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Legislative Document

No. 320

H.P. 224

House of Representatives, February 8, 2021

**An Act To Provide the Right to Counsel for Juveniles and Improve
Due Process for Juveniles**

Received by the Clerk of the House on February 4, 2021. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MORALES of South Portland.
Cosponsored by Senator KEIM of Oxford.

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

2 **Sec. 1. 15 MRSA §3003, sub-§14**, as enacted by PL 1977, c. 520, §1, is amended
3 to read:

4 **14. Juvenile.** "Juvenile" means ~~any~~ a person who has not attained ~~the age of~~ 18 years
5 of age and a person 18 years of age or older during the period of a disposition that includes
6 probation or commitment to a Department of Corrections juvenile facility who was
7 adjudicated before 18 years of age.

8 **Sec. 2. 15 MRSA §3101, sub-§2**, as amended by PL 2019, c. 525, §9, is further
9 amended to read:

10 **2. Juvenile Court jurisdiction.**

11 A. The Juvenile Court ~~shall have~~ has exclusive original jurisdiction, subject to waiver
12 of jurisdiction as provided in subsection 4, of proceedings in which a juvenile is alleged
13 to have committed a juvenile crime, as defined in section 3103.

14 This paragraph is repealed October 1, 2022.

15 A-1. Beginning October 1, 2022, the Juvenile Court has exclusive original jurisdiction,
16 subject to waiver of jurisdiction as provided in subsection 4, of proceedings in which
17 a juvenile is alleged to have committed a juvenile crime, as defined in section 3103,
18 and the juvenile had attained 12 years of age at the time the juvenile crime is alleged
19 to have been committed.

20 C. ~~The Juvenile Courts have~~ Court has jurisdiction over all petitions brought under
21 Title 34-A, chapter 9, subchapter 7 pertaining to juveniles who have been adjudicated
22 as having committed juvenile crimes in other states, but who are found within the
23 territorial jurisdiction of the State.

24 D. ~~The Juvenile Courts have~~ Court has exclusive original jurisdiction over proceedings
25 in which an adult is alleged to have committed a juvenile crime before attaining 18
26 years of age. For purposes of a proceeding under this paragraph, the adult is ~~considered~~
27 deemed a juvenile.

28 This paragraph is repealed October 1, 2022.

29 D-1. Beginning October 1, 2022, the Juvenile Court has exclusive original jurisdiction
30 over proceedings in which an adult is alleged to have committed a juvenile crime after
31 having attained 12 years of age and before attaining 18 years of age. For purposes of
32 a proceeding under this paragraph, the adult is deemed a juvenile.

33 E. ~~The Juvenile Courts shall have~~ Court has jurisdiction concurrent with the District
34 Courts over petitions for emancipation brought under section 3506-A.

35 F. Beginning October 1, 2022, a juvenile who had not attained 12 years of age at the
36 time of the juvenile's alleged juvenile crime is not subject to the jurisdiction of the
37 Juvenile Court. Notwithstanding Title 17-A, section 10-A, subsection 1, a criminal
38 proceeding may not be commenced based on conduct committed by a juvenile who had
39 not attained 12 years of age.

40 **Sec. 3. 15 MRSA §3203-A, sub-§5**, as amended by PL 2003, c. 706, Pt. A, §§2
41 and 3, is further amended to read:

1 **5. Detention hearing.** Upon petition by a juvenile community corrections officer who
2 ordered the detention or an attorney for the State who ordered the detention, the Juvenile
3 Court shall review the decision to detain a juvenile within 48 hours following the detention,
4 excluding Saturday, Sunday and legal holidays, except that if a juvenile is detained
5 pursuant to subsection 7, paragraph B-5, the Juvenile Court shall review the decision to
6 detain the juvenile within 24 hours following the detention, excluding Saturday, Sunday
7 and legal holidays. When a petition to review detention is filed, the Juvenile Court shall
8 assign counsel to represent the juvenile. The assignment must be reviewed at the juvenile's
9 first appearance before the Juvenile Court. If a juvenile petition with charges based on the
10 conduct at issue in the detention hearing is filed, the assignment continues with respect to
11 the juvenile petition but must be reviewed at the juvenile's first appearance on the juvenile
12 petition.

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

17 B. Following a detention hearing, a ~~court~~ the Juvenile Court shall order a juvenile's
18 release, in accordance with subsection 4, unless it finds, by a preponderance of the
19 evidence, that continued detention is necessary to meet one of the purposes of detention
20 provided in that subsection. The Juvenile Court shall ensure, by appropriate order, that
21 any such continued detention is otherwise in accordance with the requirements of
22 subsection 4. The ~~court~~ Juvenile Court may order that detention be continued pending
23 further appearances before the ~~court~~ Juvenile Court or pending conditional release to a
24 setting satisfactory to the juvenile community corrections officer.

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

29 D. When a ~~court~~ the Juvenile Court orders detention or a conditional release that
30 authorizes, even temporarily, the juvenile's removal from the juvenile's home, the ~~court~~
31 Juvenile Court shall determine whether reasonable efforts have been made to prevent
32 or eliminate the need for removal of the juvenile from the juvenile's home or that no
33 reasonable efforts are necessary because of the existence of an aggravating factor as
34 defined in Title 22, section 4002, subsection 1-B, and whether continuation in the
35 juvenile's home would be contrary to the welfare of the juvenile. This determination
36 does not affect whether the ~~court~~ Juvenile Court orders detention or a conditional
37 release, which continues to be governed by the other provisions of this section.

38 **Sec. 4. 15 MRSA §3301, sub-§6**, as amended by PL 2011, c. 580, §1, is further
39 amended by enacting a new 3rd blocked paragraph to read:

40 If the attorney for the State files a petition, the court, upon the motion of the attorney for
41 the State, the motion of the juvenile or the court's own motion, may assign counsel for the
42 juvenile. The assignment must be reviewed at the juvenile's first appearance before the
43 court.

44 **Sec. 5. 15 MRSA §3306, sub-§1**, as amended by PL 2019, c. 525, §15, is further
45 amended to read:

1 **1. Notice and appointment.** The provisions of this subsection address a juvenile's
2 right to counsel.

3 A. At a juvenile's first appearance before the court, the juvenile and the juvenile's
4 parent or parents, guardian or legal custodian must be fully advised by the court of their
5 constitutional and legal rights, including the juvenile's right to be represented by
6 counsel at every stage of the proceedings. At every subsequent appearance before the
7 court, the juvenile must be advised of the juvenile's right to be represented by counsel.

8 B. If the juvenile requests an attorney and if the juvenile and the juvenile's parent or
9 parents, guardian or legal custodian are found to be without sufficient financial means,
10 counsel must be appointed by the court.

11 C. The court may appoint counsel without a request under paragraph B if the court
12 determines representation by counsel necessary to protect the interests of the juvenile.

13 D. The court shall appoint counsel to represent the juvenile upon the entry of a
14 dispositional order that includes commitment to a Department of Corrections juvenile
15 correctional facility. A juvenile's right to counsel under this paragraph continues until
16 the juvenile is discharged from the disposition. Counsel appointed under this
17 paragraph may be in addition to the juvenile's primary counsel.

18 This subsection does not limit the court's authority to appoint counsel for a juvenile at any
19 time beginning with the detention of the juvenile under this Part.

20 **Sec. 6. 15 MRSA §3313, sub-§2, ¶F**, as amended by PL 2019, c. 474, §1 and c.
21 525, §26, is repealed and the following enacted in its place:

22 F. The juvenile has made or has agreed to pay restitution to the victim of the juvenile's
23 conduct for the damage or injury that the victim sustained in an amount that the court
24 has determined is within the juvenile's ability to pay pursuant to section 3314-C;

25 **Sec. 7. 15 MRSA §3313, sub-§2, ¶J**, as amended by PL 1979, c. 663, §119, is
26 further amended to read:

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

28 **Sec. 8. 15 MRSA §3313, sub-§2, ¶K**, as amended by PL 2019, c. 525, §26, is
29 further amended to read:

30 K. The confinement of the juvenile would entail excessive hardship to the juvenile or
31 the juvenile's dependents-;

32 **Sec. 9. 15 MRSA §3313, sub-§2, ¶L** is enacted to read:

33 L. The juvenile had not attained 14 years of age at the time of the alleged conduct; and

34 **Sec. 10. 15 MRSA §3313, sub-§2, ¶M** is enacted to read:

35 M. The juvenile crime would be considered a Class D or Class E crime if committed
36 by an adult and, based upon both the written agreement of the parties and a court
37 finding, the facts and circumstances of the underlying criminal episode giving rise to
38 the conviction did not generate probable cause to believe the juvenile had committed
39 what would be considered a Class A, Class B or Class C crime if committed by an
40 adult.

1 **Sec. 11. 15 MRSA §3315, sub-§3**, as amended by PL 2003, c. 503, §3, is further
2 amended to read:

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

13 A. A juvenile who has not attained 21 years of age must be represented by counsel at
14 a judicial review of the juvenile's commitment.

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

19 **Sec. 12. 15 MRSA §3316, sub-§2, ¶A**, as repealed and replaced by PL 1999, c.
20 127, Pt. B, §6, is amended to read:

21 A. A commitment of a juvenile to a Department of Corrections juvenile ~~corrections~~
22 correctional facility pursuant to section 3314 must be for an indeterminate period not
23 to extend beyond the juvenile's 18th birthday unless the court expressly further limits
24 or extends the indeterminate commitment, as long as the court does not ~~limit the~~
25 ~~commitment to less than one year nor~~ extend the commitment beyond a juvenile's 21st
26 birthday ~~and as long as an order does not result in a commitment of less than one year,~~
27 ~~unless the commitment is for an indeterminate period not to extend beyond the~~
28 ~~juvenile's 21st birthday.~~ Nothing in this Part may be construed to prohibit the provision
29 to a juvenile following the expiration of the juvenile's term of commitment of services
30 voluntarily accepted by the juvenile and the juvenile's parent or parents, guardian or
31 legal custodian if the juvenile is not emancipated; except that these services may not
32 be extended beyond the juvenile's 21st birthday.

33 **Sec. 13. 15 MRSA §3317**, as amended by PL 1997, c. 752, §26 and PL 2003, c.
34 689, Pt. B, §§6 and 7, is further amended to read:

35 **§3317. Disposition after return to Juvenile Court**

36 In instances of commitment of a juvenile to the Department of Health and Human
37 Services or a Department of Corrections juvenile correctional facility or when the juvenile
38 is under a specified period of probation, the Commissioner of Health and Human Services
39 or the commissioner's designee or the Commissioner of Corrections or the commissioner's
40 designee, or the juvenile following the disposition may for good cause petition the Juvenile
41 Court having original jurisdiction in the case for a judicial review of the disposition,
42 including extension or reduction of the period of commitment or period of probation. For
43 a petition initiated by the juvenile, the Department of Health and Human Services or the
44 Department of Corrections shall provide information including, but not limited to, the

1 information in reports required for periodic review pursuant to section 3315. In all cases
2 in which a the juvenile is returned to a Juvenile Court, the Juvenile Court may make any of
3 the dispositions otherwise provided in section 3314, including a reduction of the period of
4 commitment or probation, and Title 34-A, section 3805, subsection 2. When reviewing a
5 commitment to the Department of Health and Human Services, the court shall consider
6 efforts made by the Department of Corrections and the Department of Health and Human
7 Services to reunify the juvenile with the juvenile's parents or custodians, shall make a
8 finding regarding those efforts and shall return custody of the juvenile to a parent or legal
9 custodian if the return of the juvenile is not contrary to the welfare of the juvenile. A
10 petition for judicial review of a disposition committing the ~~child~~ juvenile to the Department
11 of Health and Human Services must be served on the parents at least 7 days prior to the
12 hearing. Absent extraordinary circumstances, the juvenile may file a petition no more than
13 once every 180 days.

14 **Sec. 14. 15 MRSA §3402, sub-§1,** as amended by PL 2015, c. 100, §3, is further
15 amended to read:

16 **1. Matters for appeal.** Appeals of the following matters may be taken from the
17 ~~juvenile court~~ Juvenile Court to the Supreme Judicial Court by a party specified in
18 subsection 2:

- 19 A. An adjudication, as long as the appeal is taken after an order of disposition;
20 B. An order of disposition, or of any subsequent order modifying disposition, for an
21 abuse of discretion; ~~and~~
22 D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal
23 to alter a detention order upon petition of the juvenile pursuant to section 3203-A,
24 subsection 11, for abuse of discretion, ~~provided that the~~ The appeal must be handled
25 expeditiously; ~~and~~
26 H. A judicial review decision pursuant to section 3317.

27 **Sec. 15. 15 MRSA §3405, sub-§2,** as amended by PL 2015, c. 100, §5, is further
28 amended to read:

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

- 33 A. The untranscribed sound recording of the proceedings; or
34 B. An agreed or settled statement of facts with the consent of the parties.

35 **Sec. 16. 34-A MRSA §3805, sub-§1,** as amended by PL 1999, c. 583, §31, is
36 further amended by enacting a new first blocked paragraph to read:

37 This subsection is repealed October 1, 2022.

38 **Sec. 17. 34-A MRSA §3805, sub-§1-A** is enacted to read:

39 **1-A. Eligibility.** Beginning October 1, 2022, only a juvenile, as defined in Title 15,
40 section 3003, subsection 14, who is 12 years of age or older at the time of commitment may
41 be committed to the facility pursuant to this subchapter and Title 15, Part 6.

SUMMARY

1
2 Currently, Maine has no minimum age at which a child may be prosecuted for a crime.
3 The purpose of this bill is to prevent children under 12 years of age from being prosecuted
4 for crimes, to prevent children under 14 years of age from being incarcerated, to eliminate
5 the current requirement that, if committed, a juvenile must be committed for at least a year
6 and to prevent courts from imposing dispositions against juveniles that involve
7 commitment without exhausting all other less restrictive alternatives. The bill also
8 mandates regular opportunities for judicial review of a juvenile's commitment in addition
9 to providing an appellate avenue for relief from unfavorable reviews.

10 The overarching goal of the bill is to ensure that fewer children are in the juvenile
11 justice system and that, if and when they do become involved in the system, there is a
12 presumption against incarceration and a requirement for the regular review of any
13 commitment imposed, in order to minimize the harm that incarceration can cause children.

14 The bill amends the statute governing a juvenile's right to counsel to specify that the
15 right to counsel attaches at the juvenile's initial appearance and continues until the court no
16 longer has jurisdiction over the juvenile, including all post-dispositional hearings and
17 during the time of commitment. The bill also requires counsel appointed by the court to
18 continue to represent the juvenile throughout all proceedings concerning the juvenile,
19 unless relieved by the court. The Juvenile Court must assign counsel to a juvenile when a
20 detention order is reviewed.

21 The bill amends the definition of "juvenile" as used in the Maine Juvenile Code to
22 include a person 18 years of age or older who had been adjudicated as a juvenile during the
23 period of a disposition that includes probation and commitment to the Department of
24 Corrections beyond that person's 18th birthday.

25 The bill establishes that the Juvenile Court has jurisdiction over proceedings in which
26 a juvenile had attained 12 years of age at the time of the offense, effective October 1, 2022.

27 The bill authorizes the Juvenile Court to appoint counsel for a juvenile upon the filing
28 of a petition. The bill requires the Juvenile Court to appoint counsel upon a disposition
29 ordering a juvenile to the Department of Corrections juvenile correctional facility; counsel
30 may be in addition to the juvenile's primary counsel.

31 The bill adds 2 considerations that must be accorded weight against ordering placement
32 in a secure facility: whether the juvenile was under 14 years of age at the time of the crime
33 and whether the adjudication is for a juvenile crime that would be a Class D or E crime if
34 it were an adult crime and was not reduced from a crime that was charged as Class A, B or
35 C.

36 The bill adds to the already existing review in the Maine Revised Statutes, Title 15,
37 section 3315 a requirement that the juvenile have counsel. It allows courts to require the
38 Department of Corrections, the Department of Health and Human Services, or both, to
39 demonstrate the reasonableness of the current treatment or placement provided or offered
40 if an appropriate treatment or an appropriate less restrictive alternative placement is not
41 being provided. It also allows such judicial reviews for individuals who are 18 to 20 years
42 of age.

43 The bill allows a juvenile to request a hearing under Title 15, section 3317 and to
44 petition for a reduction of a period of commitment and authorizes the court to reduce the

1 period of commitment or probation. A juvenile may request this hearing only once every
2 180 days absent extraordinary circumstances.

3 The bill allows a court to limit commitment to less than one year.

4 The bill allows for appeal of hearings pursuant to Title 15, section 3317.

5 The bill raises the age at which a juvenile may be committed to Long Creek Youth
6 Development Center to 12 years of age beginning October 1, 2022.