



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

---

Legislative Document

No. 1684

H.P. 1208

House of Representatives, May 7, 2019

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

---

Reference to the Committee on Judiciary suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative MORALES of South Portland.  
Cosponsored by Senator MILLETT of Cumberland and  
Representatives: BAILEY of Saco, GATTINE of Westbrook, HARNETT of Gardiner,  
MADIGAN of Waterville, McDONALD of Stonington, MOONEN of Portland, O'NEIL of  
Saco, PLUECKER of Warren.

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

2 **Sec. 1. 15 MRSA §3101, sub-§2**, as amended by PL 2017, c. 127, §1, is further  
3 amended to read:

4 **2. Juvenile Court jurisdiction.**

5 A. The Juvenile Court ~~shall have~~ has exclusive original jurisdiction, subject to  
6 waiver of jurisdiction as provided in subsection 4, of proceedings in which a juvenile  
7 who has attained 12 years of age is alleged to have committed a juvenile crime, as  
8 defined in section 3103.

9 C. Juvenile Courts have jurisdiction over all petitions brought under Title 34-A,  
10 chapter 9, subchapter 7 pertaining to juveniles who have been adjudicated as having  
11 committed juvenile crimes in other states, but who are found within the territorial  
12 jurisdiction of the State.

13 D. Juvenile Courts ~~shall~~ have exclusive original jurisdiction over proceedings in  
14 which an adult is alleged to have committed a juvenile crime after having attained 12  
15 years of age and before attaining his 18th birthday 18 years of age. For purposes of  
16 such proceedings such an adult ~~shall be~~ is considered a juvenile.

17 E. Juvenile Courts ~~shall~~ have jurisdiction concurrent with the District Courts over  
18 petitions for emancipation brought under section 3506-A.

19 F. A juvenile who has not attained 12 years of age at the time of the juvenile's  
20 alleged crime is not subject to the jurisdiction of the Juvenile Court and may not be  
21 prosecuted for any juvenile crime.

22 **Sec. 2. 15 MRSA §3306, sub-§1**, as amended by PL 1977, c. 664, §25, is  
23 repealed and the following enacted in its place:

24 **1. Notice and appointment of counsel.** The provisions of this subsection govern a  
25 juvenile's right to counsel.

26 A. At a juvenile's first appearance before the court, the court shall fully advise the  
27 juvenile and the parents, guardian or legal custodian of the juvenile of their  
28 constitutional and legal rights, including the juvenile's right to be represented by  
29 counsel at every stage of the proceedings. At every subsequent appearance before the  
30 court, the court shall fully advise the juvenile of the juvenile's right to be represented  
31 by counsel.

32 B. If the juvenile requests an attorney and the juvenile and the juvenile's parents,  
33 guardian or legal custodian are found to be without sufficient financial means, the  
34 court shall appoint counsel for the juvenile pursuant to the Maine Rules of Unified  
35 Criminal Procedure, Rule 44.

36 C. The court, at any stage of the proceedings, may appoint counsel without being  
37 requested to pursuant to paragraph B if the court considers representation by counsel  
38 necessary to protect the interests of the juvenile.

1 D. Counsel appointed by the court to represent a juvenile shall continue to represent  
2 the juvenile throughout all proceedings, until the court's jurisdiction over the juvenile  
3 has ended or counsel is relieved by order of the court.

4 E. For purposes of this subsection, "proceedings" includes, but is not limited to, the  
5 following proceedings when conducted at any time during a juvenile's commitment to  
6 a secure institution through the conclusion of the juvenile's term of probation and  
7 until the court's jurisdiction over the juvenile has ended:

8 (1) Detention, adjudicatory and dispositional hearings; and

9 (2) Post-dispositional proceedings, including appeal, post-conviction review and  
10 judicial review of commitment.

11 **Sec. 3. 15 MRSA §3313**, as amended by PL 1995, c. 690, §5, is further amended  
12 to read:

13 **§3313. Mandatory criteria for imposing an institutional disposition**

14 **1. Standard.** The court may not issue an order of disposition that involves  
15 commitment for any juvenile who has not attained 14 years of age. The court may not  
16 issue an order of disposition that involves commitment for a juvenile who has attained 14  
17 years of age who has been adjudicated of a juvenile crime that would constitute a Class D  
18 or Class E crime unless, based upon both the written agreement of the parties and a court  
19 finding, the facts and circumstances of the underlying criminal episode giving rise to the  
20 Class D or Class E adjudication generated probable cause to believe the juvenile had  
21 committed a juvenile crime that would constitute a Class A, Class B or Class C crime in  
22 the course of that criminal episode. The court ~~shall~~ may not enter an order of disposition  
23 for a juvenile who has attained 14 years of age and who has been adjudicated as having  
24 committed a juvenile crime ~~without~~ by imposing placement in a secure institution as  
25 disposition unless, having regard to the nature and circumstances of the crime and the  
26 history, character and condition of the juvenile, ~~it finds~~ the State provides and the court  
27 finds by clear and convincing evidence that ~~his~~ the juvenile's confinement is necessary for  
28 protection of the public because:

29 A. There is ~~undue~~ demonstrable risk that, during the period of a suspended sentence  
30 or probation, the juvenile will commit another crime;

31 B. The juvenile is in need of ~~correctional~~ treatment that can be provided ~~most~~  
32 effectively only by ~~his~~ his commitment to ~~an~~ a secure institution; or

33 C. A ~~lesser-sentence~~ disposition that does not involve commitment to a secure  
34 institution will depreciate the seriousness of the juvenile's conduct.

35 **2. Additional consideration.** The court shall explicitly, on the record and in open  
36 court, weigh the following grounds, ~~while not controlling the discretion of the court, shall~~  
37 ~~be accorded weight~~ against ordering placement in a secure institution:

38 A. The juvenile's conduct neither caused nor threatened serious harm;

39 B. The juvenile did not contemplate or was incapable of contemplating that ~~his~~ the  
40 juvenile's conduct would cause or threaten serious harm;

- 1 C. The juvenile acted under a strong provocation;
- 2 D. There were substantial grounds tending to excuse or justify the juvenile's conduct,  
3 though failing to establish a defense;
- 4 E. The victim of the juvenile's conduct induced or facilitated its commission;
- 5 ~~F. The juvenile has made or has agreed to make restitution to the victim of his~~  
6 ~~conduct for the damage or injury that the victim sustained;~~
- 7 G. The juvenile has not previously been adjudicated to have committed a juvenile  
8 crime or has led a law-abiding life for a substantial period of time prior to the conduct  
9 ~~which that~~ formed the basis for the present adjudication;
- 10 H. The juvenile's conduct was the result of circumstances unlikely to recur;
- 11 I. The character and attitudes of the juvenile indicate that ~~he~~ the juvenile is unlikely  
12 to commit another juvenile crime;
- 13 J. The juvenile is particularly likely to respond affirmatively to probation; ~~and~~
- 14 K. The confinement of the juvenile would entail excessive hardship to ~~himself~~ the  
15 juvenile or ~~his~~ the juvenile's dependents; ~~and~~
- 16 L. Secure confinement in a juvenile facility demonstrably risks harm to the juvenile  
17 because of:
- 18 (1) Conditions at the facility with respect to the juvenile's safety, health and  
19 welfare;
- 20 (2) Inability of the facility to timely provide all medically necessary and  
21 rehabilitative medical and mental health care to the juvenile;
- 22 (3) Inability of the facility to provide the education to which the juvenile is  
23 entitled, including under an individualized education plan pursuant to Title 20-A,  
24 chapter 303; or
- 25 (4) Any other reason related to the juvenile's best interests.

26 **3. Statement of reasons accompanying disposition of commitment for juveniles.**

27 In a disposition for a juvenile crime ~~that if committed by an adult would be murder or a~~  
28 ~~Class A, Class B or Class C crime~~, the court shall state on the record and in open court  
29 the court's reasons for ordering ~~or not ordering~~ placement of the juvenile in a secure  
30 institution. Failure to state these reasons, even if a disposition that includes commitment  
31 is agreed to by the juvenile and the State, is grounds for appeal as a per se abuse of  
32 discretion as an indication that the court has not weighed independently the propriety of  
33 imposing a disposition that involves any period of commitment to a secure institution.

34 **Sec. 4. 15 MRSA §3314, sub-§1, ¶F**, as amended by PL 2001, c. 696, §4, is  
35 further amended to read:

36 ~~The~~ If the juvenile has attained 14 years of age, the court may commit the juvenile  
37 to a Department of Corrections juvenile correctional facility. Whenever a juvenile is  
38 committed to a Department of Corrections juvenile correctional facility, the court  
39 shall determine whether reasonable efforts have been made to prevent or eliminate

1 the need for removal of the juvenile from the juvenile's home or that no reasonable  
2 efforts are necessary because of the existence of an aggravating factor as defined in  
3 Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's  
4 home would be contrary to the welfare of the juvenile. This determination does not  
5 affect whether the court orders a commitment to a Department of Corrections  
6 juvenile correctional facility, which continues to be governed by section 3313.

7 **Sec. 5. 15 MRSA §3314, sub-§1, ¶H,** as amended by PL 2007, c. 96, §5, is  
8 further amended to read:

9 H. ~~The~~ If the juvenile has attained 14 years of age, the court may order the juvenile  
10 to serve a period of confinement that may not exceed 30 days, with or without an  
11 underlying suspended disposition of commitment to a Department of Corrections  
12 juvenile correctional facility, which confinement must be served concurrently with  
13 any other period of confinement previously imposed and not fully discharged or  
14 imposed on the same date but may be served intermittently as the court may order  
15 and must be ordered served in a facility approved or operated by the Department of  
16 Corrections exclusively for juveniles. The court may order such a disposition to be  
17 served as a part of and with a period of probation that is subject to such provisions of  
18 Title 17-A, section 1204 as the court may order and that must be administered  
19 pursuant to Title 34-A, chapter 5, subchapter 4. Revocation of probation is governed  
20 by the procedure contained in subsection 2. Any disposition under this paragraph is  
21 subject to Title 17-A, section 1253, subsection 2 except that a statement is not  
22 required to be furnished and the day-for-day deduction must be determined by the  
23 facility, but not to Title 17-A, section 1253, subsection 2, paragraph A, or subsection  
24 3-B, 4, 5, 8, 9 or 10. For purposes of calculating the commencement of the period of  
25 confinement, credit is accorded only for the portion of the first day for which the  
26 juvenile is actually confined; the juvenile may not be released until the juvenile has  
27 served the full term of hours or days imposed by the court. When a juvenile is  
28 committed for a period of confinement, the court shall determine whether reasonable  
29 efforts have been made to prevent or eliminate the need for removal of the juvenile  
30 from the juvenile's home or that reasonable efforts are not necessary because of the  
31 existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B  
32 and whether continuation in the juvenile's home would be contrary to the welfare of  
33 the juvenile. This determination does not affect whether the court orders a period of  
34 confinement pursuant to section 3313.

35 **Sec. 6. 15 MRSA §3315,** as amended by PL 2013, c. 234, §10, is further amended  
36 to read:

37 **§3315. Right to periodic review**

38 **1. Right to review for dispositions that do not involve commitment.** Every  
39 disposition pursuant to section 3314 ~~and or~~ 3318-B, other than unconditional discharge ~~or~~  
40 commitment or possible commitment to a secure institution, must be reviewed not less  
41 than once in every 12 6 months until the juvenile is discharged or has attained 21 years of  
42 age, whichever occurs earlier. The review must be made by a representative of the  
43 Department of Corrections unless the juvenile has been committed to the custody of the  
44 Commissioner of Health and Human Services, in which case such review must be made

1 by a representative of the Department of Health and Human Services. A report of the  
2 review must be made in writing to the juvenile and the juvenile's parents, guardian or  
3 legal custodian. A copy of the report must be forwarded to the program or programs that  
4 were reviewed, and the department whose personnel made the review shall retain a copy  
5 of the report in their files. The written report must be prepared in accordance with  
6 subsection 2. When a juvenile is placed in the custody of the Commissioner of Health  
7 and Human Services, reviews and permanency planning hearings must be conducted in  
8 accordance with Title 22, section 4038. Title 22, sections 4005, 4039 and 4041 also  
9 apply.

10 **1-A. Judicial review of juvenile in custody of Department of Corrections.** When  
11 a juvenile is placed in the custody of the Department of Corrections, the court shall grant  
12 a petition for review filed by the juvenile, the parents, guardian or legal custodian of the  
13 juvenile or the department; the court may also initiate a review on its own. Prior to the  
14 review, the department shall provide notice of the review to the court and to the juvenile  
15 and the juvenile's parents, guardian or legal custodian but not to a parent whose parental  
16 rights have been terminated pursuant to Title 22, chapter 1071, subchapter 6.

17 The court may convene a prehearing conference to clarify any disputed issues and to  
18 review the possibility of a less restrictive alternative to incarceration. The court shall  
19 consider the report made by the department in accordance with subsection 1, hear  
20 evidence and consider the reason for the original disposition made under sections 3313  
21 and 3314 and efforts made by the parties since then.

22 After a hearing or by agreement, the court shall make written findings that determine:

23 A. The safety of the juvenile's placement;

24 B. The continuing necessity for and appropriateness of the juvenile's placement;

25 C. The extent of the involved parties' compliance with the juvenile's individualized  
26 plan and the extent of the juvenile's progress with that plan;

27 D. A likely date when the juvenile may be placed in a less restrictive alternative or at  
28 home; and

29 E. If the juvenile is at least 16 years of age, whether that juvenile is receiving  
30 instructions to aid that juvenile to live independently.

31 The court may make any other order it is authorized to make pursuant to section 3314.

32 **2. Contents of review.** The written report of each periodic review ~~shall~~ must contain  
33 the following information:

34 A. A brief description of the services, with the dates and types of service for each  
35 provider, provided to the juvenile during the period preceding the review and the  
36 results of those services;

37 B. ~~A~~ The current well-being of the juvenile and an individualized plan for the  
38 provision of services to the juvenile for the next period;

39 C. A statement showing that the plan imposes the least ~~restricting~~ restrictive  
40 alternative consistent with adequate care of the juvenile and protection of the

1 community, including a statement specifying which less restrictive alternatives were  
2 considered and at what time and the reasons why those alternatives were rejected; and

3 D. A certification that the services recommended are available and will be afforded  
4 to the juvenile.

5 **3. Court review of determination to remove juvenile from home.** Whenever a  
6 court makes a determination pursuant to section 3314, subsection 1, paragraph F or  
7 section 3314, subsection 2 that reasonable efforts have been made to prevent or eliminate  
8 the need for removal of the juvenile from the juvenile's home or that no reasonable efforts  
9 are necessary because of the existence of an aggravating factor as defined in Title 22,  
10 section 4002, subsection 1-B and that continuation in the juvenile's home would be  
11 contrary to the welfare of the juvenile, that determination must be reviewed by the court  
12 not less than once every 12 months until the juvenile is discharged or no longer residing  
13 outside the juvenile's home or attains 18 years of age. This review does not affect a  
14 juvenile's commitment to a Department of Corrections juvenile correctional facility  
15 pursuant to section 3313.

16 **4. Court review of determination to impose a disposition involving commitment.**  
17 Whenever a court imposes a disposition that involves commitment to a secure institution  
18 for a juvenile pursuant to section 3314, subsection 1, paragraph F, or a suspended  
19 sentence and an order of probation that could result in a disposition of commitment to a  
20 secure institution pursuant to section 3314, subsection 2, no later than 90 days following  
21 the imposition of the disposition, and at least every 90 days thereafter, the juvenile must  
22 appear before the court with the juvenile's parents, guardian or legal custodian to review  
23 the disposition. The Department of Corrections shall provide notice of the reviews and  
24 file a copy of each notice with the court prior to the review hearing. The court may  
25 convene a prehearing conference to clarify the disputed issues and review the possibility  
26 of alternative dispositions specified in section 3314. The court shall determine, in light of  
27 the factors set forth in subsections 1-A and 2, section 3002 and section 3313, whether  
28 further confinement in a secure institution demonstrably risks harm to the juvenile. The  
29 State and any witnesses considered necessary by the State, the juvenile or the court shall  
30 appear before the court in order for the court to review whether further commitment of  
31 the juvenile is in the juvenile's best interests. The court may also receive evidence  
32 regarding the juvenile's commitment from reports, affidavits and other evidence that is  
33 sufficiently reliable. If requested by the juvenile, the juvenile's parent, guardian or legal  
34 custodian or another party, the court shall require that the person who wrote the report or  
35 prepared the material appear as a witness and be subject to examination by the court and  
36 any party. In the absence of the request, the court may order the person who prepared the  
37 report or other material to testify if the court finds that the interests of justice so require.  
38 A juvenile or other party who is indigent is entitled to appointment of counsel pursuant to  
39 section 3306, subsection 1 for a review conducted pursuant to this subsection.

40 **Sec. 7. 15 MRSA §3316, sub-§2, ¶A,** as repealed and replaced by PL 1999, c.  
41 127, Pt. B, §6, is amended to read:

42 A. A commitment of a juvenile to a Department of Corrections juvenile corrections  
43 facility pursuant to section 3314 must be for an indeterminate period not to extend  
44 beyond the juvenile's 18th birthday unless the court expressly further limits or

1 extends the indeterminate commitment, as long as the court does not ~~limit the~~  
2 ~~commitment to less than one year nor~~ extend the commitment beyond a juvenile's  
3 21st birthday ~~and as long as an order does not result in a commitment of less than one~~  
4 ~~year, unless the commitment is for an indeterminate period not to extend beyond the~~  
5 ~~juvenile's 21st birthday.~~ Nothing in this Part may be construed to prohibit the  
6 provision to a juvenile following the expiration of the juvenile's term of commitment  
7 of services voluntarily accepted by the juvenile and the juvenile's parents, guardian or  
8 legal custodian if the juvenile is not emancipated; except that these services may not  
9 be extended beyond the juvenile's 21st birthday.

10 **Sec. 8. 15 MRSA §3402, sub-§1**, as amended by PL 2015, c. 100, §3, is further  
11 amended to read:

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

- 14 A. An adjudication, as long as the appeal is taken after an order of disposition;  
15 B. An order of disposition, or of any subsequent order modifying disposition, for an  
16 abuse of discretion; ~~and~~  
17 D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal  
18 to alter a detention order upon petition of the juvenile pursuant to section 3203-A,  
19 subsection 11, for abuse of discretion; ~~provided that the.~~ The appeal must be handled  
20 expeditiously; ~~and~~  
21 H. A judicial review decision, pursuant to section 3315, for an abuse of discretion.  
22 The appeal must be handled expeditiously.

23 **Sec. 9. 15 MRSA §3405, sub-§2**, as amended by PL 2015, c. 100, §5, 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 juvenile court. In the interest of justice, the Supreme Judicial Court may order that the  
28 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. 10. 34-A MRSA §3805, sub-§1**, as amended by PL 1999, c. 583, §31, is  
32 further amended to read:

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

## 36 SUMMARY

37 Currently, Maine has no minimum age at which a child may be prosecuted for a  
38 crime. The purpose of this bill is to prevent children under 12 years of age from being

1 prosecuted for crimes, to prevent children under 14 years of age from being incarcerated,  
2 to eliminate the current requirement that, if committed, a juvenile must be committed for  
3 at least a year and to prevent courts from imposing dispositions against juveniles that  
4 involve commitment without exhausting all other less restrictive alternatives. The bill  
5 also mandates regular opportunities for judicial review of a juvenile's commitment in  
6 addition to providing an appellate avenue for relief from unfavorable reviews.

7 The bill provides that if a court imposes a disposition that involves incarceration, the  
8 court must conduct a detailed analysis on the record explaining the rationale for the  
9 disposition. Such a disposition is authorized only if the court finds certain criteria by clear  
10 and convincing evidence. If the court commits a juvenile to a facility, the bill requires  
11 periodic judicial review of the incarceration to ensure that the rehabilitative purposes of  
12 incarceration are not being outweighed by the harm caused by incarceration.

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

18 This bill amends the statute governing a juvenile's right to counsel to specify that the  
19 right to counsel attaches at the juvenile's initial appearance and continues until the court  
20 no longer has jurisdiction over the juvenile, including all post-dispositional hearings and  
21 during the time of commitment. This bill also requires counsel appointed by the court to  
22 continue to represent the juvenile throughout all proceedings concerning the juvenile,  
23 unless relieved by the court.