

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 140

H.P. 86

House of Representatives, January 10, 2023

An Act to Amend the Laws Governing the Right to Counsel for Juveniles and Due Process for Juveniles

Reference to the Committee on Judiciary suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative RUDNICKI of Fairfield.
Cosponsored by Representatives: CYRWAY of Albion, DRINKWATER of Milford, JAVNER
of Chester.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 15 MRSA §3003, sub-§14**, as amended by PL 2021, c. 326, §1, is further
3 amended to read:

4 **14. Juvenile.** "Juvenile" means a person who has not attained 18 years of age ~~and a~~
5 ~~person 18 years of age or older during the period of a disposition that includes probation or~~
6 ~~commitment to a Department of Corrections juvenile facility who was adjudicated before~~
7 ~~18 years of age. This definition does not apply to a person whose disposition includes~~
8 ~~probation or commitment to a Department of Corrections juvenile correctional facility~~
9 ~~when that person engages in new criminal conduct and is 18 years of age or older at the~~
10 ~~time of the new criminal conduct.~~

11 **Sec. 2. 15 MRSA §3203-A, sub-§4, ¶G**, as enacted by PL 2021, c. 326, §2, is
12 repealed.

13 **Sec. 3. 15 MRSA §3203-A, sub-§5**, as amended by PL 2021, c. 326, §3, is further
14 amended to read:

15 **5. Detention hearing.** Upon petition by a juvenile community corrections officer who
16 ordered the detention or an attorney for the State who ordered the detention, the Juvenile
17 Court shall review the decision to detain a juvenile within 48 hours following the detention,
18 excluding Saturday, Sunday and legal holidays, except that if a juvenile is detained
19 pursuant to subsection 7, paragraph B-5, the Juvenile Court shall review the decision to
20 detain the juvenile within 24 hours following the detention, excluding Saturday, Sunday
21 and legal holidays. ~~When a petition to review detention is filed, the Juvenile Court shall~~
22 ~~assign counsel to represent the juvenile. The assignment must be reviewed at the juvenile's~~
23 ~~first appearance before the Juvenile Court. If a juvenile petition with charges based on the~~
24 ~~conduct at issue in the detention hearing is filed, the assignment continues with respect to~~
25 ~~the petition to review detention but must be reviewed at the juvenile's first appearance on~~
26 ~~the juvenile petition.~~

27 A. A detention hearing must precede and must be separate from a bind-over or
28 adjudicatory hearing. Evidence presented at a detention hearing may include
29 testimony, affidavits and other reliable hearsay evidence as permitted by the Juvenile
30 Court and may be considered in making any determination in that hearing.

31 B. Following a detention hearing, the Juvenile Court shall order a juvenile's release,
32 in accordance with subsection 4, unless it finds, by a preponderance of the evidence,
33 that continued detention is necessary to meet one of the purposes of detention provided
34 in that subsection. The Juvenile Court shall ensure, by appropriate order, that any such
35 continued detention is otherwise in accordance with the requirements of subsection 4.
36 The Juvenile Court may order that detention be continued pending further appearances
37 before the Juvenile Court or pending conditional release to a setting satisfactory to the
38 juvenile community corrections officer.

39 C. Continued detention or conditional release may not be ordered unless a Juvenile
40 Court Judge or justice of the peace has determined pursuant to subsection 4-A or the
41 Juvenile Court determines at the detention hearing that there is probable cause to
42 believe that the juvenile has committed a juvenile crime.

1 D. When the Juvenile Court orders detention or a conditional release that authorizes,
2 even temporarily, the juvenile's removal from the juvenile's home, the Juvenile Court
3 shall determine whether reasonable efforts have been made to prevent or eliminate the
4 need for removal of the juvenile from the juvenile's home or that no reasonable efforts
5 are necessary because of the existence of an aggravating factor as defined in Title 22,
6 section 4002, subsection 1-B, and whether continuation in the juvenile's home would
7 be contrary to the welfare of the juvenile. This determination does not affect whether
8 the Juvenile Court orders detention or a conditional release, which continues to be
9 governed by the other provisions of this section.

10 **Sec. 4. 15 MRSA §3301, sub-§6**, as amended by PL 2021, c. 326, §4, is further
11 amended by repealing the 3rd blocked paragraph.

12 **Sec. 5. 15 MRSA §3306, sub-§1, ¶D**, as enacted by PL 2021, c. 326, §5, is
13 repealed.

14 **Sec. 6. 15 MRSA §3306, sub-§1**, as amended by PL 2021, c. 326, §5, is further
15 amended by repealing the first blocked paragraph.

16 **Sec. 7. 15 MRSA §3313, sub-§2, ¶J**, as amended by PL 2021, c. 326, §7, is further
17 amended to read:

18 J. The juvenile is particularly likely to respond affirmatively to probation; and

19 **Sec. 8. 15 MRSA §3313, sub-§2, ¶K**, as amended by PL 2021, c. 326, §8, is further
20 amended to read:

21 K. The confinement of the juvenile would entail excessive hardship to the juvenile or
22 the juvenile's dependents;.

23 **Sec. 9. 15 MRSA §3313, sub-§2, ¶L**, as enacted by PL 2021, c. 326, §9, is
24 repealed.

25 **Sec. 10. 15 MRSA §3313, sub-§2, ¶M**, as enacted by PL 2021, c. 326, §10, is
26 repealed.

27 **Sec. 11. 15 MRSA §3314, sub-§1, ¶F**, as amended by PL 2021, c. 326, §11, is
28 further amended to read:

29 F. The court may commit the juvenile to a Department of Corrections juvenile
30 correctional facility, ~~except that, beginning October 1, 2021, the juvenile must be at~~
31 ~~least 12 years of age at the time of commitment to be committed to such a facility.~~
32 Whenever a juvenile is committed to a Department of Corrections juvenile correctional
33 facility, the court shall determine whether reasonable efforts have been made to prevent
34 or eliminate the need for removal of the juvenile from the juvenile's home or that no
35 reasonable efforts are necessary because of the existence of an aggravating factor as
36 defined in Title 22, section 4002, subsection 1-B and whether continuation in the
37 juvenile's home would be contrary to the welfare of the juvenile. This determination
38 does not affect whether the court orders a commitment to a Department of Corrections
39 juvenile correctional facility, which continues to be governed by section 3313.

40 **Sec. 12. 15 MRSA §3315, sub-§3**, as amended by PL 2021, c. 326, §12, is further
41 amended to read:

1 **3. Court review of determination.** Whenever a court makes a determination pursuant
2 to section 3314, subsection 1, paragraph F or section 3314, subsection 2 that reasonable
3 efforts have been made to prevent or eliminate the need for removal of the juvenile from
4 the juvenile's home or that no reasonable efforts are necessary because of the existence of
5 an aggravating factor as defined in Title 22, section 4002, subsection 1-B and that
6 continuation in the juvenile's home would be contrary to the welfare of the juvenile, that
7 determination must be reviewed by the court not less than once every 12 months until the
8 juvenile is discharged ~~or~~, no longer ~~residing~~ resides outside the juvenile's home or attains
9 18 years of age. This review does not affect a juvenile's commitment to a Department of
10 Corrections juvenile correctional facility.

11 ~~A. A juvenile who has not attained 21 years of age must be represented by counsel at~~
12 ~~this review.~~

13 ~~B. If an appropriate treatment or appropriate and less restrictive placement is not being~~
14 ~~provided or offered to the juvenile, the court may order the Department of Corrections~~
15 ~~or the Department of Health and Human Services, or both, to demonstrate the~~
16 ~~reasonableness of the current treatment or placement provided or offered.~~

17 **Sec. 13. 15 MRSA §3316, sub-§2, ¶A**, as amended by PL 2021, c. 326, §13, is
18 further amended to read:

19 A. A commitment of a juvenile to a Department of Corrections juvenile correctional
20 facility pursuant to section 3314 must be for an indeterminate period not to extend
21 beyond the juvenile's 18th birthday unless the court expressly further limits or extends
22 the indeterminate commitment, as long as the court does not limit the commitment to
23 less than one year or extend the commitment beyond a juvenile's 21st birthday and as
24 long as an order does not result in a commitment of less than one year, unless the
25 commitment is for an indeterminate period not to extend beyond the juvenile's 21st
26 birthday. Nothing in this Part may be construed to prohibit the provision to a juvenile
27 following the expiration of the juvenile's term of commitment of services voluntarily
28 accepted by the juvenile and the juvenile's parent or parents, guardian or legal custodian
29 if the juvenile is not emancipated; except that these services may not be extended
30 beyond the juvenile's 21st birthday.

31 **Sec. 14. 15 MRSA §3317**, as amended by PL 2021, c. 326, §14, is further amended
32 to read:

33 **§3317. Disposition after return to Juvenile Court**

34 In instances of commitment of a juvenile to the Department of Health and Human
35 Services or a Department of Corrections juvenile correctional facility or when the juvenile
36 is under a specified period of probation, the Commissioner of Health and Human Services
37 or the commissioner's designee or the Commissioner of Corrections or the commissioner's
38 designee, ~~or the juvenile~~ following the disposition may for good cause petition the Juvenile
39 Court having original jurisdiction in the case for a judicial review of the disposition,
40 including extension of the period of commitment or period of probation. ~~For a petition~~
41 ~~initiated by the juvenile, the Department of Health and Human Services or the Department~~
42 ~~of Corrections shall provide information including, but not limited to, the information in~~
43 ~~reports required for periodic review pursuant to section 3315.~~ In all cases in which the
44 juvenile is returned to a Juvenile Court, the Juvenile Court may make any of the
45 dispositions otherwise provided in section 3314 and Title 34-A, section 3805, subsection

1 2. When reviewing a commitment to the Department of Health and Human Services, the
2 court shall consider efforts made by the Department of Corrections and the Department of
3 Health and Human Services to reunify the juvenile with the juvenile's parents or custodians,
4 shall make a finding regarding those efforts and shall return custody of the juvenile to a
5 parent or legal custodian if the return of the juvenile is not contrary to the welfare of the
6 juvenile. A petition for judicial review of a disposition committing the juvenile to the
7 Department of Health and Human Services must be served on the parents at least 7 days
8 prior to the hearing. ~~Absent extraordinary circumstances, the juvenile may file a petition~~
9 ~~no more than once every 180 days. A juvenile who has not attained 21 years of age must~~
10 ~~be represented by counsel at this review.~~

11 **Sec. 15. 15 MRSA §3402, sub-§1, ¶D,** as amended by PL 2021, c. 326, §15, is
12 further amended to read:

13 D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal
14 to alter a detention order upon petition of the juvenile pursuant to section 3203-A,
15 subsection 11, for abuse of discretion. The appeal must be handled expeditiously; and

16 **Sec. 16. 15 MRSA §3402, sub-§1, ¶H,** as amended by PL 2021, c. 326, §15, is
17 further amended to read:

18 H. An order binding a juvenile over for prosecution as an adult, which may be taken
19 following issuance of the bind-over order, or, at the election of the appellant, following
20 a judgment of conviction as an adult, but not both; ~~and.~~

21 **Sec. 17. 15 MRSA §3402, sub-§1, ¶I,** as enacted by PL 2021, c. 326, §15, is
22 repealed.

23 **Sec. 18. 15 MRSA §3405, sub-§2,** as amended by PL 2021, c. 326, §16, is further
24 amended to read:

25 **2. Record on appeals.** In appeals taken pursuant to section 3402, subsection 1,
26 paragraphs A, and B ~~and~~ H, review must be on the basis of the record of the proceedings
27 in the Juvenile Court. In the interest of justice, the Supreme Judicial Court may order that
28 the record consist of:

29 A. The untranscribed sound recording of the proceedings; or

30 B. An agreed or settled statement of facts with the consent of the parties.

31 **Sec. 19. 34-A MRSA §3805, sub-§1-A,** as enacted by PL 2021, c. 326, §18, is
32 repealed.

33 **Sec. 20. 34-A MRSA §3805, sub-§1-B** is enacted to read:

34 **1-B. Eligibility.** Only a juvenile, as defined in Title 15, section 3003, subsection 14,
35 who is 11 years of age or older at the time of commitment may be committed to the facility
36 pursuant to this subchapter and Title 15, Part 6.

37 SUMMARY

38 This bill reverses the changes in law made by Public Law 2021, chapter 326.

39 The bill removes the provision specifying that the right to counsel for a juvenile
40 attaches at the juvenile's initial appearance and continues until the court no longer has

1 jurisdiction over the juvenile, including all post-dispositional hearings and during the time
2 of commitment. The bill also removes a requirement that counsel appointed by the court
3 continue to represent the juvenile throughout all proceedings concerning the juvenile,
4 unless relieved by the court. The bill removes a requirement that the Juvenile Court assign
5 counsel to a juvenile when a detention order is reviewed.

6 The bill amends the definition of "juvenile" as used in the Maine Juvenile Code.

7 The bill removes a provision establishing the Juvenile Court's jurisdiction over
8 proceedings in which a juvenile had attained 12 years of age at the time of the offense.

9 The bill removes the authority of the Juvenile Court to appoint counsel for a juvenile
10 upon the filing of a petition. The bill removes the requirement that the Juvenile Court
11 appoint counsel upon a disposition ordering a juvenile to the Department of Corrections
12 juvenile correctional facility.

13 The bill removes 2 considerations that must be accorded weight against ordering
14 placement in a secure facility.

15 The bill removes provisions in the law governing a juvenile's right to periodic review
16 relating to a requirement that the juvenile have counsel. It removes the provision that
17 allows courts to require the Department of Corrections, the Department of Health and
18 Human Services, or both, to demonstrate the reasonableness of the current treatment or
19 placement provided or offered if an appropriate treatment or an appropriate less restrictive
20 alternative placement is not being provided. It also removes the provision that allows
21 judicial reviews for individuals who are 18 to 20 years of age.

22 The bill removes a provision that allows a juvenile to request a hearing under the Maine
23 Revised Statutes, Title 15, section 3317 and to petition for a reduction of a period of
24 commitment. The bill also removes the authorization of the court to reduce the period of
25 commitment or probation.

26 The bill removes a provision that allows a court to limit commitment to less than one
27 year.

28 The bill removes a provision that allows for appeal of hearings pursuant to Title 15,
29 section 3317.

30 The bill lowers the age at which a juvenile may be committed to Long Creek Youth
31 Development Center to 11 years of age.