



127th MAINE LEGISLATURE

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Legislative Document

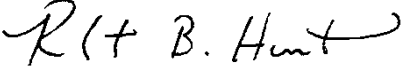
No. 1029

H.P. 712

House of Representatives, March 24, 2015

An Act To Improve Maine's Juvenile Justice System

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative DION of Portland.
Cosponsored by Senator GERZOFSKY of Cumberland and
Representative: FREY of Bangor.

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

2 **Sec. 1. 15 MRSA §3301, sub-§5, ¶A**, as amended by PL 1999, c. 624, Pt. B, §9,
3 is further amended to read:

4 A. Decide that action requiring ongoing supervision is not required either in the
5 interests of the public or of the juvenile. If the juvenile community corrections officer
6 determines that the facts in the report prepared for the community corrections officer
7 by the referring officer pursuant to section 3203-A, subsection 3 are sufficient to file
8 a petition, but in the community corrections officer's judgment the interest of the
9 juvenile and the public will be served best by providing the juvenile with services
10 voluntarily accepted by the juvenile and the juvenile's parents, guardian or legal
11 custodian if the juvenile is not emancipated, the juvenile community corrections
12 officer may refer the juvenile for that care and treatment and not request that a
13 petition be filed. Whenever possible and appropriate, the juvenile community
14 corrections officer may refer the juvenile to participate in a program intended to
15 increase community safety by reducing the likelihood of future illegal behavior by
16 the juvenile, to hold the juvenile accountable to the juvenile's victims and the
17 community and to assist the juvenile in becoming a responsible and productive
18 member of society;

19 **Sec. 2. 15 MRSA §3306-B** is enacted to read:

20 **§3306-B. Physical restraints in the courtroom**

21 **1. Physical restraints prohibited.** A juvenile may not be brought before the court
22 wearing any physical restraints, except when ordered by a Juvenile Court Judge during or
23 prior to the hearing.

24 **2. Inquiry regarding restraints.** Prior to the juvenile's appearance in court, the
25 court shall inquire of the transporting agency and the judicial marshal or other designated
26 court security as to whether reasonable grounds exist for the use of physical restraints in a
27 particular situation or for a particular juvenile. If the State, the transporting agency, the
28 judicial marshal or other designated court security raises a concern that reasonable
29 grounds exist for the use of physical restraints, the burden at hearing is on the juvenile to
30 show by a preponderance of the evidence that reasonable grounds for use of physical
31 restraints do not exist or that a less restrictive alternative that will alleviate the need for
32 physical restraints exists. The court shall permit testimony on the issue of whether the
33 use of physical restraints is necessary in a particular situation or for a particular juvenile.

34 **3. Exceptions.** Physical restraints may not be used on a juvenile during a court
35 proceeding and must be removed prior to the juvenile's appearance before the court
36 unless a Juvenile Court Judge finds that:

37 A. The use of physical restraints is necessary due to one of the following:

38 (1) Present behavior of the juvenile represents a current threat to that juvenile's
39 safety or the safety of others in the courtroom;

1 (2) Recent disruptive courtroom behavior of the juvenile has placed others in
2 potentially harmful situations or presents a substantial risk of inflicting physical
3 harm on that juvenile or others; or

4 (3) Present behavior of the juvenile presents a substantial risk of flight from the
5 courtroom; or

6 B. There are no less restrictive alternatives to physical restraints that will prevent
7 flight by the juvenile or physical harm to the juvenile or others, including but not
8 limited to the presence of court personnel or law enforcement officers.

9 **Sec. 3. 15 MRSA §3308, sub-§3**, as amended by PL 1991, c. 493, §20 and PL
10 2003, c. 689, Pt. B, §6, is further amended to read:

11 **3. Parties.** Records of court proceedings and of the other records described in
12 subsection 5 must be open to inspection by the juvenile, the juvenile's parents, guardian
13 or legal custodian, the juvenile's attorney, the prosecuting attorney and to any agency to
14 which legal custody of the juvenile was transferred as a result of adjudication. These
15 records may also be open to inspection by the Department of Health and Human Services
16 prior to adjudication if commitment to the Department of Health and Human Services is a
17 proposed disposition. Dissemination of any records described in this subsection may be
18 allowed only with the consent of the court, after hearing, taking into consideration the
19 purposes of this Part. The juvenile, the juvenile's counsel and the district attorney must
20 be given notice of the hearing and an opportunity to be heard.

21 **Sec. 4. 15 MRSA §3308, sub-§5**, as amended by PL 1999, c. 624, Pt. B, §18, is
22 further amended to read:

23 **5. Other records.** Police records, juvenile community corrections officers' records
24 and all other reports of social and clinical studies may not be open to inspection ~~except~~
25 ~~with consent of the court or except to the extent that such records, reports and studies~~
26 ~~were made a part of the record of a hearing that was open to the general public under~~
27 ~~section 3307 in cases not open to the general public under section 3307. In cases that are~~
28 open to the general public under section 3307 those records may be open to inspection by
29 a specific person only with the consent of the court, after hearing, taking into
30 consideration the purposes of this Part and the person's need to access the information
31 through this process. The juvenile, counsel who represented the juvenile at the
32 adjudicatory or dispositional hearing and the district attorney must be given notice of the
33 hearing and an opportunity to be heard.

34 **Sec. 5. 15 MRSA §3314, sub-§1, ¶H-1** is enacted to read:

35 H-1. Whenever possible and appropriate, the court may require that the juvenile
36 participate in a program intended to increase community safety by reducing the
37 likelihood of future illegal behavior by the juvenile, to hold the juvenile accountable
38 to the juvenile's victims and the community and to assist the juvenile in becoming a
39 responsible and productive member of society.

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SUMMARY

2 This bill directs juvenile community corrections officers, when determining
3 alternatives based on preliminary investigations, and the court, when entering a
4 dispositional order for an adjudicated juvenile, to consider that whenever possible and
5 appropriate the juvenile be referred to participate in a program intended to increase
6 community safety by reducing the likelihood of future illegal behavior by the juvenile, to
7 hold the juvenile accountable to the juvenile's victims and the community and to assist
8 the juvenile in becoming a responsible and productive member of society.

9 The bill prohibits the use of physical restraints on a juvenile during a court
10 proceeding and specifies that restraints must be removed prior to the juvenile's
11 appearance before the court unless a Juvenile Court Judge finds that use of restraints is
12 necessary because the present behavior of the juvenile represents a current threat to that
13 juvenile's safety or the safety of others in the courtroom; recent disruptive courtroom
14 behavior of the juvenile has placed others in potentially harmful situations or presents a
15 substantial risk of inflicting physical harm on that juvenile or others; present behavior of
16 the juvenile presents a substantial risk of flight from the courtroom; or less restrictive
17 restraints are unavailable.

18 Prior to a juvenile's appearance in court, the court is directed to inquire of the
19 transporting agency and the judicial marshal or other designated court security as to
20 whether reasonable grounds exist for the use of physical restraints in a particular situation
21 or for a particular juvenile. If the transporting agency or the judicial marshal or other
22 designated court security raises a concern that reasonable grounds exist for the use of
23 physical restraints, the burden at hearing is on the juvenile to show by a preponderance of
24 the evidence that reasonable grounds for use of physical restraints do not exist or that a
25 less restrictive alternative that will alleviate the need for physical restraints exists. The
26 court is directed to permit testimony on the issue of whether the use of physical restraints
27 is necessary in a particular situation or for a particular juvenile.

28 The bill also amends the provisions regarding the dissemination of certain juvenile
29 court records to specify that dissemination may be allowed only with the consent of the
30 court, after hearing, taking into consideration the purposes of the Maine Juvenile Code.
31 The bill specifies that police records, juvenile community corrections officers' records
32 and all other reports of social and clinical studies may not be open to inspection in cases
33 not open to the general public, and in cases that are open to the general public those
34 records may be open to inspection only with the consent of the court, after hearing, taking
35 into consideration the purposes of the Maine Juvenile Code and the need of the person
36 seeking to inspect the records to access the information through this process. The
37 juvenile, counsel who represented the juvenile at the adjudicatory or dispositional hearing
38 and the district attorney must be given notice of the hearing and an opportunity to be
39 heard.