

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-TWO

H.P. 1451 - L.D. 1946

**Resolve, Establishing the Committee To Ensure Constitutionally Adequate Contact with Counsel**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this resolve establishes the Committee To Ensure Constitutionally Adequate Contact with Counsel to conduct a review to ensure that residents of Department of Corrections correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities and criminal defendants in court facilities have constitutionally adequate contact with counsel; and

**Whereas,** the review must be initiated before the 90-day period expires in order that the review may be completed and a report submitted in time for submission to the next legislative session; 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

**Sec. 1. Committee established. Resolved:** That the Committee To Ensure Constitutionally Adequate Contact with Counsel, referred to in this resolve as "the constitutional communications committee," is established.

**Sec. 2. Committee membership. Resolved:** That, notwithstanding Joint Rule 353, the constitutional communications committee consists of 16 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;
2. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature;
3. The Commissioner of Corrections or the commissioner's designee;

4. The Attorney General or the Attorney General's designee;
5. The Commissioner of Public Safety or the commissioner's designee;
6. The Executive Director of the Maine Commission on Indigent Legal Services or the executive director's designee;
7. The president of a statewide association of sheriffs or the president's designee;
8. The president of a statewide association of criminal defense lawyers or the president's designee;
9. The president of a statewide association of prosecutors or the president's designee;
10. A representative of a civil rights organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate;
11. A representative of a civil liberties organization whose primary mission is the protection of civil liberties, appointed by the Speaker of the House;
12. A representative of a statewide prisoners' rights organization, appointed by the President of the Senate; and
13. A representative of a statewide organization whose mission includes advocating for victims and survivors of domestic violence, appointed by the Speaker of the House.

**Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the constitutional communications committee.

**Sec. 4. Appointments; convening of committee. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the constitutional communications committee. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the constitutional communications committee to meet and conduct its business.

**Sec. 5. Duties. Resolved:** That the constitutional communications committee shall:

1. Review the federal and state constitutional and statutory requirements concerning adequate communications with counsel for those involved in the criminal justice system;
2. Review recent policies and practices that have resulted in reported violations of the requirements in the State;
3. Review how other jurisdictions ensure confidential communications by telephone, video or electronic communication or in person between counsel and criminal defendants that are incarcerated or detained or in court facilities for court proceedings;
4. Review how other jurisdictions ensure opportunities for document review by incarcerated persons without interception, monitoring, copying, redaction or other action or review of documents by anyone acting on behalf of a correctional facility, a jail or the State;

5. Review remedies used by other jurisdictions when the constitutional and statutory requirements are not met, including, but not limited to, exclusion of evidence, disqualification to participate in prosecution, licensure discipline and expanded opportunities for post-conviction review; and

6. Develop recommendations to implement in this State to ensure that residents of Department of Corrections correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities and criminal defendants in court facilities have constitutionally adequate contact with counsel.

**Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide necessary staffing services to the constitutional communications committee, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session.

**Sec. 7. Report. Resolved:** That, no later than November 2, 2022, the constitutional communications committee shall submit a report that includes a summary of its activities and recommendations, including suggested legislation, to the Joint Standing Committee on Judiciary for presentation to the First Regular Session of the 131st Legislature.

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