

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE
AND PUBLIC SAFETY**

July 2011

MEMBERS:

SEN. GARRETT PAUL MASON, CHAIR
SEN. RODNEY L. WHITTEMORE
SEN. STAN GERZOFKY

REP. GARY E. PLUMMER, CHAIR
REP. DAVID C. BURNS
REP. RICKY D. LONG
REP. SUSAN E. MORISSETTE
REP. DEBORAH J. SANDERSON
REP. ANNE M. HASKELL
REP. STEPHEN P. HANLEY
REP. MICHAEL A. LAJOIE
REP. ANNA D. BLODGETT
REP. MICHAEL H. CLARKE

STAFF:

MARION HYLAN BARR, SENIOR ANALYST
ALYSON MAYO, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670

STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND
ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public Law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 125th Legislature is September 28, 2011. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Criminal Justice and Public Safety

teams.

LD 1413

An Act To Amend the Maine Juvenile Code To Address the Issue of Competency

**PUBLIC 282
EMERGENCY**

Sponsor(s)

Committee Report

Amendments Adopted

OTP-AM

H-412

This bill repeals provisions regarding suspension of juvenile proceedings for mentally ill or incapacitated juveniles and enacts provisions establishing criteria to determine whether a juvenile is competent to proceed in a juvenile proceeding. The bill specifies that a juvenile is competent to proceed in a juvenile proceeding if the juvenile has a rational as well as a factual understanding of the proceedings against the juvenile and a sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding. The issue as to a juvenile's competency to proceed may be raised by the juvenile, by the State or by the Juvenile Court at any point in the juvenile proceeding after a finding of probable cause and prior to the imposition of a final order of disposition. A competency determination is necessary only when the Juvenile Court has a reasonable doubt as to a juvenile's competency to proceed.

The bill provides that if the Juvenile Court determines that a competency determination is necessary, it shall order that a juvenile be examined by the State Forensic Service to evaluate the juvenile's competency to proceed. The examination must take place within 21 days of the court's order. Pending a competency examination, the Juvenile Court shall suspend the proceeding on the petition. The suspension remains in effect pending the outcome of a competency determination hearing. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile.

The bill requires that the State Forensic Service examiner evaluate whether the juvenile appreciates the allegations of the petition, the nature of the adversarial process and the range of possible dispositions that may be imposed in the proceedings against the juvenile, whether the juvenile can disclose to counsel facts pertinent to the proceedings and display logical and autonomous decision making and appropriate courtroom behavior and whether the juvenile can testify relevantly at proceedings.

The bill provides that in assessing the juvenile's competency, the State Forensic Service examiner shall compare the juvenile being examined to juvenile norms that are broadly defined as those skills typically possessed by the average juvenile defendant adjudicated in the juvenile justice system. The State Forensic Service examiner shall determine and report if the juvenile suffers from mental illness, mental retardation or chronological immaturity and the severity of the impairment and its potential effect on the juvenile's competency to proceed. If the State Forensic Service examiner determines that the juvenile suffers from chronological immaturity, the examiner shall compare the juvenile to the average juvenile defendant. If the State Forensic Service examiner determines that the juvenile suffers from a mental illness, the examiner must provide the prognosis of the mental illness. The State Forensic Service examiner's report must also state an opinion whether there exists a substantial probability that the deficiencies related to competence identified in the report, if any, can be ameliorated in the foreseeable future.

If the Juvenile Court finds that the juvenile is competent to proceed, the Juvenile Court shall set a time for the resumption of the proceedings. The burden of proof is on the State if the juvenile is less than 14 years of age at the time the issue of competence is raised. If the juvenile is at least 14 years of age at the time the issue of competence is raised, the burden of proof is on the juvenile. In the event the State has the burden of proof, it must show by a preponderance of the evidence that the juvenile is competent to proceed. In the event the juvenile has the burden of proof, the juvenile must show by a preponderance of the evidence that the juvenile is not competent to proceed. Statements made by the juvenile in the course of an examination may not be admitted as evidence in the adjudicatory

Joint Standing Committee on Criminal Justice and Public Safety

stage for the purpose of proving any juvenile crime alleged.

Even if the Juvenile Court has found the juvenile to be competent to proceed in a juvenile proceeding, if the juvenile is subsequently bound over for prosecution in the Superior Court or a court with a unified criminal docket, the issue of the juvenile's competency may be revisited since the juvenile is then being treated as an adult rather than as a juvenile.

If the Juvenile Court finds that the juvenile is not competent to proceed but additionally finds that there exists a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall continue to suspend the proceedings and refer the juvenile to the Commissioner of Health and Human Services for evaluation and treatment of the mental health and behavioral needs identified in the report of the State Forensic Service examiner. At the end of 60 days or sooner, at the end of 180 days and at the end of one year following referral, the State Forensic Service shall forward a report to the Juvenile Court relative to the juvenile's competency to proceed and its reasons. Upon receipt of the report the Juvenile Court shall forward the report to the parties and without delay set a date for a conference of counsel or, upon a motion of any party, set a hearing on the question of the juvenile's competency to proceed. If the Juvenile Court finds that the juvenile is not yet competent to proceed, but there exists a substantial probability that the juvenile will be competent to proceed in the foreseeable future, the proceedings must remain suspended pending further review or hearing.

If one year after suspension of the proceedings, the Juvenile Court determines that the juvenile is not competent to proceed, the Juvenile Court shall immediately release the juvenile if detained in a juvenile correctional facility unless any party presents clear and convincing evidence that there exists a substantial probability that the juvenile will be competent in the foreseeable future. If the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall schedule a hearing to determine whether or not the court should order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile or order the juvenile into the custody of the Commissioner of Health and Human Services for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.

If during the suspension of the proceedings the juvenile reaches 18 years of age, the Juvenile Court may evaluate the appropriateness of placing the juvenile in an appropriate institution for the care and treatment of adults with mental illness or mental retardation for observation, care and treatment.

The Juvenile Court shall set a time for resumption of the proceedings if at any point it finds, based upon the burden and standard of proof, that the juvenile is now competent to proceed.

If following the competency determination hearing the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall release the juvenile if detained in a juvenile correctional facility and schedule a hearing to determine whether or not the Juvenile Court should order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile or order the juvenile into the custody of the Commissioner of Health and Human Services for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.

Committee Amendment "A" (H-412)

This amendment makes clear that the purpose of the report of the State Forensic Service examiner is to assist, not

Joint Standing Committee on Criminal Justice and Public Safety

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 two 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 Title 34-A, section 3318-B. The amendment also adds an emergency preamble and clause.

Enacted Law Summary

Public Law 2011, chapter 282 repeals provisions regarding suspension of juvenile proceedings for mentally ill or incapacitated juveniles and enacts provisions establishing criteria to determine whether a juvenile is competent to proceed in a juvenile proceeding.
Public Law 2011, chapter 282 was enacted as an emergency measure effective June 9, 2011.

LD 1419 An Act To Improve the Coordination of County Correctional Services

PUBLIC 374

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PLUMMER SHERMAN	OTP-AM	H-531

This bill makes the following changes to the laws governing the State Board of Corrections.

1. It revises the membership of the State Board of Corrections to include the following:
 - A. Two sheriffs;
 - B. Two county commissioners;
 - C. One county administrator;
 - D. One administrator of a county or regional jail;
 - E. The Commissioner of Corrections or the commissioner's designee;
 - F. One municipal official; and
 - G. One public member.

2. It revises the provisions of law governing the submission of jail budgets to the State Board of Corrections by making those submissions on a biennial basis and by providing sufficient time before the beginning of the biennium for preparation and submission.

3. It creates a full-time position of Executive Director of the State Board of Corrections to replace a limited-period position established by financial order and enumerates the powers and duties of that position, including developing parameters for jail populations and standards for jails, transferring inmates between correctional facilities and