

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

—
H.P. 1039 - L.D. 1413

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

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,

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

Sec. 1. 15 MRSA §3309-A, last ¶, as repealed and replaced by PL 1985, c. 213, is amended to read:

Nothing in this section may be construed to limit court-ordered examinations pursuant to ~~section 3318~~ sections 3318-A and 3318-B.

Sec. 2. 15 MRSA §3310, sub-§3, as amended by PL 2001, c. 471, Pt. F, §2, is repealed.

Sec. 3. 15 MRSA §3318, as amended by PL 2009, c. 268, §§6 and 7, is repealed.

Sec. 4. 15 MRSA §3318-A is enacted to read:

§3318-A. Determination of competency of a juvenile to proceed in a juvenile proceeding

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chronological immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation.

B. "Mental illness" means any diagnosable mental impairment supported by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

C. "Mental retardation" means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

2. Competency to proceed in a juvenile proceeding. A juvenile is competent to proceed in a juvenile proceeding if the juvenile has:

A. A rational as well as a factual understanding of the proceedings against the juvenile; and

B. A sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding.

3. Determination of competency. The issue as to a juvenile's competency to proceed may be raised by the juvenile, by the State or sua sponte 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.

4. Competency examination. 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.

5. Suspension of juvenile proceedings. 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 pursuant to subsection 7. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile pursuant to section 3203-A, subsection 5.

6. Criteria for State Forensic Service examiner's report. The following provisions govern criteria for the State Forensic Service examiner's report.

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:

(1) Appreciate the allegations of the petition;

(2) Appreciate the nature of the adversarial process including:

- (a) Having a factual understanding of the participants in the juvenile's proceeding, including the judge, defense counsel, attorney for the State and mental health expert; and
- (b) Having a rational understanding of the role of each participant in the juvenile's proceeding;
- (3) Appreciate the range of possible dispositions that may be imposed in the proceedings against the juvenile and recognize how possible dispositions imposed in the proceedings will affect the juvenile;
- (4) Appreciate the impact of the juvenile's actions on others;
- (5) Disclose to counsel facts pertinent to the proceedings at issue including:
 - (a) Ability to articulate thoughts;
 - (b) Ability to articulate emotions; and
 - (c) Ability to accurately and reliably relate to a sequence of events;
- (6) Display logical and autonomous decision making;
- (7) Display appropriate courtroom behavior;
- (8) Testify relevantly at proceedings; and
- (9) Demonstrate any other capacity or ability either separately sought by the Juvenile Court or determined by the examiner to be relevant to the Juvenile Court's determination.

B. 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.

C. The State Forensic Service examiner shall determine and report if the juvenile suffers from mental illness, mental retardation or chronological immaturity.

D. If the juvenile suffers from mental illness, mental retardation or chronological immaturity, the State Forensic Service examiner shall report the severity of the impairment and its potential effect on the juvenile's competency to proceed.

E. If the State Forensic Service examiner determines that the juvenile suffers from chronological immaturity, the examiner shall report a comparison of the juvenile to the average juvenile defendant.

F. If the State Forensic Service examiner determines that the juvenile suffers from a mental illness, the examiner shall provide the following information:

- (1) The prognosis of the mental illness; and
- (2) Whether the juvenile is taking any medication and, if so, what medication.

G. The State Forensic Service examiner's report must 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.

7. Post-examination report and hearing. Following receipt of the competency examination report from the State Forensic Service examiner, the Juvenile Court shall provide copies of the report to the parties and hold a competency determination hearing. If the Juvenile Court finds that the juvenile is competent to proceed based upon the burden and standard of proof pursuant to subsection 8, the Juvenile Court shall set a time for the resumption of the proceedings. If the Juvenile Court is not satisfied that the juvenile is competent to proceed, the Juvenile Court shall determine how to proceed pursuant to section 3318-B.

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.

8. Allocation of the burden of proof; standard of proof. The burden of proof of competence 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.

9. Statements made in the course of competency examination. Statements made by the juvenile in the course of a competency examination may not be admitted as evidence in the adjudicatory stage for the purpose of proving any juvenile crime alleged.

10. Competency to proceed after bind over. Notwithstanding a finding by the Juvenile Court that the juvenile is 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 pursuant to section 3101, subsection 4, the issue of the juvenile's competency may be revisited.

Sec. 5. 15 MRSA §3318-B is enacted to read:

§3318-B. Disposition of a juvenile found incompetent to proceed

1. Substantial probability that juvenile will be competent in the foreseeable future. If, following the competency determination hearing pursuant to section 3318-A, subsection 7, 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 the suspension of 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 under section 3318-A.

A. 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 examine the juvenile and forward a report of the examination to the Juvenile Court relating 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.

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:

(1) Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or

(2) Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 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.

C. 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.

D. 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 pursuant to section 3318-A, subsection 8, that the juvenile is now competent to proceed.

2. No substantial probability that juvenile will be competent in the foreseeable future. If, following the competency determination hearing provided in section 3318-A, subsection 8, 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 promptly hold a hearing to determine whether or not the Juvenile Court should:

A. Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or

B. Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 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.

Sec. 6. 34-A MRSA §3802, sub-§1, ¶B, as amended by PL 1995, c. 502, Pt. F, §27, is further amended to read:

B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section 3309-A, and court-ordered examinations pursuant to Title 15, section ~~3318~~ 3318-A;

Sec. 7. 34-A MRSA §4102-A, sub-§1, ¶B, as enacted by PL 2005, c. 328, §22, is amended to read:

B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section 3309-A, and court-ordered examinations pursuant to Title 15, section ~~3318~~ 3318-A;

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

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor