



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

RANDALL A. LIBERTY
COMMISSIONER

TESTIMONY OF

CHRISTINE THIBEAULT
ASSOCIATE COMMISSIONER, DIVISION OF JUVENILE SERVICES
MAINE DEPARTMENT OF CORRECTIONS

April 17, 2025

In Opposition to:

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

Senator Beebe-Center, Representative Hasenfus, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, I am Christine Thibault, Associate Commissioner of the Maine Department of Corrections' (DOC) Division of Juvenile Services, providing testimony in opposition to LD 740, An Act to Divert Youth from the Criminal Justice System and Address Their Needs.

The department has serious concerns with several aspects of LD 740, but the three overarching issues are outlined as follows:

1. The bill contains language that is inconsistent with the language and structure of the Maine Juvenile Code and demonstrates a lack of understanding of Maine's current juvenile justice process.
2. The bill requires the Department of Health and Human Services to have a formal function within the juvenile justice system without establishing roles and responsibilities of DHHS in statutes governing the authority and responsibility of DHHS. By contrast, there are several sections in Title 34-A governing the Maine Department of Corrections that clearly identify DOC's responsibilities related to youth involved in Maine's juvenile justice system.
3. The bill proposes a process that is, at times, inconsistent with and duplicative of the Settlement Agreement between the State of Maine and the United States Department of Justice, recently approved by the United States District Court on December 20, 2024.

Each of the specific concerns related to how this proposal would amend the Maine Juvenile Code are explained fully more thoroughly below:

1. Section 1 of the bill creates a per se exclusionary rule that would result in otherwise admissible evidence being automatically excluded from an adjudicatory hearing (trial) in the juvenile court. Section one of the bill would prohibit the juvenile court from hearing any statement by a juvenile or a juvenile's parent, guardian or legal custodian made to a law enforcement officer or JCCO "related to determining whether to refer the juvenile to the DHHS for a juvenile needs assessment pursuant to section 3207." Consequently, any statements describing the juvenile's involvement in the alleged juvenile criminal conduct or the juvenile's mindset while allegedly committing a juvenile crime would be automatically excluded from a trial in the juvenile court should one occur. Automatic exclusion of otherwise admissible evidence from an adjudicatory hearing is typically limited to instances where a person's Constitutional rights are violated. [See State of Maine v. Ann Marie C., 407 A2d 715 (1979).]

2. The “Juvenile Needs Assessment” may be duplicative to or inconsistent with the “Single Assessment DHHS is required to provide youth pursuant to the DOJ Settlement Agreement.” Section 2 of the bill states that the “Juvenile Needs Assessment” must be conducted by DHHS and “must be based on and informed by high-fidelity wraparound principles.” The bill further states the assessment “must be designed to identify the supports and services needed to promote child and family well-being and inform the development of an individual wraparound plan that specifies the goals and action to be taken to address the medical, educational, social, therapeutic or other services needed by the juvenile and the juvenile’s family.”

This language is problematic in that there is no definition of “child and family well-being” and the bill doesn’t clarify who is responsible for taking “action to address” the juvenile’s and family’s needs. Is the responsibility on DHHS, DOC, the high-fidelity wraparound provider, the family, or someone else?

Section 1 of the bill also authorizes law enforcement officers or JCCOs to refer juveniles for a single assessment without providing any guidance on which juveniles should be referred and without any indication of how these assessments will be paid for should the juvenile not have insurance coverage. There is uncertainty about whether such an assessment would be covered by MaineCare or private insurance, and there is no clarity in the bill on who would pay for the assessment in the event the juvenile is uninsured.

For these reasons requiring DHHS to conduct a “juvenile needs assessment” will likely be inconsistent with DHHS’s obligation to provide a “single assessment” for youth pursuant to the DOJ settlement agreement.

To provide context on the scope of the number of juveniles that could be offered a needs assessment, there were 2,073 juvenile *cases* referred to DOC Division of Juvenile Services in 2024. Although the number of *youths* referred is lower because some youths have more than one referral, this total does not include juvenile cases addressed by law enforcement agencies without referral to DOC.

Finally, Section 1 of the bill references juveniles “reasonably believed to be a fugitive from justice...” The Maine Juvenile Code does not contain a definition of “fugitive from justice,” nor is this term typically used to describe juveniles who have absconded from one state and are located in another.

3. Maine has no statutes governing the roles and responsibilities of the Maine Department of Health and Human Services in addressing the needs of youth involved in the juvenile justice system. The proposal would obligate DHHS to become part of the diversion portion of the juvenile justice system without creating any corresponding authority or mandate in statute that specifies the roles and responsibilities of DHHS. This approach is not consistent with how such obligations are created in Maine law. By contrast, there are several provisions in Title 34-A that specify the roles and responsibilities of DOC regarding youth involved in the juvenile justice system. The lack of corresponding statutory authority and responsibility of DHHS in responding to juvenile criminal conduct raises many questions about confidentiality of information and expectations of DHHS regarding the juvenile court process.

4. The juvenile’s participation in the needs assessment performed by DHHS is not truly voluntary, as declining to obtain the assessment could result in legal consequence. Section 2 of the bill states that if a juvenile or the parents, guardian or legal custody do not consent to DHHS conducting a needs assessment, “the law enforcement officer or JCCO may report the denial of consent to the prosecutor and Juvenile Court to which a petition is submitted and proceed with arrest, detention, nonsecure placement or release of the juvenile into the custody of the juvenile’s parents, guardian or legal custodian, as appropriate.” Providing a legal consequence for not obtaining the juvenile needs assessment negates the characterization of the assessment as “voluntary.”

Additionally, the language describing the consequences for failure to obtain a juvenile needs assessment is inconsistent with the Maine Juvenile Code, as it provides authority to a law enforcement officer or JCCO to communicate directly with the Juvenile Court. The language is further problematic in that it suggests the failure to obtain a juvenile needs assessment could form the basis of an arrest or detention even though the Juvenile Code does not authorize arrest for conduct that would not constitute a crime if committed by an adult and limits the circumstances under which a juvenile may be securely detained.

5. The proposal imposes unrealistic timelines and would cause delay in the juvenile court process. The proposal states, “[DHHS] *shall* complete a juvenile needs assessment pursuant to this section within 60 days following a referral of a juvenile to [DHHS].” This is an unrealistically short period of time to complete the types of assessment being required, and most juveniles appear in court in fewer than 60 days following issuance of a summons. Consequently, the needs assessment would not be available to the JCCO or prosecutor before the juvenile appears in court. Requiring completion of the needs assessment before a decision can be made on whether the juvenile may be summoned to appear in juvenile court will result in youth not appearing in court for several months following their alleged offense – a problem previously rectified by authorizing a juvenile to be summoned to court within a matter of weeks. In 1999, the Maine legislature enacted 15 MRS §3304 allowing juveniles to be summoned to court because there was almost always a very long delay between offense and court appearance and law enforcement would have to locate the juvenile and family (not always in the same jurisdiction) weeks or months after the offense to serve notice to appear in court. Requiring the needs assessment before a juvenile can appear in court would undoubtedly return us to that every inefficient system that is contrary to best practice.

6. The presumed intent of this proposal is duplicative of the DOJ Settlement Agreement. Subsection 6 of Section 2 of the bill requires referral to high-fidelity wraparound care coordination services by DHHS if the report completed after the assessment “concludes that the juvenile has complex behavioral health needs and is at risk of residential, hospital or secure placement or is already involved in multiple services system...” This is exactly the target population for the Settlement Agreement. This provision would be at best redundant, and at worst contradictory to, elements of the DOJ Settlement Agreement.

7. The language in subsection 7 is confusing and demonstrates a lack of understanding of Maine’s juvenile justice system. The proposal states, “if a petition is filed following a juvenile needs assessment [conducted by DHHS], *prior to filing* the petition...” This sentence is confusing in that it references action to be taken after a petition is filed and then *prior to* a petition being filed. The subsection then states that a review of the recommendations following the juvenile needs assessment *shall* be taken by the law enforcement officer, the JCCO, and the prosecutor for possible screening and diversion of the juvenile case. The Maine Juvenile Code requires law enforcement agencies and DOC to initiate diversion prior to referral to a prosecutor. Prosecutors may dismiss a juvenile petition that has been filed to allow DOC to initiate diversion efforts, but they do not independently screen juveniles for diversion.

8. The language in subsection 8 is confusing in that it implies a process that is currently not codified in the Maine Juvenile Code and raises potential constitutional concerns.

Subsection 8 allows a petition to be filed in the Juvenile Court prior to, or in conjunction with, a referral to a needs assessment if the prosecutor or arresting officer or JCCO determines that there is “a need to request an order from the juvenile court for immediate detention or nonsecure placement to protect the safety of the juvenile or public.” This language implies that a petition could not be filed prior to completion of the juvenile needs assessment unless there is a need for immediate detention of the juvenile – which in Maine does not require a court order at the time of a juvenile’s arrest.

Subsection 8 requires the “petitioner” to identify reasons why diversion was not appropriate. This language is inconsistent with the Maine Juvenile Code for the following reasons:

- “Petitioner” is not defined in the Maine Juvenile Code.
- Diversion is conducted by law enforcement officers or JCCOs, neither of whom are authorized to file a petition in the juvenile court.
- Presumably, the prosecutor, being the sole authority on whether to file a petition alleging juvenile criminal conduct, would be the only person considered the “petitioner.”

Subsection 8 states that, “the petitioner *must* identify the reasons for which diversion was not an appropriate disposition prior to seeking court involvement.” Not only is this language problematic because prosecutors don’t make decisions regarding diversion, there may be potential constitutional concerns with requiring a prosecutor to explain why they are filing a juvenile criminal charge, especially since the proposal does not state to whom such an explanation must be provided, and what action, if any, is authorized should the reviewer not be satisfied with the reasons given.

9. Despite the language referencing “consultation with counsel” regarding consent to use of the information in the needs assessment to be used by law enforcement, legal counsel is not appointed for juveniles unless and until a juvenile petition is filed with the court. Subsection 9 on page 3 references “following consultation with counsel,” regarding consent for the information in the needs assessment to be used “for any purpose by a law enforcement agency during any portion of its investigation...” Legal counsel is not appointed to juveniles until there is a petition pending in court so there would be no consultation with legal counsel during the investigative phase unless the family has means to pay for an attorney during the investigation phase.

10. Requiring creation of a “stakeholders group” and implementation of a state statute designed to serve the same purpose as the DOJ Settlement Agreement will require additional resources from both the Department of Corrections and the Department of Health and Human Services and will diminish resources available to implement the DOJ Settlement Agreement. Section 3 of the bill requires DHHS to convene a stakeholders group to “develop processes to educate and train relevant persons and entities in all matters related to the needs assessment, including the purpose of the juvenile needs assessment, and in procedures for its use.” Again, this obligation may be inconsistent with similar requirements of the DOC Settlement Agreement approved by the US District Court in December 2024.

For the reasons stated above, the department respectfully provides this testimony in opposition to L.D. 740.

I am happy to answer questions.

Christine Thibeault
Associate Commissioner, Division of Juvenile Services
Maine Department of Corrections