

MAINE STATE LEGISLATURE

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Date: 11/4/08

L.D. 71
(Filing No. H-639)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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

COMMITTEE AMENDMENT "B" 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 of Health and Human Services shall assess
19 the juvenile and develop a treatment plan. A copy of this plan must be submitted to the
20 court that committed the juvenile, the State Forensic Service, the attorney for the juvenile,
21 the office of the attorney for the State who prosecuted the juvenile, the juvenile and the
22 parents, guardian or legal custodian if the juvenile has any. The court shall review the
23 treatment plan. If the treatment plan involves absences from the secure treatment facility,
24 release to a community setting or discharge from the custody of the Commissioner of
25 Health and Human Services, the court shall schedule a hearing within 30 days and shall
26 provide notice of the hearing to the State Forensic Service, the attorney for the juvenile,
27 the office of the attorney for the State who prosecuted the juvenile, the juvenile and the
28 parents, guardian or legal custodian if the juvenile has any. Following the hearing, the
29 court shall make findings and issue an order pursuant to subsection 7. Hearings pursuant
30 to this 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 of Health and Human Services, and the term
33 "psychiatrist" means the psychiatrist under whose guidance the Department of Health and
34 Human Services is 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 on the petition and provide notice to the Commissioner of Health and
23 Human Services, the State Forensic Service, the attorney for the juvenile, the office of the
24 attorney for the State who prosecuted the juvenile, the juvenile and the parents, guardian
25 or legal custodian if the juvenile has any. Upon notice of a petition pursuant to this
26 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

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

FISCAL NOTE REQUIRED
(See attached)



Approved: 12/13/07 *MAC*

123rd MAINE LEGISLATURE

LD 71

LR 843(04)

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 "B"
Committee: Criminal Justice and Public Safety
Fiscal Note Required: Yes

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 average annual General Fund cost for each affected juvenile is estimated to be \$78,000. The timing of the required appropriations can not be determined at this time. The incidence of this legislation is expected to be very small as only 2 potential cases have occurred in the last 15 years.

The additional costs to the Judicial Department and the Department of the Attorney General associated with this bill can be absorbed utilizing existing budgeted resources.