

# MAINE STATE LEGISLATURE

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Date: 5/16/07

(Filing No. H-248)

**CRIMINAL JUSTICE AND PUBLIC SAFETY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
123RD LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 69, L.D. 71, Bill, "An Act To Amend the Laws Governing the Plea of Not Criminally Responsible by Reason of Mental Disease or Defect in Juvenile Cases"

Amend the bill by striking out the title and substituting the following:

**'An Act To Amend the Laws Governing the Plea of Not Criminally Responsible by Reason of Insanity in Juvenile Cases'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 15 MRSA §3305, 3rd ¶** is enacted to read:

A juvenile may enter an answer of not criminally responsible by reason of insanity or not criminally responsible coupled with a denial of the charges. For the purposes of this section, "insanity" has the same meaning as established in Title 17-A, section 39, except that the term "mental disease or defect" does not include, in and of itself, the fact that a juvenile has not attained the level of mental and emotional development normally associated with persons 18 years of age or older.

**Sec. 2. 15 MRSA §3309-A, sub-§3**, as amended by PL 1995, c. 690, §3 and affected by §7, is further amended to read:

**3. By consent of the parties.** When the juvenile and the prosecuting attorney consent and the court finds that such an evaluation may be of assistance to it in carrying out the purposes of the Maine Juvenile Code; or

**Sec. 3. 15 MRSA §3309-A, sub-§4**, as amended by PL 1999, c. 65, §1, is further amended to read:

**4. Juvenile adjudicated of gross sexual assault.** After adjudication and before disposition when a juvenile is adjudicated of a juvenile crime that if committed by an adult would be gross sexual assault under Title 17-A, section 253, subsection 1, the court

**COMMITTEE AMENDMENT**

1 shall order the juvenile to undergo a diagnostic evaluation and may order the evaluation  
2 to take place at a detention facility described in section 3203-A, subsection 7, paragraph  
3 B.; or

4 **Sec. 4. 15 MRSA §3309-A, sub-§5** is enacted to read:

5 **5. Not criminally responsible by reason of insanity.** When the juvenile has  
6 entered an answer of not criminally responsible by reason of insanity pursuant to section  
7 3305 or certifies in writing to the court that the results of such an evaluation are required  
8 in order to determine whether or not to so answer.

9 **Sec. 5. 15 MRSA §3310-B** is enacted to read:

10 **§3310-B. Commitment of a juvenile found not criminally responsible by reason of**  
11 **insanity**

12 **1. Not criminally responsible by reason of insanity.** When it is determined by a  
13 preponderance of the evidence that a juvenile is not criminally responsible by reason of  
14 insanity, the court record must so state. The court shall order the juvenile immediately  
15 committed to the custody of the Commissioner of Health and Human Services for an  
16 indeterminate period. The Commissioner of Health and Human Services shall  
17 immediately place the juvenile in an appropriate secure treatment facility. Under the  
18 guidance of a psychiatrist, the commissioner shall assess the juvenile and develop a  
19 treatment plan. A copy of this plan must be submitted to the court that committed the  
20 juvenile, the State Forensic Service, the attorney for the juvenile, the office of the  
21 attorney for the State who prosecuted the juvenile, the juvenile and the parents, guardian  
22 or legal custodian if the juvenile has any. The court shall review the treatment plan. If  
23 the treatment plan involves absences from the secure treatment facility, release to a  
24 community setting or discharge from the custody of the Commissioner of Health and  
25 Human Services, the court shall schedule a hearing within 30 days and shall provide  
26 notice of the hearing to the State Forensic Service, the attorney for the juvenile, the office  
27 of the attorney for the State who prosecuted the juvenile, the juvenile and the parents,  
28 guardian or legal custodian if the juvenile has any. Following the hearing, the court shall  
29 make findings and issue an order pursuant to subsection 7. Hearings pursuant to this  
30 section are not open to the public.

31 For the purposes of this section, the term "Commissioner of Health and Human Services"  
32 includes any designee of the commissioner, and the term "psychiatrist" means the  
33 psychiatrist under whose guidance the Department of Health and Human Services is  
34 providing treatment to the juvenile committed under this section.

35 **2. Notice of placement.** Upon placement of a juvenile committed under this section  
36 in an appropriate secure treatment facility, or in the event of transfer from one facility to  
37 another of a juvenile committed under this section, notice of the placement or transfer  
38 must be given by the Commissioner of Health and Human Services to the court that  
39 committed the juvenile.

40 **3. Indeterminate commitment.** The commitment of a juvenile to the custody of the  
41 Commissioner of Health and Human Services must continue until terminated by the  
42 court. At its discretion, the court that committed the juvenile may appoint a guardian ad  
43 litem.

1 4. Periodic review. The psychiatrist shall every 6 months conduct a review of the  
2 juvenile to address issues related to the mental status of the juvenile and shall compile a  
3 report based on this review. The report of the psychiatrist must address whether the  
4 juvenile is ready for participation in a treatment plan involving absences from the secure  
5 treatment facility, release to a community setting or discharge from the custody of the  
6 Commissioner of Health and Human Services.

7 The report must be submitted to the Commissioner of Health and Human Services, the  
8 State Forensic Service and the court that committed the juvenile. The court shall then  
9 forward copies of the report to the attorney for the juvenile, the office of the attorney for  
10 the State who prosecuted the juvenile, the juvenile and the parents, guardian or legal  
11 custodian if the juvenile has any.

12 The report must address whether the juvenile requires continued secure treatment or is  
13 ready for release back into the community without likelihood that the juvenile will cause  
14 injury to self or others due to mental disease or defect, with reasons supporting the  
15 opinion. The report must outline all treatment efforts undertaken on behalf of the  
16 juvenile.

17 5. Petition for review. Upon the petition of the juvenile, the Commissioner of  
18 Health and Human Services or the attorney for the State who prosecuted the juvenile  
19 asserting that the juvenile is ready for participation in a treatment plan involving absences  
20 from the secure treatment facility, release to a community setting or discharge from the  
21 custody of the Commissioner of Health and Human Services, the court shall immediately  
22 schedule a hearing upon the petition and provide notice to the Commissioner of Health  
23 and Human Services, the State Forensic Service, the attorney for the juvenile, the office  
24 of the attorney for the State who prosecuted the juvenile, the juvenile and the parents,  
25 guardian or legal custodian if the juvenile has any. Upon notice of a petition pursuant to  
26 this subsection, the psychiatrist shall file with the court a report outlining the current  
27 treatment plan and all treatment efforts provided to the juvenile. The report must include  
28 an opinion as to whether or not the juvenile continues to present a risk of harm to self or  
29 others due to mental disease or defect to the extent that continued placement in a secure  
30 treatment facility is required. A copy of the report must be submitted by the psychiatrist  
31 to the State Forensic Service. The State Forensic Service shall file a report with the court  
32 no later than 10 days prior to the hearing. Petitions pursuant to this subsection may not  
33 be filed with the court more frequently than once every 6 months.

34 6. Hearing on petition. The court shall review the reports referenced in subsection  
35 5 and provide a copy of the reports to the office of the attorney for the State who  
36 prosecuted the juvenile, the office of the district attorney in whose district the release  
37 petition was filed or in whose district release may occur and the attorney for the juvenile.  
38 At the hearing, the psychiatrist shall present testimony in support of the opinion.  
39 Additional testimony from a member of the State Forensic Service, testimony of an  
40 independent psychiatrist or a licensed psychologist who has examined the juvenile and is  
41 employed by the prosecutor's office, testimony of an independent psychiatrist or licensed  
42 psychologist who has examined the juvenile and is employed by the juvenile and any  
43 other relevant testimony must also be considered.

44 The juvenile bears the burden of proving by a preponderance of the evidence that the  
45 juvenile is ready for participation in a treatment plan involving absences from the secure

1 treatment facility, release to a community setting or discharge from the custody of the  
2 Commissioner of Health and Human Services and that the juvenile no longer presents a  
3 risk of harm to self or others due to mental disease or defect.

4 **7. Findings and order of the court.** If after hearing the court finds that the juvenile  
5 may, without likelihood of harm to the juvenile or to others due to mental disease or  
6 defect, be granted participation in a treatment plan involving absences from the secure  
7 treatment facility, be released to a community setting or be discharged from the custody  
8 of the Commissioner of Health and Human Services, the court shall so order. A  
9 treatment plan involving absences from the secure treatment facility or release to a  
10 community setting may include conditions necessary to ensure that the plan can be  
11 implemented without likelihood of harm to the juvenile or others due to mental disease or  
12 defect.

13 **8. Notification of victim.** Upon request of the victim, the Commissioner of Health  
14 and Human Services shall notify the victim of the juvenile crime whenever the juvenile is  
15 allowed absences from the secure treatment facility, is released from a secure treatment  
16 facility to a less restrictive residential placement, is returned to the community with or  
17 without conditions imposed by the court or is discharged from the custody of the  
18 Commissioner of Health and Human Services.

19 **9. Return to a secure treatment facility upon the commissioner's order.** The  
20 Commissioner of Health and Human Services may order any juvenile released pursuant  
21 to subsection 7 who fails to comply with the conditions of the juvenile's court-approved  
22 treatment plan to return to the secure treatment facility from which the juvenile was  
23 released. The court shall hold a hearing for the purposes of reviewing the order for  
24 release within 7 days of the juvenile's return if the juvenile will be detained for 7 or more  
25 days. At the hearing, the court shall receive testimony of the psychiatrist, any member of  
26 the State Forensic Service who has examined the juvenile upon the juvenile's return and  
27 any other relevant testimony. Following the hearing, the court may reissue or modify the  
28 previous order of release.

29 **10. Return to a secure treatment facility due to likelihood of causing injury.** A  
30 juvenile released pursuant to subsection 7 whose return to a secure treatment facility is  
31 considered necessary due to failure to comply with the conditions of the juvenile's court-  
32 approved treatment plan or who due to a deterioration in functioning now presents a  
33 likelihood of harm to self or others due to mental disease or defect, upon the verified  
34 petition of any interested person, may be brought before any judge of the District Court  
35 upon the judge's order. The court shall hold a hearing for the purpose of reviewing the  
36 mental condition of the juvenile and the order for release. The court may order the  
37 juvenile detained for observation and treatment, if appropriate, at a secure treatment  
38 facility pending the hearing. The detention may not exceed 14 days. The psychiatrist  
39 shall report to the court prior to the hearing as to the mental condition of the juvenile,  
40 indicating specifically whether the juvenile may return to the community without  
41 likelihood that the juvenile will cause injury to self or others due to mental disease or  
42 defect. The court shall receive the testimony of the psychiatrist who observed or treated  
43 the juvenile during the period of detention, any member of the State Forensic Service  
44 who has examined the juvenile during the period of detention and any other relevant  
45 testimony. Following the hearing, the court may reissue, modify or rescind the previous  
46 order of release.'

**SUMMARY**

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This amendment replaces the bill and does the following.

1. It clarifies definitions of the juvenile defense of not criminally responsible by reason of insanity by making language consistent with the defense as it applies to adult criminal matters.
2. It creates procedures similar to those that exist for adults found not criminally responsible by reason of insanity for the review by the juvenile court of a juvenile's placement, transfer, release and discharge from the custody of the Department of Health and Human Services.
3. It specifies that subsequent hearings for juveniles found not criminally responsible by reason of insanity may not be open to the public.
4. It provides a mechanism for notice to the victim when a juvenile is released from secure treatment.
5. It allocates the procedures governing findings and hearings related to juveniles found not criminally responsible by reason of insanity to the sequence of sections in the Maine Juvenile Code governing adjudicatory hearings, findings and adjudication, thereby clarifying that a finding of not criminally responsible by reason of insanity precludes adjudication of a juvenile crime.
6. It provides procedures by which a juvenile may enter an answer of not criminally responsible by reason of insanity alone or coupled with a denial of the charges.
7. It provides authority to the juvenile court to order a diagnostic evaluation of a juvenile who enters an answer of not criminally responsible by reason of insanity alone or coupled with a denial of the charges.
8. It provides that copies of treatment plans, reports and petitions must be distributed to all parties, including the juvenile and the juvenile's parents, guardian or legal custodian if the juvenile has any.

**FISCAL NOTE REQUIRED**  
**(See attached)**



Approved: 05/11/07 *MAC*

# 123rd MAINE LEGISLATURE

LD 71

LR 843(02)

**An Act To Amend the Laws Governing the Plea of Not Criminally Responsible by Reason of Mental Disease or Defect in Juvenile Cases**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Criminal Justice and Public Safety**

**Fiscal Note Required: Yes**

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## Fiscal Note

Potential current biennium cost increase - General Fund

### Fiscal Detail and Notes

The Department of Health and Human Services will require additional General Fund appropriations to support the costs of providing secure treatment to certain juveniles. The exact amount required can not be determined at this time and will depend on the number of juveniles committed. The average annual General Fund cost for one juvenile is estimated to be \$78,000. Any additional costs to the Department of the Attorney General can be absorbed utilizing existing budgeted resources.