

MAINE STATE LEGISLATURE

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5/31/11
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L.D. 1413

Date: 5/31/11

(Filing No. H-412)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1039, L.D. 1413, Bill, "An Act To Amend the Maine Juvenile Code To Address the Issue of Competency"

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are currently juveniles in the juvenile justice system for whom the determination of competency is urgent; and

Whereas, adapting the adult model of competency determination to fit juveniles does not recognize the important differences between adults and juveniles; and

Whereas, the sooner that adoption of a method to determine juvenile competency is in place, the sooner judges, attorneys, state agencies and juveniles and their families will have a uniform method and shared expectations for determining juvenile competency; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill in section 4 in §3318-A in subsection 6 in paragraph A by striking out the first 2 lines (page 2, lines 8 and 9 in L.D.) and inserting the following:

'A. To assist the court's determination of competency, the State Forensic Service examiner's report must address the juvenile's capacity and ability to:'

Amend the bill in section 4 in §3318-A in subsection 7 in the 2nd line (page 3, line 15 in L.D.) by inserting after the following: "shall" the following: 'provide copies of the report to the parties and'

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Amend the bill in section 4 in §3318-A in subsection 7 by adding at the end the following:

'The court may consider the report of the State Forensic Service examiner, together with all other evidence relevant to the issue of competency, in its determination whether the juvenile is competent to proceed. No single criterion set forth in subsection 6 may be binding on the court's determination.'

Amend the bill in section 5 in §3318-B in subsection 1 in paragraph B by striking out the first 8 lines (page 4, lines 16 to 23 in L.D.) and inserting the following:

'B. If more than one year has elapsed since the suspension of the proceedings, the Juvenile Court shall promptly hold a hearing to determine whether based on clear and convincing evidence there exists a substantial probability that the juvenile will be competent in the foreseeable future. Notwithstanding section 3318-A, subsection 8, the burden of proof is on the State in any hearing under this paragraph. If the Juvenile Court finds that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall further determine whether or not the court should.'

Amend the bill in section 5 in §3318-B in subsection 2 in the 5th and 6th lines (page 4, line 43 and page 5, line 1 in L.D.) by striking out the following: "release the juvenile if detained in a juvenile correctional facility and schedule" and inserting the following: 'promptly hold'

Amend the bill by adding before the summary the following:

'Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.'

SUMMARY

This amendment makes clear that the purpose of the report of the State Forensic Service examiner is to assist, not prescribe, the court's determination of competency.

It provides that the court, upon receipt of the report of the State Forensic Service examiner, must provide a copy of that report to the parties.

It makes explicit that the court may consider the report of the State Forensic Service examiner, together with all other evidence relevant to competency, in its determination whether a juvenile is competent to proceed and that no single criterion addressed in the report of the State Forensic Service examiner is binding on the court's determination.

In 2 places, it eliminates an ambiguity that might have required a juvenile's release from a juvenile correctional facility before the court held a hearing to determine what referrals are appropriate with respect to a juvenile whose case is subject to dismissal under the Maine Revised Statutes, Title 34-A, section 3318-B.

The amendment also adds an emergency preamble and clause.