

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

S.P. 635 - L.D. 1603

**An Act to Implement the Recommendations of the Committee To Ensure
Constitutionally Adequate Contact with Counsel**

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

PART A

Sec. A-1. 4 MRSA §1804, sub-§3, ¶N, as amended by PL 2021, c. 481, §3, is further amended to read:

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; ~~and~~

Sec. A-2. 4 MRSA §1804, sub-§3, ¶O, as enacted by PL 2021, c. 481, §4, is amended to read:

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court; ~~and~~

Sec. A-3. 4 MRSA §1804, sub-§3, ¶P is enacted to read:

P. Develop and maintain a registry of names, telephone numbers and other contact information for attorneys who provide legal services to persons who are incarcerated. The commission shall on a weekly basis provide these names, telephone numbers and other contact information to all sheriffs' offices and to the Department of Corrections. On the Monday following transmission of the information, the sheriffs' offices and the Department of Corrections have constructive notice that communications to and from these attorneys by residents of jails and correctional facilities are subject to the attorney-client privilege. The attorneys' names, telephone numbers and other contact information are confidential.

Sec. A-4. 5 MRSA §200-N is enacted to read:

§200-N. Confidential attorney-client communications

1. Policies. By January 1, 2024, the Attorney General shall adopt a written policy for the protection of confidential attorney-client communications by employees and agents of the Attorney General, which must include, at a minimum, processes to protect and ensure confidentiality of attorney-client communications and processes to be followed in the event that there is a breach of attorney-client confidentiality.

2. Training. By January 1, 2024, the Attorney General shall develop a training program for all state, county and municipal law enforcement officers and investigators who, as part of a criminal investigation, may inadvertently hear confidential attorney-client communications, which must include, at a minimum, practices and procedures for protecting and ensuring confidential attorney-client communications and practices and procedures to be followed in the event that there is a breach of attorney-client confidentiality.

Sec. A-5. 15 MRSA §714 is enacted to read:

§714. Intercepted attorney-client communications of jail and correctional facility residents

1. Intercepted attorney-client communications of jail and correctional facility residents. If the sender or the recipient of an intercepted oral communication or wire communication was, at the time the communication was made, a resident in either a jail or an adult or juvenile correctional facility administered by the Department of Corrections and the other party was an attorney and if the resident demonstrates that the jail or correctional facility had actual or constructive notice at the time the communication was made of the attorney's name and, if the communication involved the use of a telephone, the jail or correctional facility had actual or constructive notice at the time that the communication was made of the attorney's telephone number and the communication was made directly to or from that telephone number:

A. The contents of the intercepted oral communication or wire communication and the fact and circumstances of the communication are not admissible in a criminal proceeding, including a proceeding under chapter 305-A;

B. A person who viewed or listened to the intercepted communication and did not immediately discontinue viewing or listening to the communication as soon as the person had sufficient information to determine that the sender or the recipient of the communication was, at the time the communication was made, a resident in a jail or correctional facility and the other part was an attorney, is disqualified from participating in an investigation of the resident and from appearing as a witness in a criminal proceeding in which the resident is a defendant, including a proceeding under chapter 305-A; and

C. A person who viewed or listened to the intercepted communication and saw or heard information that may be relevant to a pending or anticipated charge against the resident or a defense the resident may assert, or may lead to the discovery of that evidence, is disqualified from participating in the investigation of the resident and from appearing as a witness in the pending or anticipated criminal proceeding in which the resident is a defendant, including a subsequent proceeding under chapter 305-A on the pending or anticipated charge.

For purposes of this subsection, the inclusion of the attorney's name and telephone number on a list transmitted by the Maine Commission on Indigent Legal Services pursuant to Title 4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of Corrections constitutes constructive notice to a jail in the same county as the sheriff's office or to all correctional facilities administered by the Department of Corrections, respectively, beginning on the Monday following the transmission.

2. Application of other law or rule. This section does not limit the applicability of any other provision of law or of the Maine Rules of Evidence regarding the admissibility or inadmissibility in evidence of attorney-client communications that do not meet the requirements of this section.

Sec. A-6. 25 MRSA §2802, first ¶, as amended by PL 2019, c. 103, §1, is further amended to read:

There is created a board of trustees for the academy consisting of ~~18~~ 19 members as follows: the Commissioner of Public Safety, ex officio, the Attorney General, ex officio, the Game Warden Colonel in the Department of Inland Fisheries and Wildlife, ex officio, the Commissioner of Corrections, ex officio, the Chief of the State Police, ex officio, and the following to be appointed by the Governor: a county sheriff, a chief of a municipal police department, 2 officers of municipal police departments who are not police chiefs, an educator who is not and has never been a sworn member of a law enforcement agency, a criminal prosecutor from one of the offices of the District Attorney, a representative of a federal law enforcement agency, 3 citizens each of whom is not and has never been a sworn member of a law enforcement agency, a municipal official who is not and has never been a sworn member of a law enforcement agency, one nonsupervisory corrections officer representing a state or county correctional facility, one person who is an attorney who represents defendants in criminal cases and one person knowledgeable about public safety who has been recommended to the Governor by the Wabanaki tribal governments of the ~~Aroostook Band of Miamaes~~ Mi'kmaq Nation, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Motahkmikuk, the Passamaquoddy Tribe at Sipayik and the Penobscot Nation. The member appointed by the Governor based on the recommendation of the Wabanaki tribal governments must be recommended by the tribal governments by a process determined by those governments that provides for the board membership to rotate among the tribal governments.

Sec. A-7. 25 MRSA §2803-B, sub-§1, ¶M, as amended by PL 2021, c. 342, §2, is further amended to read:

M. Freedom of access requests. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to Title 1, chapter 13; ~~and~~

Sec. A-8. 25 MRSA §2803-B, sub-§1, ¶N, as enacted by PL 2021, c. 342, §3, is amended to read:

N. Unannounced execution of search warrants; and

Sec. A-9. 25 MRSA §2803-B, sub-§1, ¶O is enacted to read:

O. By January 1, 2024, the confidentiality of attorney-client communications, which must include, at a minimum, processes to protect and ensure confidentiality of attorney-client communications and processes to be followed in the event that there is a breach of attorney-client confidentiality.

Sec. A-10. 25 MRSA §2804-C, sub-§2-G is enacted to read:

2-G. Training regarding confidential attorney-client communications. Beginning January 1, 2024, the board shall include in the basic law enforcement training program a block of instruction on the confidentiality of attorney-client communications, including the processes that law enforcement agencies use to protect and ensure the confidentiality of attorney-client communications and the processes that law enforcement agencies follow in the event that there is a breach of attorney-client confidentiality.

Sec. A-11. 25 MRSA §2804-D, as amended by PL 2017, c. 436, §1, is further amended to read:

§2804-D. Basic corrections training

1. Required. As a condition to the continued employment of any person as a corrections officer, that person must successfully complete, within the first 12 months of employment, a basic training course as approved by the board. Thereafter, as a condition of continued employment as a corrections officer, the officer must satisfactorily maintain the basic certification. The board, under extenuating and emergency circumstances in individual cases, may extend the 12-month period for not more than 180 days. The board, in individual cases, may waive basic training requirements when the facts indicate that an equivalent course has been successfully completed in another state or federal jurisdiction. A full-time correctional trade instructor must meet the training requirements established under this subsection for corrections officers. Beginning January 1, 2018, the basic training course must include 8 hours of training in how to identify, understand and respond to signs of mental illnesses and substance use disorder that is provided by a trainer who is certified by a nationally recognized organization that provides evidence-based mental health first aid training. Beginning January 1, 2024, the basic training course must include a block of instruction on the confidentiality of attorney-client communications, including the processes that correctional facilities and jails use to protect and ensure the confidentiality of attorney-client communications and the processes that correctional facilities and jails follow in the event that there is a breach of attorney-client confidentiality.

Sec. A-12. 30-A MRSA §291 is enacted to read:

§291. Confidential attorney-client communications

By January 1, 2024, each district attorney shall adopt a written policy for the protection of confidential attorney-client communications by employees and agents of the district attorney's office, which must include, at a minimum, processes to protect and ensure confidentiality of attorney-client communications and processes to be followed in the event that there is a breach of attorney-client confidentiality.

Sec. A-13. 34-A MRSA §1208, sub-§8 is enacted to read:

8. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards:

A. By January 1, 2024, for the protection of confidential attorney-client communications by each county and municipal detention facility. The standards must include, at a minimum:

(1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to residents of the facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each facility must proactively and by request of the attorney or the attorney's client who is a resident of the facility confirm the registration of an attorney's name, telephone number and other contact information; and

(2) Processes to be followed in the event that there is a breach of attorney-client confidentiality; and

B. By January 1, 2024, requiring each county and municipal detention facility to designate space within the facility for attorney-client meetings and the exchange of case materials and to make that space available to residents of the facility and their attorneys on a timely basis.

Sec. A-14. 34-A MRSA §1402, sub-§14 is enacted to read:

14. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards:

A. By January 1, 2024, for the protection of confidential attorney-client communications by each correctional facility. The standards must include, at a minimum:

(1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each correctional facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to persons who are residents of the correctional facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each correctional facility must proactively and by request of the attorney or the attorney's client confirm the registration of an attorney's name, telephone number and other contact information; and

(2) Processes to be followed in the event that there is a breach of attorney-client confidentiality; and

B. By January 1, 2024, requiring each correctional facility to designate space within the correctional facility for attorney-client meetings and the exchange of case materials and to make that space available to residents of the correctional facility and their attorneys on a timely basis.

PART B

Sec. B-1. Report on courthouse space. The State Court Administrator shall submit a report by January 1, 2024 to the Joint Standing Committee on Criminal Justice and Public Safety and the Joint Standing Committee on Judiciary on the availability of space in public

areas of courthouses and in secure holding areas of courthouses for confidential attorney-client communications, including the review of written, video and audio materials related to criminal cases. The report must include an assessment of the space available in each courthouse and, to the extent space is inadequate for confidential attorney-client communications, a plan for the development of adequate space within that courthouse.

Sec. B-2. Development of policies and procedures. The County Corrections Professional Standards Council, established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 6-D, shall convene meetings of state, county and municipal law enforcement agencies, county and municipal jails, the judicial branch, the Department of Corrections, the Maine Sheriffs' Association, the Office of the Attorney General, the Maine Prosecutors Association, the Maine Association of Criminal Defense Lawyers and the Maine Commission on Indigent Legal Services to develop a consistent set of policies and procedures to be implemented by all law enforcement agencies, district attorneys' offices, jails, holding facilities, short-term detention areas and correctional facilities, as applicable to the agencies, offices and facilities, that protect and ensure attorney-client communications are confidential and that clearly describe the following:

1. The process for protecting and ensuring the confidentiality of attorney-client communications;
2. The policies to be followed in the event that there is a breach of attorney-client confidentiality; and
3. The methods by which attorneys and persons who are residents of jails and correctional facilities will be made aware of confidential channels for attorney-client communications and the methods by which persons who are residents of jails and correctional facilities will be provided with information regarding their right to confidential attorney-client communications.