

Office of Policy and Legal Analysis

Date: March 11, 2022

To: Joint Standing Committee on Criminal Justice and Public Safety

From: Dan Tartakoff, Legislative Analyst

Re: LD 756, An Act Regarding Criminal Services for Juveniles (Morales)

Summary of bill

The original bill is a concept draft that proposes to “explore and establish best practices regarding juvenile criminal services.”

Summary of sponsor’s proposed amendment

At the hearing, the sponsor introduced an amendment dated 3/3/2022 that replaces the bill and does the following.

1. It amends the Maine Juvenile Code to provide that the detention of an arrested juvenile may not be ordered by a juvenile corrections officer to protect the juvenile from an immediate threat of bodily harm.
2. It amends the Maine Juvenile Code to provide that a court may not order the placement in a secure institution of a juvenile adjudicated as having committed a juvenile crime based on a finding that confinement of the juvenile is necessary for the protection of the public because the juvenile is in need of correctional treatment that can be provided most effectively by the juvenile’s commitment to an institution.
3. It directs the Department of Corrections to contract with an independent service provider to conduct individualized needs assessments over a six-month period of juveniles detained in the custody of the department or adjudicated as having committed juvenile crimes and committed to the department and to submit to the department a report that, based on those assessments conducted, describes the services needed by juveniles detained in the custody of or committed to the department to avoid further incarceration or institutionalization. The department is directed, on or before April 15, 2023, to submit to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters a report that includes the report developed by the service provider and any findings and recommendations by the department and the service provider. After reviewing the report, the joint standing committee may report out legislation relating to the report.
4. It directs the Governor’s Office of Policy Innovation and the Future to establish a pilot program to be administered by an independent, nonprofit community-based organization or collaborative of organizations to distribute funding provided by the office to small-community based organizations and similar entities to establish or support community-based services. On or before January 1, 2024, the office is required to submit to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters a report regarding the outcome of the pilot program, including any findings and recommendations. After reviewing the report, the joint standing

committee may report out legislation relating to the report. The amendment also provides a one-time General Fund appropriation of \$1,000,000 in fiscal year 2022-23 to fund the pilot program.

5. It directs the Office of Program Evaluation and Government Accountability to develop a proposal and framework for ensuring appropriate independent oversight of the State's juvenile justice system, taking into consideration options for establishing oversight of the system by a single, multidisciplinary entity independent of any state department or agency that is consistent with national best practices and with the purposes and construction of the Maine Juvenile Code. On or before March 1, 2023, the office is required to the joint legislative committee established to oversee program evaluation and government accountability matters and to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters a report that includes the proposal and framework developed pursuant to this section and any findings and recommendations, including suggested legislation. After reviewing the report, the joint standing committee may report out legislation relating to the report.

6. It establishes an on-going General Fund appropriation of \$7,000,000 beginning in fiscal year 2022-23 to the Department of Health and Human Services, the Department of Education and the Department of Labor to expand child and juvenile services in the following areas: youth development, crisis response, mental health, peer support, restorative justice services, trauma-responsive services and services for victims of gender-based violence.

7. It establishes an on-going General Fund appropriation of \$4,000,000 beginning in fiscal year 2022-23 to the Department of Health and Human Services to expand housing and related resources for children and juveniles and their caregivers, in a manner that prioritizes investment in service models and resources accessible to children and juveniles, including, but not limited to, transitional housing, emergency shelter and mobile respite beds, host homes and rental assistance.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Rep. Morales, ACLU of Maine, Disability Rights Maine, GLAD (testimony supported by EqualityMaine and MaineTransNet), Maine Immigrants' Rights Coalition, Maine Prisoner Advocacy Coalition, Maine Youth Justice, NAMI Maine, Permanent Commission on the Status of Racial, Indigenous and Tribal Populations, Vera Institute of Justice, additional members of the public.

Opponents – Department of Corrections, Department of Health and Human Services/Office of Child and Family Services, Maine Prosecutor's Association, Maine Sheriff's Association.

Neither for nor against – Christian Civic League of Maine, additional members of the public.

Issues, proposed amendments and additional information

1. **Concerns with Section 1, MPA** – the Maine Prosecutor's Association expressed concern with the changes in Section 1 of the amendment, which it argues would eliminate the ability of juvenile community corrections officers, prosecutors and judges to keep high-risk youth safe through detention. The MPA testified that current law already requires that, to be ordered detained, a juvenile must have committed a felony or have previously been placed on conditional release and failed to follow/abide by those conditions.

2. **Concerns with Section 2, MPA/DOC/MSA** – multiple opponents expressed concerns with Section 2 of the amendment. Per the Maine Prosecutor’s Association, any juvenile currently committed to Long Creek has either repeatedly refused to participate in programming in the community or is considered to be a significant risk to public safety and the amendment would prohibit judges from committing youth to Long Creek to ensure they receive necessary treatment. DOC argued that the Section 2 change would remove a judge’s ability to commit a youth to Long Creek for treatment when that youth poses a risk to public safety. The Maine Sheriff’s Association expressed a belief that this change is yet another effort to close Long Creek.
3. **Concerns with Sections 3 and 4, DOC** – DOC testified that Section 3 is duplicative of services it already provides through its current staff and that the contracting directed under Section 4 is duplicative of similar contracting that multiple state agencies, including DOC, already provide.
4. **Section 5, analyst note** – Section 5 directs OPEGA to study and report back on a proposal and framework for establishment of appropriate independent oversight of the State’s juvenile justice system.

OPEGA is established in statute (3 MRSA §991) with the following enumerated purposes:

The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and programs of State Government and, when determined necessary by the committee, local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation. The office also is established to ensure that public funds provided to local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted. When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds and any expenditure by any public official or public employee during the course of public duty, including, but not limited to, any expenditure of private money for the purposes of the agency or other entity.

While the Legislature is of course free to override existing statutory parameters (the ever popular “notwithstanding”), it is not entirely clear that the scope of the proposal in Section 5 would fall within this statutory directive for OPEGA, which primarily describes evaluations and examinations of existing agencies, programs and associated expenditures. Additionally, the process by which work is typically assigned to OPEGA is also set out in statute (3 MRSA §994) and generally involves direction from the Government Oversight Committee, which has not provided input on this aspect of the amendment.

5. Section 6 appropriations, additional notes

- The appropriation described as “Appropriation #1” would provide \$7 million to DHHS, DOE and DOL to fund a number of services. If a version of this amendment is approved that includes this appropriation, it will be necessary to determine whether that \$7 million will be split in some way between those three

agencies or whether it will be provided to one agency in full to be expended for these purposes with input from the other agencies (or some similar clarification).

OCFS expressed concerns regarding the lack of clarity in how these funds would be divided among these agencies and used, what conditions, if any, would be placed on the services to be funded with this appropriation and how this funding would be dovetailed with existing services and resources provided by MaineCare and OCFS.

- OCFS expressed concerns with the appropriation described as “Appropriation #2,” which would provide \$4 million to DHHS to expand housing for children, juveniles and their caregivers in a number of areas. Specifically, OCFS noted that DHHS does not have expertise in housing and works closely with MaineHousing on housing-related initiatives. OCFS also does not support “host homes” described in the appropriation due to the lack of structure around that model.
- If a version of this amendment is approved that includes these described appropriations, there may end up being a need to include additional allocated or unallocated language to effectuate the appropriations. With direction from the Committee, that language can be added as necessary after a vote and brought back for language review.

6. Request for work session, OCFS – Representative Warren requested the Department of Health and Human Services/Office of Child and Family Services provide input on the proposal for and attend the work session.

Note that OCFS provided written testimony dated 3/8/22, described in part above.

Fiscal information

Not available from OFPR at this time.

Note that the proposed amendment does include \$12 million in General Fund appropriations, \$1 million of which is one-time funding and \$11 million of which is on-going funding.