



## **Maine Juvenile Justice Legislative Update (2019)**

The following is a summary of legislation relating to juvenile justice reform that was either enacted by or carried over from the first regular session of the 129th Legislature (2019). The second regular session of the 129th Legislature will convene in January 2020.

*Thank you to the Maine Association of Criminal Defense Lawyers and the Maine Juvenile Justice Reform Practitioner Work Group for their invaluable advice and input for this summary.*

### **Recently Enacted Legislation**

*Effective September 19, 2019*

**LD 548: An Act Regarding Charging a Person Under 18 Years of Age with the Crime of Engaging in Prostitution.** *Sponsored by Senator Bill Diamond.*

- Prohibits children under the age of 18 from being charged with engaging in prostitution (17-A M.R.S. § 853-A).

***Passed into law without the Governor's signature on May 19, 2019.***

**LD 800: An Act To Require Recording of Interviews of Suspects.** *Sponsored by Representative Charlotte Warren.*

- Requires law enforcement to record interviews of suspects (including juveniles) regarding murder, Class A, Class B, and Class C crimes.
- Requires law enforcement officers to preserve their investigative notes.

***Passed into law with the Governor's signature on June 24, 2019.***

**LD 984: Resolve, To Develop Plans To Return to the State Children Housed in Residential Treatment Systems outside of the State.** *Sponsored by Representative Lori Gramlich.*

- Calls on the Department of Health and Human Services to work with families to bring children back to Maine who have been receiving behavioral health services out of state.

***Passed into law with the Governor's signature on June 6, 2019.***

**LD 1010: Resolve, Directing the Department of Education to Develop a Model School Disciplinary Policy.** *Sponsored by Representative Victoria Morales.*

- Requires the Department of Education to develop a model disciplinary policy that is designed to promote interventions to close economic, disability-related, gender, and racial gaps, focusing on positive and restorative practices in interventions.

***Passed with the Governor's signature on May 17, 2019.***

**LD 1304: An Act to Ease Financial Burdens for Juveniles Involved in the Justice System.\*** *Sponsored By Representative Donna Bailey.*

- Prohibits courts from considering a juvenile's ability to pay restitution or a juvenile's agreement to make restitution as a mitigating factor when considering confinement as a potential disposition.
- Creates presumption that juveniles who are younger than 16 are unable to pay restitution and mandates the State to rebut that presumption by a preponderance of the evidence. Creates a new "juvenile standard" when determining ability to pay.
- Allows for the court to modify an existing order of restitution, including the ability to reduce or eliminate the original restitution amount. The court may also order community service in place of or as a reduction of the existing restitution order.

***Passed into law with the Governor's signature on June 6, 2019.***

**LD 1397: An Act to Ensure That Statements Made During Participation in Informal Adjustment Processes Are Not Admissible in Court.** *Sponsored by Representative Victoria Morales.*

- Amends Maine Juvenile Code to prohibit statements made by a juvenile, their parents, or legal guardian in connection with (1) informal adjustment proceedings; (2) restorative justice programs; (3) to a clinical provider during treatment or assessments; and (4) during school disciplinary proceedings from being used against the juvenile during the State's case-in-chief at adjudicatory hearings.
- Eliminates the need for counsel to craft and execute confidentiality or protective orders for such statements on a case-by-case basis.

***Passed into law with the Governor's signature on June 6, 2019.***

**LD 1479: An Act to Clarify Commissioner Guardianship Over Detainees Under the Age of 18.**

*Sponsored by Representative Victoria Morales.*

- Clarifies that when the Department of Corrections is the guardian of a minor—as it is for children who are incarcerated—the Commissioner has power over the child regarding both medical and mental health care.

***Passed into law without the Governor’s signature on May 26, 2019.***

**LD 1573: An Act to Clarify Provisions of the Maine Juvenile Code Regarding Inspection, Disclosure, and Dissemination of Juvenile Case Records and To Change Gender-specific Terms.** *Sponsored by Representative Barbara Cardone.*

- Amends the Maine Juvenile Code by changing gender-specific terms to gender-neutral terms.
- Defines “juvenile case records” to include all information, records, or documents that may be contained in the court records of a juvenile for an individual case.
- Incorporates a presumption of confidentiality of juvenile case records and clarifies the Juvenile Code as it relates to maintaining the confidentiality of these records.

***Passed into law with the Governor’s signature on July 2, 2019.***

**LD 1596: An Act to Enhance the Long Term Stability of Certain At-Risk Youth.\*** *Sponsored by Representative Donna Bailey.*

- Gives the District Court jurisdiction over petitions for at-risk non-citizen youth between the ages of 18 and 21.
- Allows for courts to issue special findings of fact that can be used as authority in special immigrant juvenile status proceedings.
- Special findings of fact authorized by this legislation include that at risk non-citizen youth is: (1) dependent on the court; (2) suffering from abuse, neglect, or abandonment; (3) unable to be reunified with a parent; (4) unable to be returned to country of origin because it is not in the best interest of the child.

***Passed into law with the Governor’s signature on June 18, 2019.***

## **Legislation in Progress**

**LD 44: An Act Regarding the Maine Criminal Code.** *Sponsored by Representative Charlotte Warren.*

- Part B of this bill would require at least a three-year age difference between suspect and victim when charging gross sexual assault based solely on the age of the victim.

***Passed House and Senate. Awaiting action by the Governor.***

**LD 639: An Act To Protect Student Privacy.** *Sponsored by Senator Michael Carpenter.*

- Provides that video and audio recordings obtained via security or surveillance cameras on school grounds are not public information for purposes of Freedom of Access Act.

***Carried over to the second regular session of the 129th Legislature.***

**LD 1670: An Act to Limit Dissemination of Certain Juvenile Records.** *Sponsored by Representative Rachel Talbot Ross.*

- Provides for the automatic sealing of all juvenile case records once the juvenile is finally discharged from their disposition. This automatic sealing provision does not apply to the most serious juvenile crimes including those juvenile crimes that, if the youth were an adult, would constitute murder or attempted murder, as well as certain other serious violent felonies. For those records not automatically sealed, the youth may still petition the court to seal their records three years following the completion of their disposition.

***Passed by House and Senate. Awaiting action by the Governor.***

**LD 1684: An Act to Clarify the Right to Counsel for Juveniles and Improve Due Process for Juveniles.** *Sponsored by Representative Victoria Morales.*

- Establishes age 12 as the minimum age for prosecution in the Juvenile Court; establishes age 14 as the minimum age for incarceration—whether for detention or commitment.
- Eliminates the requirement that, if committed by the court as part of their disposition, a juvenile must be committed to a detention center for at least one year.
- Mandates regular judicial review process for committed juveniles and discretionary judicial review for non-committed juveniles.
- Requires the court to conduct a detailed analysis if it imposes commitment as a dispositional alternative, and authorizes commitment only if the court finds by clear and

convincing evidence that there is: (1) a demonstrable risk that a juvenile will commit another crime; (2) the juvenile is in need of treatment that can *only* be provided through confinement; or (3) disposition that does not involve commitment will depreciate the seriousness of the juvenile's crime.

- Mandates that juveniles have appointed counsel to continue representing them throughout their dispositions and their commitments, unless relieved by the court. Further provides for local co-counsel appointment for juveniles who are detained or committed but whose cases originated outside of Cumberland and York Counties.

***Carried over to the second regular session of the 129th Legislature.***

## **Rule Change Enacted**

**Maine Rule of Appellate Procedure 7(b)(1)**: Direct appeals to the Maine Supreme Judicial Court from juvenile adjudications and dispositions are now Track A appeals—reducing the briefing time for such appeals in half.

- *Purpose*: To expedite the briefing schedule of juvenile appeals to bring them more in line with other expedited appellate matters involving children, including child protective matters, guardianship, and adoption.

## **Maine Juvenile Justice Task Force**

- In May 2019, the Maine Juvenile Justice System Assessment & Reinvestment Task Force was formed. The Task Force is chaired by Representative Michael Brennan (District 36-Portland), Department of Corrections Commissioner Randall Liberty, and Jill Ward of the Maine Center for Juvenile Policy and Law.
- The Task Force is evaluating Maine's current juvenile justice system and services, and will recommend ways that Maine can develop a robust continuum of care to more effectively target resources to meet the individual needs of youth in ways that support families and strengthen communities. A report with recommendations is expected in early 2020.
- For more information and resources on the Task Force's work on juvenile justice reform in Maine, visit <https://www.mainejtaskforce.org>

*\* A practice guide for juveniles, practitioners, and judges is being developed and will be published by the Cumberland Legal Aid Clinic at the University of Maine School of Law.*