authorized juvenile court disposition extends an indeterminate commitment to a *juvenile correctional facility* or authorizes the juvenile court to impose a disposition requiring *incarceration in an adult facility*. Section 1 of the bill would allow juvenile court judges to order commitment of a juvenile "to a Department of Corrections juvenile correctional facility" for a period beyond the juvenile's 21st birthday. In section 4, however, the proposal states, "If the juvenile has been committed to a Department of Corrections juvenile correctional facility beyond the juvenile's 21st birthday under section 3316, subsection 2-A, the commissioner shall direct the transfer of the juvenile to an adult correctional facility." These statements are inherently contradictory in that the first directs the commitment to a *juvenile* facility, but the latter requires the Commissioner of Corrections to transfer the juvenile to an *adult* correctional facility.

2. The bill is unclear on the standard the juvenile court must apply in determining whether a juvenile may be committed beyond age 21. Although section 2 of the bill lists six factors the court must consider in determining whether a juvenile may be committed beyond age 21, the bill is silent as to the standard, the level of proof needed to meet the standard, and which party has the burden of proof. In contrast, the Maine Juvenile Code at 15 M.R.S.A. §3101 (4)(E)(2)(a) states that when considering a motion to bind-over, the juvenile court shall bind over a juvenile if after considering certain factors, "the **State** has established by a **preponderance** of the evidence that **it is appropriate** to prosecute the juvenile as if the juvenile were an adult." Note: for certain juvenile crimes, the current law places the burden on the juvenile to establish by a **preponderance** of the evidence that **it is not appropriate** to prosecute the juvenile as if the juvenile were an adult. No such guiding language exists in LD 535.

3. The bill is unclear on whether juveniles committed beyond age 21 and transferred to an adult correctional facility would be eligible for deductions in time authorized by the Maine Criminal Code. Although section 4 of the bill requires that juveniles committed beyond age 21 be transferred to an adult facility (without specifying when the transfer must occur) as long as the “commitment” doesn’t exceed the maximum allowed sentence of imprisonment if the juvenile were convicted as an adult, the bill is silent as to whether a juvenile transferred to an adult facility would be entitled to deductions from the sentence of imprisonment for time detained pursuant to 17-A M.R.S.A. §2305 or for “good time” under 17-A M.R.S.A. §2307 or §2308, as applicable.

4. The bill is unclear on when a juvenile committed beyond age 21 must be transferred to an adult correctional facility. Section 1 of the bill states that *if* a juvenile is committed beyond age 21, the Commissioner of Corrections shall direct the transfer of the juvenile to an adult correctional facility. The proposal is silent about *when* the juvenile must be transferred, or whether the Commissioner of Corrections has discretion on when the transfer will occur.

5. It also appears that, under this bill, juveniles committed to a juvenile correctional facility may request a hearing to have the disposition modified as frequently as every six months, creating a huge burden on prosecutors, the courts, and the Department. To illustrate this point, consider a juvenile is adjudicated for murder and when the juvenile is age 16, the court imposes a “commitment” not to exceed age 46 (about 30 years). Consequently, such an individual would remain under the jurisdiction of the juvenile court well beyond age 21. The Maine Juvenile Code at 15 M.R.S.A. §3317 allows a juvenile to request a hearing, at which the original disposition may be modified, as frequently as every 6 months. Consequently, the juvenile committed to age 46 could request a new disposition every six months for the duration of the 30 year commitment.

6. There may be constitutional challenges to a statute that authorizes imposition of a period of imprisonment in an adult correctional facility without indictment by a Grand Jury or the opportunity for a jury trial. Currently, the Maine Juvenile Code does not provide a right to a jury trial. This is not an issue when a juvenile is bound-over because the bind-over process transfers the case from juvenile court into adult criminal court, where all protections (including the right to a jury trial) and procedural rules otherwise applicable to criminal cases are available. The alternative track created by this bill does not provide similar protection.

7. A juvenile court disposition that includes a determinate period of imprisonment in an adult correctional facility is inconsistent with the purposes of the Maine Juvenile Code. The Maine Juvenile Code at 15 M.R.S.A. §3316 (2)(A) states, “A commitment of a juvenile to a Department of Corrections juvenile correctional facility pursuant to section 3314 *must be for an indeterminate period* ...” [emphasis added] The purpose of an indeterminate commitment is to ensure that the committed juvenile does not remain confined longer than is necessary to achieve rehabilitative results. In support of this principle, Title 34-A M.R.S.A. §3810 vests the Commissioner of Corrections with exclusive authority to determine that a juvenile has achieved rehabilitation and allow a committed juvenile to be released from confinement prior to the maximum period of commitment imposed by the juvenile court. Authorizing the juvenile court (as opposed to an adult court after a juvenile has been bound over) to impose dispositions that include determinate periods of imprisonment in an adult correctional facility would be inconsistent with the purposes of the Maine Juvenile Code and in violation of current law requiring that juvenile commitments be for an *indeterminate* period of time.

Finally, even if the bill were amended to address these issues, the question remains as to whether such a proposal is in any way necessary. Current Maine law provides an appropriate and constitutionally sound pathway to longer sentences through the bind-over process and providing this parallel track would only create unnecessary complication and confusion.

For the reasons stated above, the Department of Corrections respectfully asks that the committee votes "Ought Not to Pass" on this proposal.

Respectfully submitted,

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Maine Department of Corrections