RIGHT TO KNOW ADVISORY COMMITTEE

Wednesday, October 29, 2025
1 pm

Location: State House, Room 228 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
https://legislature.maine.gov/Audio/#228

1. Introductions
2. Subcommittee reports
3. Review letter from GOC and response
4. Follow up discussion: executive sessions
5. Follow up discussion: FOAA training and law enforcement
6. Follow up discussion: juvenile records
7. Discussion: access to DHHS proceedings
8. Public Comment
9. Adjourn

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

October 16, 2025

Senator Anne Carney
Chair, Right to Know Advisory Committee
Augusta, Maine 04330

Dear Senator Carney,

The Committee on Government Oversight has been presented recently with two distinct instances in which Freedom of Access Act requests have resulted in agency cost estimates that are in the tens or hundreds of thousands of dollars, with corresponding processing times that are also quite substantial.

The purpose of this letter is to seek the assistance of the Right to Know Advisory Committee in understanding whether you have any current or contemplated initiatives underway to identify opportunities to better address the negative impacts on records requesters under such circumstances, including whether aspects of Artificial Intelligence might someday play a role in reducing the cost and timing burdens.

We welcome any insight your committee may be able to provide, at your earliest convenience. After receiving your response, we may also request that one or more members of your committee meet with our committee to discuss these matters of mutual interest further.

Thank you.

Very truly yours,

Sen. Craig Hickman
Senate Chair

Rep. Anne-Marie Mastraccio
House Chair

cc: Members, Right to Know Advisory Committee
Members, Committee on Judiciary
Members. Committee on Government Oversight

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AUGUSTA, MAINE 04333-0082
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STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

October 22, 2025

Senator Craig Hickman, Senate Chair
Representative Anne-Marie Mastraccio, House Chair
Committee on Government Oversight, Maine State Legislature
Augusta, Maine 04330

Dear Senator Hickman and Representative Mastraccio,

The Right to Know Advisory Committee (RTKAC) is in receipt of your letter dated October 16, 2025 describing FOAA requests resulting in high cost estimates by agencies and inquiring as to whether the RTKAC had considered exploring the role artificial intelligence might play in helping agencies respond more efficiently to FOAA requests. This inquiry is timely and aligns with the RTKAC's current priorities.

The RTKAC is aware that there have been instances in which agencies have provided cost estimates for individual FOAA requests that are quite substantial. Additionally, we are aware of instances in which agencies or local governments have received a high volume of FOAA requests that create a significant workload for staff responsible for responding to those requests. In response to these challenges, the RTKAC has reestablished a subcommittee focusing on burdensome FOAA requests, chaired by Mr. Kevin Martin. The goal of this subcommittee is to explore ways to streamline the FOAA response process and to ensure that members of the public are able to access public records without undue barriers.

The RTKAC has also established a new subcommittee focused on the application of technology in general, and artificial intelligence (AI) in particular, to FOAA responses. This committee is chaired by Ms. Amy Beveridge. As this is a newly emerging issue, the subcommittee is focused this interim on exploring the landscape of available technologies. The subcommittee is working to arrange a presentation to the entirety of the RTKAC by Tyler Technologies, the entity holding the contract with the state of Maine to administer InforME (Information Resource of Maine). Tyler Technologies and its parent company provide similar services to other state governments and have offered to show the RTKAC examples of ways that their AI technologies have been implemented within government agencies in other states to respond to similar needs. The committee would be pleased to have members of the GOC present for this presentation.

We look forward to working together on these issues and will reach out to GOC staff to ensure continued dialogue.

Thank you.

Sen. Anne Carney
Chair, Right to Know Advisory Committee

cc: Members, Committee on Judiciary
Members. Committee on Government Oversight
Members, Right to Know Advisory Committee

Confidentiality Enforcement Provisions – Examples
Right to Know Advisory Committee
October 29, 2025

Boards/Bodies:

- Board of Licensure in Medicine/Board of Dental Practice/Board of Osteopathic Licensure—24 MRSA §2510, "Confidentiality of information"

4. Penalty. Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

- Commission on Governmental Ethics and Election Practices—1 MRSA §1013, "Authority; procedures"

3-A. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B-1 to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records unless the Legislator against whom the complaint is made submits a written request that the complaint and all accompanying materials be made public. This subsection does not prohibit a complainant from disclosing information that the complainant provided to the commission as part of the complaint or investigation once the commission has determined not to pursue the complaint or the investigation of a complaint is complete. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. *Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime.* This subsection does not prevent commission staff from disclosing information to a person from whom the commission is seeking information or evidence relevant to the complaint that is necessary to investigate the complaint or prevent the complainant or the Legislator against whom the complaint is made from discussing the complaint with an attorney or other person assisting them with the complaint. The commission or commission staff shall inform any person with whom they communicate of the requirement to keep any information regarding the complaint investigation confidential.
**(Emphasis added)*

Other examples:

- Confidential health care information—22 MRSA §1711-C, "Confidentiality of health care information"

13. Enforcement. This section may be enforced within 2 years of the date a disclosure in violation of this section was or should reasonably have been discovered.

A. When the Attorney General has reason to believe that a person has intentionally violated a provision of this section, the Attorney General may bring an action to enjoin unlawful disclosure of health care information. [PL 1997, c. 793, Pt. A, §8 (NEW); PL 1997, c. 793, Pt. A, §10 (AFF).]

B. An individual who is aggrieved by conduct in violation of this section may bring a civil action against a person who has intentionally unlawfully disclosed health care information in the Superior Court in the county in which the individual resides or the disclosure occurred. The action may seek to enjoin unlawful

disclosure and may seek costs and a forfeiture or penalty under paragraph C. An applicant for injunctive relief under this paragraph may not be required to give security as a condition of the issuance of the injunction. [PL 1999, c. 512, Pt. A, §5 (AMD); PL 1999, c. 512, Pt. A, §7 (AFF); PL 1999, c. 790, Pt. A, §§58, 60 (AFF).]

C. A person who intentionally violates this section is subject to a civil penalty not to exceed $5,000, payable to the State, plus costs. If a court finds that intentional violations of this section have occurred after due notice of the violating conduct with sufficient frequency to constitute a general business practice, the person is subject to a civil penalty not to exceed $10,000 for health care practitioners and $50,000 for health care facilities, payable to the State. A civil penalty under this subsection is recoverable in a civil action. [PL 1999, c. 512, Pt. A, §5 (AMD); PL 1999, c. 512, Pt. A, §7 (AFF); PL 1999, c. 790, Pt. A, §§58, 60 (AFF).]

D. Nothing in this section may be construed to prohibit a person aggrieved by conduct in violation of this section from pursuing all available common law remedies, including but not limited to an action based on negligence.

- Substance use testing of employees—26 MRSA §689, "Violation and remedies"

2. Breach of confidentiality. In addition to the liability imposed under subsection 1, any person who violates section 684, subsection 4, paragraph C, or section 685, subsection 3:

A. For the first offense, is subject to a civil penalty not to exceed $1,000, payable to the affected employee, to be recovered in a civil action; and [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

B. For any subsequent offense, is subject to a civil penalty of $2,000, payable to the affected employee, to be recovered in a civil action.

§412. Public records and proceedings training for certain officials and public access officers

1. Training required. A public access officer and an official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the official assumes the person's duties as an official or the person is designated as a public access officer pursuant to section 413, subsection 1.
[PL 2021, c. 313, §5 (AMD).]

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings; [PL 2007, c. 349, §1 (NEW).]

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and [PL 2007, c. 349, §1 (NEW).]

C. Penalties and other consequences for failure to comply with this chapter. [PL 2007, c. 349, §1 (NEW).]

An official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.
[PL 2019, c. 300, §1 (AMD).]

3. Certification of completion. Upon completion of the training course required under subsection 1, the official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The official shall keep the record or file it with the public entity to which the official was elected or appointed. A public access officer shall file the record with the agency or official that designated the public access officer.
[PL 2019, c. 300, §1 (AMD).]

4. Application. This section applies to a public access officer and the following officials:

A. The Governor; [PL 2007, c. 349, §1 (NEW).]

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; [PL 2007, c. 349, §1 (NEW).]

C. Members of the Legislature elected after November 1, 2008; [PL 2007, c. 576, §2 (AMD).]

D. [PL 2007, c. 576, §2 (RP).]

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; [PL 2007, c. 576, §2 (NEW).]

F. Municipal officers; municipal clerks, treasurers, managers or administrators, assessors and code enforcement officers and deputies for those positions; and planning board members and budget committee members of municipal governments; [PL 2021, c. 313, §6 (AMD).]

G. Superintendents, assistant superintendents and school board members of school administrative units; and [PL 2021, c. 313, §7 (AMD).]

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or chapter 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2. [PL 2007, c. 576, §2 (NEW).]

[PL 2021, c. 313, §§6, 7 (AMD).]

SECTION HISTORY

PL 2007, c. 349, §1 (NEW). PL 2007, c. 576, §2 (AMD). PL 2011, c. 662, §7 (AMD). PL 2019, c. 300, §1 (AMD). PL 2021, c. 313, §§5-7 (AMD).

§413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit or regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within 5 working days of the receipt of the request by the office responsible for maintaining the public record requested and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.
[PL 2015, c. 317, §2 (AMD).]

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.
[PL 2011, c. 662, §8 (NEW).]

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.
[PL 2011, c. 662, §8 (NEW).]

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.
[PL 2011, c. 662, §8 (NEW).]

SECTION HISTORY

PL 2011, c. 662, §8 (NEW). PL 2015, c. 317, §2 (AMD).

LAW WITHOUT GOVERNOR'S SIGNATURE

JUNE 8, 2025

CHAPTER

187

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FIVE

H.P. 1214 - L.D. 1813

An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning State Boards and Commissions

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

Sec. 1. 1 MRSA §412, as amended by PL 2021, c. 313, §§5 to 7, is further amended to read:

§412. Public records and proceedings training for certain officials, board members and public access officers

1. Training required. A public access officer, a board member and an official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official, board member or public access officer shall complete the training not later than the 120th day after the date the official or board member assumes the person's duties as an official or board member or the person is designated as a public access officer pursuant to section 413, subsection 1.

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official, a board member or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

An official, a board member or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the official, board member or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The official or board member shall keep the record or file it with the public entity to which the official or board member was elected or appointed. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers; municipal clerks, treasurers, managers or administrators, assessors and code enforcement officers and deputies for those positions; and planning board members and budget committee members of municipal governments;

G. Superintendents, assistant superintendents and school board members of school administrative units; ~~and~~

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or ~~chapter~~ 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2~~.~~; and

I. Members of a board or commission established under Title 5, chapter 379, referred to in this section as "board members."

Sec. 2. 1 MRSA §413, sub-§1, as amended by PL 2015, c. 317, §2, is further amended to read:

1. Designation; responsibility. Each agency, county, municipality, board or commission established under Title 5, chapter 379, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, board or commission, school administrative unit or regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within 5 working days of the receipt of the request by the office responsible for maintaining the public record requested and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, board or commission, school administrative unit and regional or other political subdivision concerning freedom of access

questions and compliance. The public access officer may serve as the contact person for more than one board or commission if the boards or commissions are within the same office or agency.

Sec. 3. 1 MRSA §413, sub-§2, as enacted by PL 2011, c. 662, §8, is amended to read:

2. Acknowledgment and response required. An agency, county, municipality, board or commission established under Title 5, chapter 379, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

§2803-B. Requirements of law enforcement agencies

1. Law enforcement policies. All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

A. Use of physical force, including the use of electronic weapons and less-than-lethal munitions; [PL 2009, c. 336, §18 (AMD).]

B. Barricaded persons and hostage situations; [PL 1993, c. 744, §5 (NEW).]

C. [PL 2013, c. 147, §16 (RP).]

D. Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, whether the commission of an alleged crime included the use of strangulation as defined in Title 17-A, section 208, subsection 1, paragraph C, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made;

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours' notice to each party prior to the retrieval;

(4) Standard procedures to ensure that protection from abuse orders issued under Title 19-A, section 4108 or 4110 are served on the defendant as quickly as possible;

(5) A process for the administration of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety and the conveyance of the results of that assessment to the bail commissioner, if appropriate, and the district attorney for the county in which the domestic violence occurred; and

(6) A process to ensure that, when a person files multiple, separate complaints regarding the behavior of another person that may indicate a course of conduct constituting stalking, as defined in Title 17-A, section 210-A, those complaints are reviewed together to determine if the other person has engaged in stalking under Title 17-A, section 210-A; [PL 2023, c. 235, §§6-8 (AMD).]

E. Hate or bias crimes. A policy adopted under this paragraph must include a policy statement that prohibits stops, detentions, searches or asset seizures and forfeitures efforts based on race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin or ancestry by members of the law enforcement agency, states that individuals may be stopped or detained only when legal authority exists to do so and states that members of the law enforcement agency must base their enforcement actions solely on an individual's conduct and behavior or specific suspect information; [PL 2019, c. 410, §2 (AMD).]

F. Police pursuits; [PL 1993, c. 744, §5 (NEW).]

G. Citizen complaints of police misconduct; [PL 2003, c. 370, §1 (AMD).]

H. Criminal conduct engaged in by law enforcement officers; [PL 2003, c. 656, §1 (AMD); PL 2003, c. 677, §1 (AMD).]

I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations; [RR 2003, c. 2, §89 (COR).]

5. Annual standards review. The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.
[PL 1993, c. 744, §5 (NEW).]

6. Freedom of access.
[PL 2013, c. 147, §23 (RP).]

7. Certification by record custodian.
[PL 2013, c. 147, §24 (RP).]

SECTION HISTORY

PL 1993, c. 744, §5 (NEW). PL 2001, c. 686, §B1 (AMD). RR 2003, c. 2, §§89-91 (COR). PL 2003, c. 185, §1 (AMD). PL 2003, c. 361, §1 (AMD). PL 2003, c. 370, §§1-4 (AMD). PL 2003, c. 656, §§1-4 (AMD). PL 2003, c. 677, §§1-4 (AMD). PL 2005, c. 331, §§16,17 (AMD). PL 2005, c. 331, §33 (AFF). PL 2005, c. 397, §C17 (AMD). PL 2009, c. 336, §18 (AMD). PL 2009, c. 451, §§1-5 (AMD). PL 2009, c. 652, Pt. A, §§37, 38 (AMD). PL 2011, c. 265, §§2-4 (AMD). PL 2011, c. 640, Pt. D, §1 (AMD). PL 2011, c. 680, §§4-6 (AMD). PL 2013, c. 147, §§16-24 (AMD). PL 2015, c. 329, Pt. A, §14 (AMD). PL 2019, c. 410, §2 (AMD). PL 2019, c. 411, Pt. C, §3 (AMD). PL 2019, c. 411, Pt. D, §3 (AFF). PL 2019, c. 466, §1 (AMD). PL 2021, c. 342, §§1-3 (AMD). PL 2021, c. 381, §1 (AMD). PL 2021, c. 647, Pt. B, §56 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF). RR 2021, c. 2, Pt. A, §88 (COR). PL 2023, c. 235, §§6-8 (AMD). PL 2023, c. 394, Pt. A, §§7-9 (AMD).

Legislative History

25 MRSA §2803-B Requirements of law enforcement agencies

The table below outlines the legislative history of the specific statutory provision in 25 MRSA §2803 governing the requirements of law enforcement agencies as it relates to freedom of access requests.

Citation in Statute	Public Law	Corresponding Documents
25 MRSA §2803-B(6)	Enacted by PL 2003, c. 185	Appendix A
25 MRSA §2803-B(6)	Repealed by PL 2013, c. 147	Appendix B
25 MRSA §2803-B(1)(M)	Enacted by PL 2013, c. 147	
25 MRSA §2803-B(1)(M)	Amended by PL 2021, c. 342	Appendix C
25 MRSA §2803-B(1)(M)	Amended by PL 2023, c. 394	Appendix D

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

cient to cover the costs as provided in Title 4, section 173. This paragraph does not apply to defendants prosecuted for violations of Title 26, chapter 7, subchapter 1-B or for violations of Title 28-A, sections 2078 and 2223.

See title page for effective date.

CHAPTER 183

S.P. 289 - L.D. 894

An Act Relating to Motorcycles and Driver Education

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

Sec. 1. 29-A MRSA §1351, sub-§4 is enacted to read:

4. Requirements. A driver education course approved under this subchapter must include instruction that imparts the understanding and skills necessary to operate a motor vehicle safely in a situation in which a motorcycle is sharing the road with that motor vehicle.

See title page for effective date.

CHAPTER 184

H.P. 749 - L.D. 1032

An Act Concerning the Processing Time for Substitute and Regular School Employee Fingerprinting

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

Sec. 1. 20-A MRSA §6103, sub-§4-A, ¶¶C and D, as enacted by PL 1999, c. 791, §4, are amended to read:

C. A person employed as a substitute who has not been fingerprinted prior to the effective date of this subsection must meet the requirements by July 1, 2002. Beginning with the 2003-2004 school year, a person employed as a substitute who needs fingerprinting and a criminal history record check pursuant to section 13011, subsection 8 must meet the requirements of this section within 8 weeks of employment by a school administrative unit. A person employed as a substitute who needs fingerprinting and a criminal history record check must be issued a temporary approval card by the department. The temporary approval card is valid for the first 8 weeks of employment, except that, for a person who has been fingerprinted pursuant to this section prior to the 20th day of employment and who has not received the results of the criminal history record check prior to the 9th week of employment, the temporary approval card remains valid until the commissioner determines whether approval is granted or denied based on the criminal history record information obtained from the State Bureau of Identification; and

D. A regular employee subject to the requirements of this section who begins work in a school after the effective date of this subsection must meet these requirements prior to ~~their~~ the 20th day of employment. Beginning with the 2003-2004 school year, a regular employee who needs fingerprinting and a criminal history record check pursuant to section 13011, subsection 8 must meet the requirements of this section within 8 weeks of employment by a school administrative unit. A regular employee who needs fingerprinting and a criminal history record check must be issued a temporary approval card by the department. The temporary approval card is valid for the first 8 weeks of employment, except that, for a person who has been fingerprinted pursuant to this section prior to the 20th day of employment and who has not received the results of the criminal history record check prior to the 9th week of employment, the temporary approval card remains valid until the commissioner determines whether approval is granted or denied based on the criminal history record information obtained from the State Bureau of Identification.

See title page for effective date.

CHAPTER 185

H.P. 204 - L.D. 249

An Act to Aid Law Enforcement in Complying with Maine's Freedom of Access Laws

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 25 MRSA §2803-B, sub-§6 is enacted to read:

6. Freedom of access. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually beginning on January 1, 2004 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.

See title page for effective date.

CHAPTER 186

H.P. 898 - L.D. 1224

An Act To Increase Requirements for Notification of Release to Victims of Stalkers

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 17-A MRSA §1175, first ¶, as amended by PL 1999, c. 126, §1, is further amended to read:

Upon complying with subsection 1, a victim of a crime of murder or stalking or of a Class A, Class B or Class C crime for which the defendant is committed to the Department of Corrections or to a county jail, or is placed in institutional confinement under Title 15, section 103 after having been found not criminally responsible by reason of mental disease or defect, or is placed in institutional confinement under Title 15, section 101-B after having been found incompetent to stand trial, must receive notice of the defendant's unconditional release and discharge from institutional confinement upon the expiration of the sentence or upon discharge under Title 15, section 104-A and must receive notice of any conditional release of the defendant from institutional confinement, including probation, parole, furlough, work release, intensive supervision, supervised community confinement, home release monitoring or similar program or release under Title 15, section 104-A.

See title page for effective date.

CHAPTER 187

S.P. 108 - L.D. 326

An Act To Increase Access to Higher Education

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

Whereas, foster care residents who intend to apply for a tuition waiver at a state postsecondary educational institution for the 2003-2004 academic year will need sufficient time to prepare their applications prior to the start of the upcoming academic year; 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. 20-A MRSA §12573, sub-§3, as amended by PL 1999, c. 774, §4, is further amended to read:

3. Limitation. Tuition waivers to eligible persons are limited to ~~25~~ 30 new students per year in each year~~.~~ at state postsecondary educational institutions as follows:

A. The first 25 tuition waivers must be available to eligible persons at the University of Maine System, the Maine Maritime Academy and the Maine Community College System; and

B. Of the 5 remaining tuition waivers, 3 must be available to eligible persons at the University of Maine System and 2 must be available to eligible persons at the Maine Community College System.

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

Effective May 16, 2003.

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2012 to July 10, 2013

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 9, 2013

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2013

This plan must be reviewed and updated as necessary. The director shall see that the plan and its revisions receive suitable dissemination on a timely basis.

§852. Plans deemed part of statewide comprehensive plan

An operational plan developed by an agency of the State that has jurisdiction over responding to an emergency is deemed to be part of the comprehensive emergency management plan for the State.

Sec. 19. 37-B MRSA §1118, sub-§1, ¶¶B and C, as enacted by PL 2001, c. 460, §3, are amended to read:

B. All other dams, at least once every ~~6~~ 12 years;

C. Any dam, within ~~30~~ 60 days of a request for an evaluation from the dam owner, the municipality in which the dam is located or the emergency management director of the county in which the dam is located; and

Sec. 20. 37-B MRSA §1119, sub-§1, ¶¶A to C, as enacted by PL 2001, c. 460, §3, are amended to read:

A. All significant hazard potential dams, at least once every ~~4~~ 6 years;

B. All high hazard potential dams, at least once every ~~2~~ 6 years;

C. Any dam, within ~~30~~ 60 days of a request for an inspection from the dam owner or the municipality in which the dam is located; and

Sec. 21. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 37-B, chapter 13, subchapter 5, in the subchapter headnote, the words "search and rescue" are amended to read "special operational plans" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 147

S.P. 518 - L.D. 1432

An Act To Revise the Laws of the Maine Criminal Justice Academy

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

Sec. 1. 17-A MRSA §1058, sub-§2, ¶C, as enacted by PL 2007, c. 466, Pt. C, §6, is amended to read:

C. An employee of a courier or security service in the course and scope of employment for the courier or security service, as approved by the ~~state~~ judicial marshal.

Sec. 2. 25 MRSA §1611, sub-§5, as amended by PL 2009, c. 421, §2, is further amended to read:

5. Law enforcement officer or officer. "Law enforcement officer" or "officer" means an active state police officer, municipal police officer, county sheriff, deputy sheriff, game warden, an employee of the Office of the State Fire Marshal who has law enforcement powers pursuant to section 2396, subsection 7, fire marshal, ~~state judicial marshal or state~~ judicial ~~deputy~~ marshal, forest ranger, Baxter State Park ranger, a detective employed by the Office of the Attorney General pursuant to Title 5, section 202, a person employed by the Department of Corrections as an investigative officer as defined in Title 34-A, section 1001, subsection 10-A, a juvenile community corrections officer as described in Title 34-A, section 5602, a probation officer, a security officer appointed by the Commissioner of Public Safety pursuant to section 2908, a motor vehicle investigator or supervisor appointed by the Secretary of State pursuant to Title 29-A, section 152, a military security police officer appointed by the Adjutant General, a University of Maine System police officer or marine patrol officer in this State.

Sec. 3. 25 MRSA §2002, sub-§1, as amended by PL 1989, c. 917, §7, is further amended to read:

1. Corrections officer. "Corrections officer" has the same meaning as set forth in section 2801-A, subsection 2~~, paragraph A~~.

Sec. 4. 25 MRSA §2801, as amended by PL 2005, c. 331, §1, is repealed and the following enacted in its place:

§2801. Maine Criminal Justice Academy; purpose

1. Purpose of academy. The purpose of the Maine Criminal Justice Academy is to provide a central training facility for criminal justice personnel. The academy shall promote the highest levels of professional law enforcement performance and facilitate coordination and cooperation between various criminal justice agencies.

2. Purpose of board of trustees. The purpose of the Maine Criminal Justice Academy Board of Trustees is to protect the public health and welfare. The board carries out this purpose by ensuring that the public is served by competent and honest criminal justice practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions, as are identified in this chapter. Other goals or objectives may not supersede this purpose.

Sec. 5. 25 MRSA §2801-A, as amended by PL 2005, c. 519, Pt. XXX, §2, is further amended to read:

§2801-A. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Board. "Board" means the Board of Trustees of the Maine Criminal Justice Academy.

2. Corrections officer. "Corrections officer" means~~:~~ a person who is responsible for the custody or direct supervision of a person confined in a jail, prison or state correctional facility pursuant to an order of a court or as a result of an arrest and who possesses a current and valid certificate issued by the board pursuant to section 2803-A.

~~A. For state agencies, the following class titles and their successor titles:~~

~~(1) Training School Counselor I and II;~~

~~(2) Training School Counselor Supervisor;~~

~~(3) Corrections Officer I, II and III;~~

~~(4) Guard;~~

~~(5) Guard Sergeant;~~

~~(6) Guard Lieutenant; and~~

~~(7) Guard Captain; and~~

~~B. For county, municipal and other agencies subject to this chapter, a person responsible for the custody of persons confined in a penal institution pursuant to an order of a court or as a result of an arrest. As used in this paragraph, "penal institution" has the same meaning as in Title 15, section 1461, subsection 1.~~

2-A. Judicial marshal. "~~State judicial~~ Judicial marshal" ~~or "state judicial deputy marshal"~~ means a law enforcement officer who possesses a current and valid certificate issued by the board pursuant to section 2803-A and is employed by ~~the Judicial Branch~~ a nonfederal employer to provide security and protection to the Judicial Branch and the courts located within the State.

~~**3. Full-time corrections officer.** "Full-time corrections officer" means a person who is employed as a corrections officer with a reasonable expectation of working more than 1,040 hours in any one calendar year for performing corrections officer duties.~~

4. Full-time law enforcement officer. "Full-time law enforcement officer" means a person who possesses a current and valid certificate issued by the board pursuant to section 2803-A and is employed as a law enforcement officer by a municipality, a county, the State or any other nonfederal employer with a reasonable expectation of working more than 1,040 hours in any one calendar year for performing law enforcement officer duties.

5. Law enforcement officer. "Law enforcement officer" means ~~any~~ a person who by virtue of public employment is vested by law with the power to make arrests for crimes or serve criminal process, whether that power extends to all crimes or is limited to specific crimes and who possesses a current and valid certificate issued by the board pursuant to section 2803-A. As used in this chapter, ~~the term~~ "law enforcement officer" does not include federal law enforcement officers or attorneys prosecuting for the State.

~~**6. Part-time corrections officer.** "Part-time corrections officer" means a person who is employed as a corrections officer with a reasonable expectation of working no more than 1,040 hours in any one calendar year for performing corrections officer duties.~~

7. Part-time law enforcement officer. "Part-time law enforcement officer" means a person who ~~is employed as a law enforcement officer with a reasonable expectation of working no more than 1,040 hours in any one calendar year for performing law enforcement officer duties.~~:

A. Possesses a current and valid certificate issued by the board pursuant to section 2803-A to perform duties as a part-time law enforcement officer and does not possess any other type of current and valid certificate issued by the board pursuant to section 2803-A;

B. Is employed as a law enforcement officer; and

C. Absent extenuating circumstances as determined by the board, works not more than 1,040 hours in any one calendar year for performing law enforcement duties.

8. Transport officer. "Transport officer" means a person who is responsible for transferring or conveying from one place to another individuals who are confined in a ~~penal institution~~ jail, prison or state correctional facility pursuant to an order of a court or as a result of an arrest and who possesses a current and valid certificate issued by the board pursuant to section 2803-A. ~~As used in this subsection, "penal institution" has the same meaning as in Title 15, section 1461, subsection 1.~~

Sec. 6. 25 MRSA §2801-B, as amended by PL 2011, c. 657, Pt. W, §§5 and 7, is further amended to read:

§2801-B. Application of chapter; exemption

1. Training and policy exemption. The training standards of this chapter and the requirements of section 2803-B do not apply to a person defined by this chapter as a law enforcement officer who is:

A. An employee of the Department of Corrections with a duty to perform probation functions or to perform intensive supervision functions or

who is an adult probation supervisor as defined in Title 17-A, section 2, subsection 3-C or an investigative officer or other employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011;

B. An agent or a representative of the Department of Agriculture, Conservation and Forestry, Division of Parks and Public Lands whose law enforcement powers are limited to those specified in Title 12, section 1806;

C. An agent or a representative of the Department of Agriculture, Conservation and Forestry, Division of Forestry whose law enforcement powers are limited to those specified by Title 12, section 8901, subsection 3;

E. A harbor master;

F. A municipal shellfish conservation warden;

G. A ~~security~~ police officer appointed by the Commissioner of Public Safety pursuant to section 2908;

H. The State Fire Marshal or Assistant State Fire Marshal;

J. A ~~state~~ judicial marshal ~~or state judicial deputy marshal~~;

K. A contract officer appointed by the Commissioner of Public Safety pursuant to Title 28-A, section 82-A; or

L. A transport officer.

This exemption does not include certification training requirements set out in this chapter that are specific to the positions identified in this subsection or, in the case of an investigative officer as described in Title 34-A, section 3011, training requirements set out in this chapter other than those of section 2803-B.

2. Education, training and certification training required. A law enforcement officer listed in subsection 1 must possess a current and valid certificate issued by the board prior to carrying out any law enforcement duties. The directors of the state agencies listed in subsection 1 shall provide adequate education and training for all law enforcement officers within their jurisdiction annually and provide documentation to the board by December 31st of each year. The board shall advise the directors concerning appropriate and adequate training.

Sec. 7. 25 MRSA §2802, first ¶, as amended by PL 2005, c. 331, §7, is further amended to read:

There is created a board of trustees for the academy consisting of 17 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, and 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 ~~representative from a criminal justice agency not involved in the general enforcement of Maine criminal laws~~ criminal prosecutor from one of the offices of the District Attorney, a representative of a federal law enforcement agency, 3 citizens each of whom ~~are~~ is not and ~~have~~ has never been a sworn ~~members~~ member of a law enforcement agency, a municipal official who is not and has never been a sworn member of a law enforcement agency and one nonsupervisory corrections officer representing a state or county correctional facility.

Sec. 8. 25 MRSA §2803-A, sub-§5, as enacted by PL 1989, c. 521, §§4 and 17, is amended to read:

5. Training and certification of corrections officers in State. In accordance with ~~the requirements of~~ this chapter, to ~~approve~~ establish training ~~programs~~ and certification standards for all corrections officers, ~~including prescription of~~ set requirements for board-approved courses, prescribe curriculum and ~~setting of standards for graduation from those approved programs and certification of~~ certify graduates of board-approved courses and persons ~~graduating from the basic training course prescribed in~~ for whom the board has waived the training requirements of this chapter. Certification ~~shall~~ must be based on the officer's demonstration of having acquired specific knowledge and skills directly related to job performance;

Sec. 9. 25 MRSA §2803-A, sub-§5-A is enacted to read:

5-A. Training of corrections employees with law enforcement powers. To establish certification standards and a preservice and in-service training program for employees of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011. This program must include:

A. Preservice law enforcement training under section 2804-B;

B. In-service law enforcement training that is specifically approved by the board as prescribed in section 2804-E.

Except for investigative officers, these employees of the Department of Corrections are exempt from section 2804-C, but completion of the basic training under section 2804-C exempts a person from the preservice training requirements under paragraph A;

Sec. 10. 25 MRSA §2803-A, sub-§8-B, as amended by PL 2005, c. 519, Pt. XXX, §4, is further amended to read:

8-B. Training of judicial marshals. To establish certification standards and a preservice and in-service training program for ~~state~~ judicial marshals ~~and state judicial deputy marshals~~. This program must include:

A. Preservice law enforcement training under section 2804-B;

B. An additional ~~40 hour~~ basic ~~court security~~ judicial marshal training program developed and approved by the board that is specific to the duties of a ~~state~~ judicial marshal ~~or state judicial deputy marshal~~; and

C. In-service law enforcement training that is specifically approved by the board as prescribed in section 2804-E.

~~State judicial~~ Judicial marshals ~~and state judicial deputy marshals~~ are exempt from section 2804-C, but completion of basic training under section 2804-C exempts a person from the preservice training requirement under paragraph A;

Sec. 11. 25 MRSA §2803-A, sub-§8-C, as enacted by PL 2005, c. 331, §13, is amended to read:

8-C. Training of transport officers. To establish certification standards and a training program for transport officers. This program must include ~~the preservice law enforcement training under section 2804-B;~~:

A. The preservice law enforcement training under section 2804-B; and

B. In-service law enforcement training that is specifically approved by the board as prescribed in section 2804-E;

Sec. 12. 25 MRSA §2803-A, sub-§9, as enacted by PL 1989, c. 521, §§4 and 17, is amended to read:

9. Other training programs. To establish~~, within the limits of funds available and with the approval of the commissioner,~~ additional training programs considered to be beneficial to law enforcement officers, corrections officers and other criminal justice personnel;

Sec. 13. 25 MRSA §2803-A, sub-§15, as enacted by PL 1989, c. 521, §§4 and 17, is amended to read:

15. Revocation or suspension of certification. To ~~revoke or suspend a~~ take disciplinary action concerning any certificate issued ~~under section 2806~~ by the board, including but not limited to suspension or revocation; ~~and~~

Sec. 14. 25 MRSA §2803-A, sub-§16, as amended by PL 2005, c. 331, §15, is further amended to read:

16. Provide assistance and materials. To provide to state, municipal and county corrections officers and state, municipal and county law enforcement officers any assistance or instructional materials the board considers necessary to fulfill the purposes of this chapter and Title 30-A, sections 381 and 2671~~.~~;

Sec. 15. 25 MRSA §2803-A, sub-§§17 to 19 are enacted to read:

17. Acceptance of gifts. To accept, as recommended by the Director of the Maine Criminal Justice Academy, money, goods and services, gifts, bequests and endowments donated to the Maine Criminal Justice Academy to support any activities carried out by the Maine Criminal Justice Academy pursuant to this chapter. Any money donated to the academy and any proceeds from the sale of property bequeathed to the board pursuant to this section must be deposited in the academy's Other Special Revenue Funds account;

18. Rules. To adopt rules as the board determines necessary and proper to carry out this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and

19. Issuance of subpoenas. To conduct investigations and issue subpoenas to assist with investigations or as otherwise considered necessary for the fulfillment of its responsibilities and to hold hearings and issue subpoenas for witnesses, records and documents in the name of the board in accordance with the terms of Title 5, section 9060, except that the subpoena authority applies to any stage or type of an investigation and is not limited to an adjudicatory hearing.

Sec. 16. 25 MRSA §2803-B, sub-§1, ¶C, as enacted by PL 1993, c. 744, §5, is repealed.

Sec. 17. 25 MRSA §2803-B, sub-§1, ¶J, as amended by PL 2009, c. 451, §1, is further amended to read:

J. Public notification regarding persons in the community required to register under Title 34-A, ~~chapter~~ chapters 15 and 17;

Sec. 18. 25 MRSA §2803-B, sub-§1, ¶K, as amended by PL 2009, c. 451, §2, is further amended to read:

K. Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases; ~~and~~

Sec. 19. 25 MRSA §2803-B, sub-§1, ¶L, as enacted by PL 2009, c. 451, §3, is amended to read:

L. Mental illness and the process for involuntary commitment~~.~~; and

Sec. 20. 25 MRSA §2803-B, sub-§1, ¶M is enacted 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.

Sec. 21. 25 MRSA §2803-B, sub-§2, as amended by PL 2011, c. 680, §5, is repealed and the following enacted in its place:

2. Minimum policy standards. The board shall establish minimum standards for each law enforcement policy pursuant to subsection 1 with the exception of the freedom of access policy under subsection 1, paragraph M. Minimum standards of new mandatory policies enacted by law must be adopted by the board no later than December 31st of the year in which the law takes effect.

Sec. 22. 25 MRSA §2803-B, sub-§3, as amended by PL 2011, c. 680, §6, is repealed and the following enacted in its place:

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board annually no later than January 1st of each year that the agency has adopted written policies consistent with the minimum standards established or amended by the board and that all officers have received orientation and training with respect to new mandatory policies or new mandatory policy changes pursuant to subsection 2. New mandatory policies enacted by law must be implemented by all law enforcement agencies no later than the July 1st after the board has adopted the minimum standards.

Sec. 23. 25 MRSA §2803-B, sub-§6, as enacted by PL 2003, c. 185, §1, is repealed.

Sec. 24. 25 MRSA §2803-B, sub-§7, as enacted by PL 2009, c. 336, §18, is repealed.

Sec. 25. 25 MRSA §2803-C, as enacted by PL 2005, c. 331, §18, is amended to read:

§2803-C. Penalty

An agency ~~that~~ or individual who fails to comply with a provision of this chapter commits a civil violation for which the State or the local government entity whose officer or employee committed the violation or the individual who committed the violation may be adjudged a fine not to exceed $500.

Sec. 26. 25 MRSA §2803-D is enacted to read:

§2803-D. Certificate admissible

Notwithstanding any other law or rule of evidence, a certificate issued by the custodian of the records of the board, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate.

Sec. 27. 25 MRSA §2804-A, first ¶, as amended by PL 2005, c. 331, §19, is further amended to read:

The Commissioner of Public Safety, with the advice and ~~consideration~~ consent of the board of trustees, shall appoint a director, who is the administrator of the academy and the executive director of the board. Qualifications of the director must be established by the commissioner and the board jointly. The salary of the director must be established by the commissioner and the board jointly. The director may be dismissed for cause by the commissioner with the approval of the board.

Sec. 28. 25 MRSA §2804-B, sub-§7, as amended by PL 1993, c. 551, §1, is further amended to read:

7. Part-time law enforcement officers. The board shall certify law enforcement officers who successfully complete preservice law enforcement training and who have qualified with a firearm using the board firearm proficiency standards as ~~reserve or~~ part-time law enforcement officers. Thereafter, as a condition of continued service as a ~~reserve or~~ part-time law enforcement officer, the officer must satisfactorily maintain the preservice certification. The board shall maintain a roster of all currently certified ~~reserve or~~ part-time law enforcement officers. The roster must be available for inspection by the public at the academy during regular working hours.

Sec. 29. 25 MRSA §2804-C, sub-§1, as amended by PL 2005, c. 331, §21, is further amended to read:

1. Required. As a condition to the continued employment of any person as a full-time law enforcement officer by a municipality, a county, the State or any other nonfederal employer, that person must successfully complete, within the first 12 months of initial full-time employment, the basic training course at the Maine Criminal Justice Academy approved by the board. If a person's failure to comply with this requirement was a result of that person's failure to satisfy any of the admission standards applicable to the basic training course and that person is subsequently employed as a full-time law enforcement officer within 12 months of termination of the initial employment by a municipality, a county, the State or any

other nonfederal employer, the person must have satisfied all the admission standards established by the board prior to the ~~satisfaction of the board at the~~ time of hire. As a condition of continued employment as a full-time law enforcement officer, the officer must satisfactorily maintain the basic certification by completing the recertification requirements prescribed by the board. The board, under extenuating and emergency circumstances in individual cases, may extend the 12-month period for not more than 180 days. The board also, in individual cases, may waive the basic training requirement when the facts indicate that an equivalent course has been successfully completed. ~~This section does not apply to any person employed as a full-time law enforcement officer by a municipality on September 23, 1971 or by a county on July 1, 1972.~~

Sec. 30. 25 MRSA §2804-C, sub-§2-C, as enacted by PL 2005, c. 684, §1, is amended to read:

2-C. Receipt of firearms; training; procedure; liability. ~~Beginning January 1, 2008, the~~ The Maine Criminal Justice Academy shall provide training for municipal, county and state law enforcement officers regarding the proper handling, storage, safekeeping and return of firearms and firearm accessories received pursuant to a court order under Title 19-A, section 4006, subsection 2-A or Title 19-A, section 4007, subsection 1, paragraph A-1. Such training must include education concerning the prohibitions on the purchase or possession of a firearm when a protection order has been obtained and communication with parties to protection orders concerning such prohibitions.

In developing materials for training in domestic violence issues, the Maine Criminal Justice Academy may consult with a statewide organization involved in advocacy for victims of domestic violence and with an organization having statewide membership representing the interests of firearms owners.

A law enforcement officer who receives custody of a firearm pursuant to Title 19-A, section 4006, subsection 2-A or Title 19-A, section 4007, subsection 1, paragraph A-1 shall exercise reasonable care to avoid loss, damage or reduction in value of the firearm and may not permanently mark the firearm or fire the firearm unless there is reasonable suspicion that the firearm has been used in the commission of a crime. Any liability for damage or reduction in value to such a firearm is governed by Title 14, chapter 741.

Sec. 31. 25 MRSA §2804-C, sub-§3, as enacted by PL 1989, c. 521, §§5 and 17, is amended to read:

3. Certification. The board shall certify each ~~law enforcement officer~~ person who meets the core curriculum training requirements.

Sec. 32. 25 MRSA §2804-C, sub-§5, as enacted by PL 1989, c. 521, §§5 and 17, is amended to read:

5. Application to currently certified law enforcement officers. This section does not apply to any law enforcement officer certified as meeting the law enforcement training requirements or to any full-time law enforcement officer employed by a state agency, including the University of Maine System, as of July 1, 1990 or to any person employed as a full-time law enforcement officer by a municipality on September 23, 1971 or by a county on July 1, 1972.

Sec. 33. 25 MRSA §2804-D, as amended by PL 2001, c. 386, §6, is further amended to read:

§2804-D. Basic corrections training

1. Required. As a condition to the continued employment of any person as a ~~full-time~~ corrections officer ~~by a municipality, a county, the State or any other nonfederal employer~~, that person must successfully complete, within the first 12 months of employment, a basic training course ~~of not less than 80 hours~~ as approved by the board. Thereafter, as a condition of continued employment as a ~~full-time~~ 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 ~~90~~ 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 ~~within the 2 years immediately preceding employment. This section applies to any person employed as a full-time corrections officer on or after July 6, 1978~~. ~~Administrators of facilities where there are corrections officers who are not full-time are encouraged to develop an orientation program for those persons.~~ A full-time correctional trade instructor hired after January 1, 2002 must meet the training requirements established under this subsection for ~~full-time~~ corrections officers.

Sec. 34. 25 MRSA §2804-E, as amended by PL 1997, c. 395, Pt. O, §5, is further amended to read:

§2804-E. In-service law enforcement training

1. Required. As a condition to the continued employment of a person as a law enforcement officer with the power to make arrests or the authority to carry a firearm in the course of duty by a municipality, county, the State or other nonfederal employer, that person must successfully complete in-service training as prescribed by the board. Failure to successfully complete in-service training by a law enforcement officer as prescribed by the board constitutes grounds to suspend or revoke a certificate issued by the board pursuant to section 2803-A.

2. Role of board. The board shall establish in-service recertification training requirements, consistent with subsection 1, and coordinate delivery of in-service training ~~with postsecondary schools and other institutions and law enforcement agencies and admin-~~

~~ister in-service training programs~~. The in-service recertification training requirements must include information on new laws and court decisions and on new enforcement practices demonstrated to reduce crime or increase officer safety. The board shall consider and encourage the use of telecommunications technology in the development and delivery of in-service training programs. In establishing the recertification training requirements, the board shall cooperate with the state and local departments and agencies to which the in-service requirements apply to ensure that the standards are appropriate. In-service training may not be applied to satisfy in-service recertification training requirements unless it is approved by the board.

~~**3. Additional certificates.** The board may offer additional certificates to be awarded for completion of additional education, experience and certified board-approved training.~~

4. Credit for continuing education. The board may grant in-service training credits to be applied to in-service recertification training requirements for courses completed at accredited colleges and universities.

5. Provision of in-service training. In-service training programs that meet the requirements established under subsection 2 or other in-service training programs may be provided by the Maine Criminal Justice Academy or the agency employing the law enforcement officer.

Sec. 35. 25 MRSA §2804-F, as enacted by PL 1989, c. 521, §§5 and 17, is amended to read:

§2804-F. In-service corrections training

1. Required. As a condition to the continued employment of any person as a ~~full-time~~ corrections officer by a municipality, county, the State or other nonfederal employer, that person shall successfully complete in-service training as prescribed by the board. Failure to successfully complete in-service training by a corrections officer as prescribed by the board constitutes grounds to suspend or revoke a certificate issued by the board pursuant to section 2803-A.

2. Role of board. The board shall establish in-service training requirements, consistent with subsection 1, and coordinate delivery of in-service training ~~with post-secondary and other institutions and corrections agencies and administer in-service training programs~~. The in-service recertification training requirements ~~shall~~ must include information on new laws and court decisions. The board shall consider and encourage the use of telecommunications technology in the development and delivery of in-service training programs. In establishing the recertification training requirements, the board shall cooperate with the ~~State~~ state and local departments and agencies to which the in-service requirements apply to ensure that the standards are appropriate. In-service training may not be applied to satisfy in-service recertification training requirements unless it is approved by the board.

3. Provisions of in-service training. In-service training programs ~~which~~ that meet the requirements established under subsection 2~~,~~ or other in-service training may be provided by the Maine Criminal Justice Academy or the agency employing the corrections officer.

4. Credit for continuing education. The board may grant in-service training credits to be applied to in-service recertification training requirements for courses completed at accredited colleges and universities.

Sec. 36. 25 MRSA §2804-K, as amended by PL 2005, c. 519, Pt. XXX, §5, is further amended to read:

§2804-K. Law enforcement training for judicial marshals

As a condition to the continued employment of any person as a ~~full-time state~~ judicial marshal ~~or state judicial deputy marshal~~, that person must successfully complete, within the first 12 months of employment, the training required under section 2803-A, subsection 8-B. Thereafter, as a condition of continued employment as a ~~full-time state~~ judicial marshal ~~or state judicial deputy marshal~~, the judicial marshal must satisfactorily maintain the ~~state~~ judicial marshal ~~or state judicial deputy marshal~~ certification by completing recertification requirements prescribed by the board. The board, under extenuating and emergency circumstances in individual cases, may extend that period for not more than ~~90~~ 180 days.

Sec. 37. 25 MRSA §2805-C, as amended by PL 1997, c. 42, §1, is further amended to read:

§2805-C. Complaint review committee

1. Committee. The chair of the board shall appoint 3 members of the board to serve on the complaint review committee. One of the members must be one of the citizen members of the board. All members of the committee must be present for deliberations. A majority vote is necessary to recommend taking corrective or disciplinary action on a complaint or to order an independent investigation pursuant to ~~section 2806,~~ subsection ~~1-A~~ 3.

2. Investigation. The committee shall investigate complaints regarding any violation of this chapter or rules established by the board by a ~~law enforcement or corrections officer~~ person holding a certificate issued by the board pursuant to section 2803-A and recommend appropriate action to the board.

3. Investigation and notice of complaints. Before proceeding with a hearing to suspend or revoke a certificate issued by the board pursuant to section

2803-A, the board, the complaint review committee or board staff shall notify the chief administrative officer of the agency employing the certificate holder that the board is investigating the certificate holder. The chief administrative officer shall investigate the alleged conduct of the certificate holder and, notwithstanding any other provision of law, report the findings and provide copies of the investigative reports to the board within 30 days of receiving notice of the investigation. The board shall proceed with any suspension or revocation action it determines appropriate after receiving the chief administrative officer's findings and reports. This subsection does not preclude a chief administrative officer from investigating conduct that may give rise to grounds for suspension or revocation before receiving a request for an investigation from the board, the complaint review committee or board staff, as long as the chief administrative officer notifies the board following that investigation if the investigation reveals reasonable cause to believe that a certificate holder has engaged in conduct described in section 2806-A, subsection 5, and providing to the board the findings and investigative reports related to the conduct. Nothing in this subsection precludes the board from investigating the conduct of a certificate holder on its own or referring a matter of such conduct to another agency for investigation regardless of whether it receives an investigative report from the chief administrative officer under this section.

Sec. 38. 25 MRSA §2806, as amended by PL 2005, c. 331, §§26 and 27, is repealed.

Sec. 39. 25 MRSA §2806-A is enacted to read:

§2806-A. Disciplinary sanctions

1. Disciplinary proceedings and sanctions. The board or, as delegated, the complaint review committee, established pursuant to section 2805-C, or staff, shall investigate a complaint on its own motion or upon receipt of a written complaint filed with the board regarding noncompliance with or violation of this chapter or of any rules adopted by the board. Investigation may include an informal conference before the complaint review committee to determine whether grounds exist for suspension, revocation or denial of a certificate or for taking other disciplinary action pursuant to this chapter. The board, the complaint review committee or staff may subpoena witnesses, records and documents in any investigation or hearing conducted.

2. Notice. The board or, as delegated, the complaint review committee, established pursuant to section 2805-C, or staff, shall notify the certificate holder of the content of a complaint filed against the certificate holder as soon as possible, but in no event later than 60 days after the board or staff receives the initial pertinent information. The certificate holder has the right to respond within 30 days in all cases except those involving an emergency denial, suspension or revocation, as described in Title 5, chapter 375, subchapter 5. If the certificate holder's response to the complaint satisfies the board, the complaint review committee or staff that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

3. Informal conference. If, in the opinion of the board, the complaint review committee, established pursuant to section 2805-C, or staff, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board or staff may request an informal conference with the certificate holder. The complaint review committee or staff shall provide the certificate holder with adequate notice of the conference and of the issues to be discussed. The certificate holder may, without prejudice, refuse to participate in an informal conference if the certificate holder prefers to request an adjudicatory hearing.

4. Further action. If the board or the complaint review committee, established pursuant to section 2805-C, finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions.

A. The board, the complaint review committee or staff may negotiate a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the certificate holder and the board. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate issued under this chapter. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

B. If a certificate holder offers to voluntarily surrender a certificate, the board, the complaint review committee or staff may negotiate stipulations necessary to ensure protection of the public health and safety and the rehabilitation or education of the certificate holder. These stipulations may be set forth only in a consent agreement entered into between the board and the certificate holder.

C. Unless specifically otherwise indicated in this chapter, if the board concludes that modification, suspension, revocation or imposition of any other sanction authorized under this chapter is in order, the board shall so notify the certificate holder and inform the certificate holder of the right to request

an adjudicatory hearing. If the certificate holder requests an adjudicatory hearing in a timely manner, the adjudicatory hearing must be held by the board, a subcommittee of 3 board members designated by the board chair or a hearing officer appointed by the board. The hearing must be in accordance with Title 5, chapter 375, subchapter 4. If a hearing officer conducts the hearing, the hearing officer, after conducting the hearing, shall file with the board all papers connected with the case and report recommended findings and sanctions to the board, which may approve or modify them. If the certificate holder wishes to appeal the final decision of the board, the certificate holder shall file a petition for review with the Superior Court within 30 days of receipt of the board's decision. Review under this paragraph must be conducted pursuant to Title 5, chapter 375, subchapter 7.

5. Grounds for action. The board may take action against any applicant for a certificate or certificate holder pursuant to this chapter or any rules adopted pursuant to this chapter, including, but not limited to, a decision to impose a civil penalty or to refuse to issue a certificate or to modify, suspend or revoke a certificate for any of the following reasons:

A. Failure to meet annual certification or recertification requirements. In enforcing this paragraph, the board shall, no later than March 31st of every year, review the certification of all law enforcement and corrections officers and decertify those individuals who do not meet certification or recertification requirements;

B. Absent extenuating circumstances as determined by the board, working more than 1,040 hours in any one calendar year as a part-time law enforcement officer performing law enforcement duties and while possessing a part-time law enforcement certificate issued by the board pursuant to section 2803-A;

C. Conviction of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime or a violation of any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45. Notwithstanding any other provision of law, the board may summarily and without hearing suspend or revoke any certificate as a result of any criminal conviction identified by this paragraph pursuant to Title 5, section 10004, subsection 1;

D. Juvenile adjudication of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime;

E. Guilty plea pursuant to a deferred disposition of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime or a violation of any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45;

F. Engaging in conduct that is prohibited or penalized by state law as murder or a Class A, Class B, Class C or Class D crime or by any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45;

G. Conviction of or adjudication as a juvenile of a crime specified in paragraph D in another state or other jurisdiction, unless that crime is not punishable as a crime under the laws of that state or other jurisdiction in which it occurred. Notwithstanding any other provision of law, the board may summarily and without hearing suspend or revoke any certificate as a result of any criminal conviction identified by this paragraph pursuant to Title 5, section 10004, subsection 1;

H. Engaging in conduct specified in paragraphs C and D in another state or other jurisdiction unless that conduct is not punishable as a crime under the laws of that state or other jurisdiction in which it occurred;

I. Falsifying or misrepresenting material facts in obtaining or maintaining a certificate issued by the board pursuant to section 2803-A;

J. Engaging in conduct that violates the standards established by the board and that when viewed in light of the nature and purpose of the person's conduct and circumstances known to the person, involves a gross deviation from the standard of conduct that a reasonable and prudent certificate holder would observe in the same or similar situation; and

K. Engaging in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, or in sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, with another person, not the person's spouse, if at the time of the sexual act or sexual contact:

(1) The officer was engaged in an investigation or purported investigation involving an allegation of abuse, as defined in former Title 19, section 762, subsection 1 and in Title 19-A, section 4002, subsection 1;

(2) The other person was the alleged victim of that abuse;

(3) The parties did not have a preexisting and ongoing sexual relationship that included engaging in any sexual act or sexual contact; and

(4) Less than 60 days had elapsed since the officer initially became involved in the investigation or purported investigation.

6. Discipline. The board may impose the following forms of discipline upon a certificate holder or applicant for a certificate:

A. Denial of an application for a certificate, which may occur in conjunction with the imposition of other discipline;

B. Issuance of warning, censure or reprimand. Each warning, censure or reprimand issued must be based upon violation of a single applicable law, rule or condition of certification or must be based upon a single instance of actionable conduct or activity;

C. Suspension of a certificate for up to 3 years. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certificate holder's record;

D. Revocation of a certificate;

E. Imposition of civil penalties of up to $1,500 for each violation of applicable laws, rules or conditions of certification or for each instance of actionable conduct or activity; or

F. Imposition of conditions of probation. Probation may run for such time period as the board determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional supervision of the applicant or certificate holder; restrictions; and other conditions as the board determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or certificate holder. Failure to comply with the conditions of probation is a ground for disciplinary action against a certificate holder.

7. Letter of guidance. The board may issue a letter of guidance or concern to a certificate holder. A letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations or express concern over action or inaction by the certificate holder that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The board may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a certificate holder's file for a specified period of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the board in any subsequent action commenced against the certificate holder within the specified time frame. Complaints, reports and investigation materials placed on file remain confidential to the extent required by this chapter.

8. Injunction. The State may bring an action in Superior Court to enjoin a person from violating any provision of this chapter, regardless of whether civil or administrative proceedings have been or may be instituted.

9. Recertification. A person whose certificate has been revoked under this chapter may apply to the board for reinstatement of certification if:

A. The certificate was revoked for a cause other than engaging in conduct that is prohibited or penalized by state law as murder or as a Class A, Class B or Class C crime or for equivalent conduct in another state or other jurisdiction;

B. At least 3 years have elapsed since revocation of the certificate; and

C. A law enforcement or corrections agency has indicated a commitment to hire the individual if the individual is recertified.

The granting of recertification under this subsection is governed by Maine Criminal Justice Academy rules relating to certification. The individual is subject to all training requirements applicable to persons whose certification has lapsed.

10. Confidentiality; access to documents. All complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in suspension or revocation of a certificate that are considered by the board or the complaint review committee established pursuant to section 2805-C are confidential. If a person subject to this chapter requests an adjudicatory hearing under the Maine Administrative Procedure Act, that hearing must be open to the public. The hearing officer who presides over the hearing shall issue a written decision that states the conduct or other facts on the basis of which action is being taken and the reason for that action. Once issued, the hearing officer's written decision is a public record under the Freedom of Access Act, regardless of whether it is appealed.

Sec. 40. 25 MRSA §2807, as amended by PL 2005, c. 331, §28, is further amended to read:

§2807. Reports of conviction or misconduct by certificate holder

~~In~~ Notwithstanding any other provision of law, in the event that a ~~law enforcement or corrections officer~~ certificate holder is convicted of a crime or violation or engages in conduct that could result in suspension or revocation of the ~~officer's~~ individual's certificate pursuant to section ~~2806~~ 2806-A and the chief administrative officer of the agency employing the ~~officer~~ certificate holder or considering the individual for em-

ployment has knowledge of the conviction or conduct, ~~then~~ the chief administrative officer shall ~~expeditiously~~ within 30 days notify the Director of the Maine Criminal Justice Academy with the name of the ~~law enforcement or corrections officer~~ certificate holder and a brief description of the conviction or conduct.

Sec. 41. 25 MRSA §2808, sub-§3, as amended by PL 2005, c. 331, §32, is further amended to read:

3. Reimbursement for training costs. Whenever a full-time law enforcement officer, trained at the Maine Criminal Justice Academy at the expense of a particular governmental entity, is subsequently hired by another governmental entity as a full-time law enforcement officer within 5 years of graduation from the academy, the governmental entity shall reimburse the first governmental entity according to the following formula, unless a mutual agreement is reached.

A. If the officer is hired by the other governmental entity during the first year after graduation, that governmental entity shall reimburse the first governmental entity the full cost of the training costs.

B. If the officer is hired by the other governmental entity during the 2nd year after graduation, that governmental entity shall reimburse the first governmental entity 80% of the training costs.

C. If the officer is hired by the other governmental entity during the 3rd year after graduation, that governmental entity shall reimburse the first governmental entity 60% of the training costs.

D. If the officer is hired by the other governmental entity during the 4th year after graduation, that governmental entity shall reimburse the first governmental entity 40% of the training costs.

E. If the officer is hired by the other governmental entity during the 5th year after graduation, that governmental entity shall reimburse the first governmental entity 20% of the training costs.

F. If the officer graduated more than 5 years before subsequently being hired by the other governmental entity, that governmental entity is not obligated to reimburse the first governmental entity.

If the officer is subsequently hired by additional governmental entities within 5 years of graduation from the academy, each of those governmental entities is liable to the governmental employer immediately preceding it for the training costs paid by that governmental entity under this subsection. The extent of financial liability must be determined according to the formula established by this subsection.

~~Reimbursement is not required when the trained officer hired by a governmental entity has had employment with a prior governmental entity terminated at the discretion of the governmental entity.~~

Sec. 42. 25 MRSA §2808-A, sub-§1, ¶B, as enacted by PL 2007, c. 240, Pt. ZZZ, §1, is amended to read:

B. "Training" means the basic training provided to a ~~full-time~~ corrections officer by the Maine Criminal Justice Academy, as described in section 2804-D.

Sec. 43. 25 MRSA §2808-A, sub-§2, as enacted by PL 2007, c. 240, Pt. ZZZ, §1, is amended to read:

2. Reimbursement for training costs. Whenever a ~~full-time~~ corrections officer, trained at the Maine Criminal Justice Academy at the expense of a particular governmental entity, is subsequently hired by another governmental entity as a ~~full-time~~ corrections officer or ~~full-time law enforcement officer~~ within 5 years of graduation from the academy, the governmental entity shall reimburse the first governmental entity according to the following formula, unless a mutual agreement is reached.

A. If the corrections officer is hired by the other governmental entity during the first year after graduation, that governmental entity shall reimburse the first governmental entity the full cost of the training costs.

B. If the corrections officer is hired by the other governmental entity during the 2nd year after graduation, that governmental entity shall reimburse the first governmental entity 80% of the training costs.

C. If the corrections officer is hired by the other governmental entity during the 3rd year after graduation, that governmental entity shall reimburse the first governmental entity 60% of the training costs.

D. If the corrections officer is hired by the other governmental entity during the 4th year after graduation, that governmental entity shall reimburse the first governmental entity 40% of the training costs.

E. If the corrections officer is hired by the other governmental entity during the 5th year after graduation, that governmental entity shall reimburse the first governmental entity 20% of the training costs.

F. If the corrections officer graduated more than 5 years before subsequently being hired by the other governmental entity, that governmental entity is not obligated to reimburse the first governmental entity.

If the corrections officer is subsequently hired by additional governmental entities within 5 years of gradua-

tion from the academy, each of those governmental entities is liable to the governmental employer immediately preceding it for the training costs paid by that governmental entity under this subsection. The extent of financial liability must be determined according to the formula established by this subsection.

~~Reimbursement is not required when the corrections officer hired by a governmental entity has had employment with a prior governmental entity terminated at the discretion of the governmental entity.~~

Sec. 44. 25 MRSA §2809, first ¶, as amended by PL 2003, c. 510, Pt. C, §7, is further amended to read:

~~Beginning January 1, 1991, the~~ The board shall report annually to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the implementation and effectiveness of this chapter. The purpose of the report is to provide the Legislature annual information on the law governing law enforcement training in order to ensure that appropriate and timely training is accomplished. The report must include the following:

Sec. 45. 30-A MRSA §353, as amended by PL 2005, c. 541, §2 and affected by §3, is further amended to read:

§353. Officer not to act as attorney or draw papers; employee of jailer not to act as judge or attorney

An officer may not appear before any court as attorney or adviser of any party in an action or draw any writ, complaint, declaration, citation, process or plea for any other person; all such acts are void. A person employed by the keeper of a jail in any capacity may not exercise any power or duty of a judicial officer or act as attorney for any person confined in the jail; all such acts are void. Beginning April 15, 2006, if commissioned as a notary public and authorized to do so by the sheriff, an employee of a jail, other than a ~~part-time or full-time~~ corrections officer or a deputy sheriff, may, without fee, exercise any power or duty of a notary public for any person confined in the jail.

See title page for effective date.

CHAPTER 148

H.P. 903 - L.D. 1264

An Act Allowing the Harvesting of Yellow Perch with Seines

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

Sec. 1. 12 MRSA §12506, sub-§2, ¶¶B and C, as amended by PL 2007, c. 463, §6 and affected by §9, are further amended to read:

B. Suckers and yellow perch using trap nets, dip nets or spears; ~~and~~

C. Lampreys by hand or using hand-held dip nets~~.~~; and

Sec. 2. 12 MRSA §12506, sub-§2, ¶E is enacted to read:

E. Yellow perch using seines.

See title page for effective date.

CHAPTER 149

H.P. 391 - L.D. 572

An Act Regarding Poker Runs Operated by Organizations Licensed To Conduct Games of Chance

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

Sec. 1. 17 MRSA §1835, sub-§8 is enacted to read:

8. Wager limit exception. Notwithstanding subsection 1, an organization that is licensed to conduct games of chance in accordance with this chapter is permitted to accept wagers up to $50 per hand for a poker run. The organization must inform the Chief of the State Police 30 days in advance of the date when the organization intends to conduct a poker run with an increased wager limit. An organization is limited to 2 poker run events per calendar year in which wagers up to $50 per hand are permitted. For the purposes of this subsection, "poker run" means a game of chance using playing cards that requires a player to travel from one geographic location to another in order to play the game.

See title page for effective date.

CHAPTER 150

H.P. 636 - L.D. 912

An Act To Provide Another Alternative to the Civil Order of Arrest Process

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

Sec. 1. 14 MRSA §3134, sub-§2, as amended by PL 1987, c. 708, §9, is repealed and the following enacted in its place:

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTIETH LEGISLATURE

FIRST REGULAR SESSION
December 2, 2020 to March 30, 2021

FIRST SPECIAL SESSION
April 28, 2021 to July 19, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 18, 2021

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2021

(1) Upon the termination of eligibility for coverage under a federal military health insurance program; or

(2) At the time of retirement.

E. If a spouse or dependent of the employee was enrolled in the plan at the time the employee withdrew pursuant to this subsection, the spouse or dependent may reenroll if the spouse or dependent meets the 18-month coverage criteria set forth in paragraph A.

See title page for effective date.

CHAPTER 342

H.P. 771 - L.D. 1043

An Act Concerning the Unannounced Execution of Search Warrants

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

Sec. 1. 25 MRSA §2803-B, sub-§1, ¶L, as amended by PL 2019, c. 411, Pt. C, §3 and affected by Pt. D, §3, is further amended to read:

L. Mental illness and the process for involuntary commitment, and the process pursuant to Title 34-B, section 3862-A; ~~and~~

Sec. 2. 25 MRSA §2803-B, sub-§1, ¶M, as enacted by PL 2013, c. 147, §20, is 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. 3. 25 MRSA §2803-B, sub-§1, ¶N is enacted to read:

N. Unannounced execution of search warrants.

See title page for effective date.

CHAPTER 343

S.P. 357 - L.D. 1096

An Act To Clarify the Rule-making Authority of the Supreme Judicial Court Concerning Electronic Records and Filing

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

Sec. 1. 4 MRSA §8-C, sub-§1, as enacted by PL 2015, c. 78, §1, is amended to read:

1. Rules and orders; processes and procedures. Notwithstanding any other provision of law, the Supreme Judicial Court may adopt rules and issue orders to permit or require the use of electronic forms, filings, records, e-mail and electronic signatures whenever paper forms, filings, records, written notice, postal mail and written signatures are required for judicial, legal or any other court-related process under the Maine Revised Statutes.

The Supreme Judicial Court, by rule, may determine any other processes or procedures appropriate to ensure adequate preservation, disposition, integrity, security, appropriate accessibility and confidentiality of the electronic records. After the effective date of the rules as adopted or amended, all laws in conflict with the rules are of no further effect.

See title page for effective date.

CHAPTER 344

H.P. 828 - L.D. 1150

An Act To Phase Out Insurance Rating Based on Smoking History

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

Sec. 1. 24-A MRSA §2736-C, sub-§2, ¶D, as amended by PL 2019, c. 5, Pt. A, §3, is further amended by amending subparagraph (8) to read:

(8) For all policies, contracts or certificates that are executed, delivered, issued for delivery, continued or renewed in this State ~~on or after~~ between July 1, 2012 and December 31, 2022, the maximum rate differential due to tobacco use filed by the carrier as determined by ratio is 1.5 to 1, except that the carrier may not apply a rate differential pursuant to this subparagraph when the covered individual is participating in an evidence-based tobacco cessation strategy approved by the United

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 7, 2022 to March 30, 2023

FIRST SPECIAL SESSION
April 5, 2023 to July 26, 2023

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NONEMERGENCY LAWS IS
JUNE 29, 2023

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NONEMERGENCY LAWS IS
OCTOBER 25, 2023

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2023

through a fronting arrangement in place prior to June 1, 2029.

Sec. 3. Rulemaking. The Superintendent of Insurance shall provisionally adopt the rules required in the Maine Revised Statutes, Title 39-A, section 403, subsection 4-B, paragraph D no later than January 1, 2024.

See title page for effective date.

CHAPTER 394

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 commu-

nication 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 Micmacs~~ 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.

See title page for effective date.

CHAPTER 395

S.P. 666 - L.D. 1661

An Act to Require a Liability Automobile Insurance Policy to Cover the Costs of Towing and Storing Certain Vehicles

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

PART A

Sec. A-1. 29-A MRSA §1605, sub-§1, ¶C, as amended by PL 2007, c. 213, §1 and affected by §3, is further amended to read:

C. Be in the amount or limit of at least:

(1) For damage to property, $25,000;

(2) For injury to or death of any one person, $50,000;

(3) For one accident resulting in injury to or death of more than one person, $100,000; ~~and~~

(4) For medical payments pursuant to section 1605-A, $2,000~~.~~; and

(5) For towing and storage charges pursuant to section 1605-B, $500.

Sec. A-2. 29-A MRSA §1605-B is enacted to read:

§1605-B. Towing and storage charges

A motor vehicle liability policy issued for a motor vehicle registered or principally garaged in this State must provide coverage in an amount up to $500 per accident for the reasonable towing and storage charges incurred as a result of an accident involving the insured vehicle if the vehicle is towed at the request of a law enforcement officer. The coverage required by this section applies only to the reasonable towing and storage charges of the insured vehicle. This section does not apply to a policy insuring more than 4 motor vehicles, nor to any policy covering a garage, automobile sales agency, repair shop, service station or public parking place.

Sec. A-3. 29-A MRSA §1861, first ¶, as amended by PL 2017, c. 120, §1, is further amended to read:

A person holding or storing an abandoned vehicle, holding or storing a vehicle towed at the request of the vehicle's operator, owner or owner's agent or holding or storing a vehicle stored at the request of a law enforcement officer may hold the vehicle and all its accessories, contents and equipment, not including the personal effects of the registered owner, until reasonable towing and storage charges of the person holding or storing the vehicle are paid, except that a person may not hold the perishable cargo of a commercial motor vehicle, as defined in 49 Code of Federal Regulations, Part 390.5, as amended, when the perishable cargo being transported in interstate or intrastate commerce is not owned by the motor carrier or driver of the commercial motor vehicle being held and the person holding or storing the towed vehicle is presented with evidence of insurance, as defined in section 1551, covering the commercial motor vehicle and the vehicle's cargo. For purposes of this paragraph, "perishable cargo" means cargo of a commercial motor vehicle that is subject to spoilage or decay or is marked with an expiration date. The owner of the vehicle shall maintain, at a minimum, the amounts of motor vehicle financial responsibility in accordance with section 1605-B to pay the reasonable towing and

§4007. Conducting proceedings

1. Procedures. All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.
[PL 1985, c. 495, §17 (AMD).]

1-A. Nondisclosure of certain identifying information. This subsection governs the disclosure of certain identifying information.

A. At each proceeding, the court shall inquire whether there are any court orders in effect at the time of the proceeding that prohibit contact between the parties and participants. If such an order is in effect at the time of the proceeding, the court shall keep records that pertain to the protected person's current or intended address or location confidential, subject to disclosure only as authorized in this section. Any records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the protected person and determines that the disclosure is in the interests of justice. [PL 2007, c. 351, §2 (NEW).]

B. If, at any stage of the proceedings, a party or a participant alleges in an affidavit or a pleading under oath that the health, safety or liberty of the person would be jeopardized by disclosure of information pertaining to the person's current or intended address or location, the court shall keep records that contain the information confidential, subject to disclosure only as authorized in this section. Upon receipt of the affidavit or pleading, the records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or participants or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the person seeking protection and determines that the disclosure is in the interests of justice. [PL 2007, c. 351, §2 (NEW).]

C. If the current or intended address or location of a party or participant is required to be kept confidential under paragraph A or B, and the current or intended address or location of that person is a material fact necessary to the proceeding, the court shall hear the evidence outside of the presence of the person and the person's attorney from whom the information is being kept confidential unless the court determines after a hearing that takes into consideration the health, safety or liberty of the protected person that the exclusion of the party or participant is not in the interests of justice. If such evidence is taken outside the presence of a party or participant, the court shall take measures to prevent the excluded person and the person's attorney from accessing the recorded information and the information must be redacted in printed transcripts. [PL 2007, c. 351, §2 (NEW).]

D. Records that are required to be maintained by the court as confidential under this subsection may be disclosed to:

(1) A state agency if necessary to carry out the statutory function of that agency;

(2) A guardian ad litem appointed to the case; or

(3) A criminal justice agency, as defined by Title 16, section 703, subsection 4, if necessary to carry out the administration of criminal justice or the administration of juvenile justice, and such disclosure is otherwise permitted pursuant to section 4008.

In making such disclosure, the court shall order the party receiving the information to maintain the information as confidential. [PL 2013, c. 267, Pt. B, §18 (AMD).]

E. The court shall disclose records that are confidential under this subsection to the Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising counsel. [PL 2023, c. 638, §26 (NEW).]
[PL 2023, c. 638, §26 (AMD).]

2. Interviewing children. The court may interview a child witness in chambers, with only the guardian ad litem and counsel present, provided that the statements made are a matter of record. The court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.
[PL 1979, c. 733, §18 (NEW).]

3. Motion for examination. At any time during the proceeding, the court may order that a child, parent, alleged parent, person frequenting the household or having custody at the time of the alleged abuse or neglect, any other party to the action or person seeking care or custody of the child be examined pursuant to the Maine Rules of Civil Procedure, Rule 35.
[PL 1989, c. 270, §1 (AMD).]

3-A. Report of licensed mental health professional. In any hearing held in connection with a child protection proceeding under this chapter, the written report of a licensed mental health professional who has treated or evaluated the child shall be admitted as evidence, provided that the party seeking admission of the written report has furnished a copy of the report to all parties at least 21 days prior to the hearing. The report shall not be admitted as evidence without the testimony of the mental health professional if a party objects at least 7 days prior to the hearing. This subsection does not apply to the caseworker assigned to the child.
[PL 1989, c. 226 (NEW).]

4. Interstate compact. The provisions of the Interstate Compact for the Placement of Children, sections 4251 to 4269, if in effect and ratified by the other state involved, apply to proceedings under this chapter; otherwise, the provisions of the Interstate Compact on Placement of Children, sections 4191 to 4247, apply to proceedings under this chapter. Any report submitted pursuant to the compact is admissible in evidence for purposes of indicating compliance with the compact and the court may rely on evidence to the extent of its probative value.
[PL 2007, c. 255, §4 (AMD).]

5. Records.
[PL 2005, c. 300, §1 (RP).]

6. Benefits and support for children in custody of department. When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title 19-A, chapter 55, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits and shall provide any necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title 19-A, sections 2002 and 2004 unless current information is already on file with the court. If a child is placed in the custody of the department, the court shall order child support from each parent according to the guidelines pursuant to Title 19-A, chapter 63, designate each parent as a nonprimary care provider and apportion the obligation accordingly.

Income affidavits and instructions must be provided to each parent by the department at the time of service of the petition or motion. The court may order a deviation pursuant to Title 19-A, section 2007. Support ordered pursuant to this section must be paid directly to the department pursuant to Title 19-A, chapter 65, subchapter IV. The failure of a parent to file an affidavit does not prevent the entry of a protection order. A parent may be subject to Title 19-A, section 2004, subsection 1, paragraph D for failure to complete and file income affidavits.

[PL 1995, c. 694, Pt. D, §37 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 772, §4 (AMD). PL 1983, c. 783, §3 (AMD). PL 1985, c. 495, §17 (AMD). PL 1985, c. 506, §§A41,42 (AMD). PL 1989, c. 226 (AMD). PL 1989, c. 270, §1 (AMD). PL 1991, c. 840, §6 (AMD). PL 1993, c. 248, §1 (AMD). PL 1995, c. 694, §D37 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2005, c. 300, §1 (AMD). PL 2007, c. 255, §4 (AMD). PL 2007, c. 351, §2 (AMD). PL 2013, c. 267, Pt. B, §18 (AMD). PL 2023, c. 638, §26 (AMD).

§4008. Records; confidentiality; disclosure

1. Confidentiality of records and information. All department records that contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department, and all information contained in those records, are confidential and subject to release only under the conditions of subsections 2 and 3.

Within the department, the records are available only to and may be used only by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended.
[PL 2007, c. 485, §1 (AMD); PL 2007, c. 485, §2 (AFF).]

1-A. Disclosure. The department may determine that for the purposes of disclosure under this section records are limited to only records created by the department in connection with its duties under this chapter.
[PL 2021, c. 176, §5 (NEW).]

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department; [PL 1987, c. 511, Pt. B, §1 (RPR).]

A-1. A law enforcement agency, to the extent necessary for reporting, investigating and prosecuting an alleged crime, the victim of which is a department employee, an employee of the Attorney General's Office, an employee of any court or court system, a person mandated to report suspected abuse or neglect, a person who has made a report to the department, a person who has provided information to the department or an attorney, guardian ad litem, party, participant, witness or prospective witness in a child protection proceeding; [PL 2005, c. 300, §3 (NEW).]

A-2. An administrator of a social media service, to the extent authorized by a court for reporting, investigating or removing a threat or serious intimidation attempt directed against an employee of the department, an employee of the Attorney General's office, a guardian ad litem or an officer of any court or court system. The information remains confidential and the social media service may not redisclose any of the information provided by the department. For the purposes of this subsection, "social media service" means an electronic medium or service through which users create, share and view user-generated content; [PL 2021, c. 148, §1 (NEW).]

B. [PL 1983, c. 327, §3 (RP).]

C. A physician treating a child who the physician reasonably suspects may be abused or neglected; [RR 2021, c. 2, Pt. B, §181 (COR).]

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate; [PL 1987, c. 744, §3 (AMD).]

D-1. A parent, custodian or caretaker of a child when the department believes the child may be at risk of harm from the person who is the subject of the records or information, with protection for identity of reporters and other persons when appropriate; [PL 2005, c. 300, §4 (NEW).]

D-2. [PL 2023, c. 151, §6 (RP).]

E. A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel

appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4115, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [PL 2021, c. 647, Pt. B, §50 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

E-1. [PL 2007, c. 371, §3 (RP).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; [PL 1989, c. 270, §2 (RPR).]

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reporters and other persons when appropriate; [PL 1989, c. 270, §3 (RPR).]

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; [PL 1989, c. 270, §4 (RPR); PL 1989, c. 502, Pt. A, §76 (RPR); PL 1989, c. 878, Pt. A, §62 (RPR).]

I. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the federal Indian Child Welfare Act of 1978, 25 United States Code, Section 1903 or the Maine Indian Child Welfare Act, section 3943, subsections 8 and 10, or a representative designated to provide child welfare services by an Indian tribe of Canada; [PL 2023, c. 359, §7 (AMD).]

J. A person making a report of suspected abuse or neglect. The department may only disclose that it has not accepted the report for investigation, unless other disclosure provisions of this section apply; [PL 2015, c. 194, §1 (AMD); PL 2015, c. 198, §1 (AMD).]

K. The local animal control officer or the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902 when there is a reasonable suspicion of animal cruelty, abuse or neglect. For purposes of this paragraph, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B; [PL 2015, c. 494, Pt. A, §21 (AMD).]

L. A person for the purpose of carrying out background screening of an individual who is or may be engaged in:

(1) Child-related activities or employment; or

(2) Activities or employment relating to adults with intellectual disabilities, autism, related conditions as set out in 42 Code of Federal Regulations, Section 435.1010 or acquired brain injury; [PL 2023, c. 638, §27 (AMD).]

M. The personal representative of the estate of a child named in a record who is reported to be abused or neglected; and [PL 2023, c. 638, §28 (AMD).]

N. The Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising counsel, with protection for identity of reporters and other persons when appropriate. [PL 2023, c. 638, §29 (NEW).]

[PL 2023, c. 638, §§27-29 (AMD).]

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child, appointed pursuant to section 4005, subsection 1; [PL 2005, c. 300, §8 (AMD).]

A-1. The court-appointed guardian ad litem or attorney of a child who is the subject of a court proceeding involving parental rights and responsibilities, grandparent visitation, custody, guardianship or involuntary commitment. The access of the guardian ad litem or attorney to the records or information under this paragraph is limited to reviewing the records in the offices of the department. Any other use of the information or records during the proceeding in which the guardian ad litem or attorney is appointed is governed by paragraph B; [PL 2009, c. 38, §1 (AMD).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-C, section 9-304 or Title 19-A, section 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court; [PL 2017, c. 402, Pt. C, §60 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [PL 1983, c. 327, §4 (AMD); PL 1983, c. 470, §12 (AMD).]

D. An appropriate state executive or legislative official with responsibility for child protection services, provided that no personally identifying information may be made available unless necessary to that official's functions; [PL 2001, c. 439, Pt. X, §2 (AMD).]

E. The protection and advocacy agency for persons with disabilities, as designated pursuant to Title 5, section 19502, in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; [PL 1991, c. 630, §2 (AMD).]

F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; [PL 2001, c. 696, §18 (AMD).]

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-C, section 9-304, subsection 3 and section 8205; [PL 2017, c. 402, Pt. C, §61 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Upon written request, a person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; [PL 2003, c. 673, Pt. Z, §3 (AMD).]

I. Any government entity that needs such information in order to carry out its responsibilities under law to protect children from abuse and neglect. For purposes of this paragraph, "government entity" means a federal entity, a state entity of any state, a local government entity of any state or locality or an agent of a federal, state or local government entity; [PL 2007, c. 371, §4 (AMD).]

J. To a juvenile court when the child who is the subject of the records has been brought before the court pursuant to Title 15, Part 6; [PL 2013, c. 293, §1 (AMD).]

K. A relative or other person whom the department is investigating for possible custody or placement of the child; [PL 2015, c. 381, §1 (AMD).]

L. To a licensing board of a mandated reporter, in the case of a mandated reporter under section 4011-A, subsection 1 who appears from the record or relevant circumstances to have failed to make a required report. Any information disclosed by the department personally identifying a licensee's client or patient remains confidential and may be used only in a proceeding as provided by Title 5, section 9057, subsection 6; [PL 2023, c. 151, §7 (AMD).]

M. Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children operated pursuant to 42 United States Code, Section 5773(b). Information disclosed pursuant to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 United States Code, Section 671(a)(35)(B); and [PL 2023, c. 151, §8 (AMD).]

N. A party to a child protection proceeding and the attorney representing the party in the proceeding, with protection for identity of reporters and other persons when appropriate. [PL 2023, c. 151, §9 (NEW).]

[PL 2023, c. 151, §§7-9 (AMD).]

3-A. Confidentiality. The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request and recommendations pursuant to section 4004, subsection 1, paragraph E, but may not disclose data that is otherwise classified as confidential.

[PL 2021, c. 550, §2 (AMD).]

4. Unlawful dissemination; penalty. A person is guilty of unlawful dissemination if the person knowingly disseminates records that are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime that, notwithstanding Title 17-A, section 1604, subsection 1, paragraph E, is punishable by a fine of not more than $500 or by imprisonment for not more than 30 days.

[PL 2019, c. 113, Pt. C, §67 (AMD).]

5. Retention of unsubstantiated child protective services records. Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 5 years following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 5-year retention period. An expunged record or unsubstantiated record that should have been expunged under this subsection may not be used for any purpose, including admission into evidence in any administrative or judicial proceeding.

[PL 2017, c. 472, §1 (AMD).]

6. Disclosing information; establishment of fees; rules. The department may charge fees for searching and disclosing information in its records as provided in this subsection.

A. The department may charge fees for the services listed in paragraph B to any person except the following:

(1) A parent in a child protection proceeding, an attorney who represents a parent in a child protection proceeding or a guardian ad litem in a child protection proceeding when the parent, attorney or guardian ad litem requests the service for the purposes of the child protection proceeding;

(2) An adoptive parent or prospective adoptive parent who requests information in the department's records relating to the child who has been or might be adopted;

(3) A person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record, including a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; the information in the record must be requested for the purpose of evaluating or treating the child, parent or custodian who is the subject of the record;

(4) Governmental entities of this State that are not engaged in licensing; and

(5) Governmental entities of any county or municipality of this State that are not engaged in licensing.

An order by a court for disclosure of information in records pursuant to subsection 3, paragraph B must be deemed to have been made by the person requesting that the court order the disclosure. [PL 2015, c. 194, §4 (AMD).]

B. The department may charge fees for the following services:

(1) Searching its records to determine whether a particular person is named in the records;

(2) Receiving and responding to a request for disclosure of information in department records, whether or not the department grants the request; and

(3) Disclosing information in department records. [PL 2015, c. 194, §4 (AMD).]

C. The department shall adopt rules governing requests for the services listed in paragraph B. Those rules may provide for a mechanism for making a request, the information required in making a request, the circumstances under which requests will be granted or denied and any other matter that the department determines necessary to efficiently respond to requests for disclosure of information in the records. The rules must establish a list of specified categories of activities or employment for which the department may provide information for background or employment-related screening pursuant to subsection 2, paragraph L. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 194, §4 (AMD).]

D. The department shall establish a schedule of fees by rule. The schedule of fees may provide that certain classes of persons are exempt from the fees, and it may establish different fees for different classes of persons. All fees collected by the department must be deposited in the General Fund. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2003, c. 673, Pt. W, §1 (NEW).]

E. A governmental entity that is engaged in licensing may charge an applicant for the fees imposed on it by the department for searching and disclosing information in its records. [PL 2015, c. 194, §4 (AMD).]

F. This subsection may not be construed to permit or require the department to make a disclosure in any particular case. [PL 2003, c. 673, Pt. W, §1 (NEW).]

[PL 2015, c. 194, §4 (AMD).]

7. Appeal of denial of disclosure of records. A parent, legal guardian, custodian or caretaker of a child who requests disclosure of information in records under subsection 2 and whose request is denied may request an administrative hearing to contest the denial of disclosure. The request for hearing must be made in writing to the department. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter 4. The issues that may be determined at hearing are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person. The department shall render after hearing without undue delay a decision as to whether some or all of the information requested should be disclosed. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the requester that the requester may file a petition for judicial review of the

decision within 30 days of the date of the decision. The department shall send a copy of the decision to the requester by regular mail to the requester's most recent address of record.
[PL 2015, c. 501, §2 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 327, §§3-5 (AMD). PL 1983, c. 354, §§1,2 (AMD). PL 1983, c. 470, §§12,13 (AMD). PL 1983, c. 783, §4 (AMD). PL 1985, c. 495, §18 (AMD). PL 1985, c. 506, §§A43-45 (AMD). PL 1985, c. 739, §§5,6 (AMD). PL 1987, c. 511, §§A3,B1 (AMD). PL 1987, c. 714, §§5-7 (AMD). PL 1987, c. 744, §§3-7 (AMD). PL 1989, c. 118 (AMD). PL 1989, c. 270, §§2-5 (AMD). PL 1989, c. 483, §A33 (AMD). PL 1989, c. 502, §§A76,77,D18 (AMD). PL 1989, c. 700, §A89 (AMD). PL 1989, c. 857, §58 (AMD). PL 1989, c. 878, §§A62,63 (AMD). PL 1991, c. 630, §§2-4 (AMD). PL 1993, c. 294, §§3, 4 (AMD). PL 1993, c. 686, §8 (AMD). PL 1993, c. 686, §13 (AFF). PL 1995, c. 391, §2 (AMD). PL 1995, c. 694, §§D38,39 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2001, c. 439, §X2 (AMD). PL 2001, c. 696, §§17-20 (AMD). PL 2003, c. 673, §§W1,Z2-4 (AMD). PL 2005, c. 300, §§2-9 (AMD). PL 2007, c. 140, §§5-7 (AMD). PL 2007, c. 335, §1-3 (AMD). PL 2007, c. 335, §5 (AFF). PL 2007, c. 371, §§3-6 (AMD). PL 2007, c. 473, §1 (AFF). PL 2007, c. 485, §1 (AMD). PL 2007, c. 485, §2 (AFF). PL 2009, c. 38, §1 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2013, c. 293, §§1-3 (AMD). PL 2015, c. 194, §§1-4 (AMD). PL 2015, c. 198, §§1-3 (AMD). PL 2015, c. 381, §§1-3 (AMD). PL 2015, c. 494, Pt. A, §§21-23 (AMD). PL 2015, c. 501, §§1, 2 (AMD). PL 2017, c. 402, Pt. C, §§60, 61 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2017, c. 472, §1 (AMD). PL 2019, c. 113, Pt. C, §67 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 148, §1 (AMD). PL 2021, c. 176, §5 (AMD). PL 2021, c. 550, §2 (AMD). PL 2021, c. 647, Pt. B, §50 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF). RR 2021, c. 2, Pt. B, §181 (COR). PL 2023, c. 39, §1 (AMD). PL 2023, c. 151, §§6-9 (AMD). PL 2023, c. 359, §7 (AMD). PL 2023, c. 638, §§27-29 (AMD).

§4034. Request for a preliminary protection order

1. Request. A petitioner may add to a child protection petition a request for a preliminary protection order or may request a preliminary protection order separately from the child protection petition. A request for a preliminary protection order must include a sworn summary of facts to support the request and identify the specific services offered and provided under section 4036-B, subsection 3 to prevent the removal of the child from the home.
[PL 2015, c. 501, §9 (AMD).]

2. Order. If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order automatically expires at the time of the issuing of a final protection order under section 4035 or a judicial review order under section 4038.
[PL 2001, c. 696, §25 (AMD).]

3. Custodial consent. If the custodian consents in writing and the consent is voluntarily and knowingly executed in court before a judge, or the custodian does not appear after proper notice has been given, then the hearing on the preliminary protection order need not be held, except as provided in subsection 4.
[PL 1983, c. 184, §3 (AMD).]

4. Summary preliminary hearing. The court shall schedule a summary preliminary hearing on a preliminary protection order within 14 days but not less than 7 days after issuance of the preliminary protection order, except that counsel for a parent may request that the hearing take place sooner. Upon request of counsel, the court may conduct the summary preliminary hearing as expeditiously as the court determines the interests of justice require. If a parent, custodian or legal guardian appears for the summary preliminary hearing and does not consent to the preliminary protection order, the court shall conduct a hearing at which the petitioner bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, legal guardian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissable as hearsay evidence. If after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary protection order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case the court shall conduct a hearing on jeopardy and conduct a permanency planning hearing. The hearings must commence within 30 days of entry of the preliminary protection order.

If the petitioner has not been able to serve a parent, custodian or legal guardian before the scheduled summary preliminary hearing, the parent, custodian or legal guardian may request a subsequent summary preliminary hearing within 10 days after receipt of the petition.
[PL 2015, c. 501, §10 (AMD).]

5. Contents of order. The preliminary protection order must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition. The order must include a notice that visitation must be scheduled within 7 days of the issuance of the order unless there is a compelling reason not to schedule visitation.
[PL 2001, c. 696, §27 (AMD).]

6. Visitation. When the court issues a preliminary protection order, the court shall order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order, unless there is a compelling reason not to schedule such visitation.
[PL 2001, c. 696, §28 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 184, §§3,4 (AMD). PL 1997, c. 715, §§A4,5 (AMD). PL 2001, c. 696, §§25-28 (AMD). PL 2015, c. 501, §§9, 10 (AMD).

§4035. Hearing on jeopardy order petition

1. Hearing required. The court shall hold a hearing prior to making a jeopardy order. [PL 1997, c. 715, Pt. A, §7 (AMD).]

2. Adjudication. After hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to the child's health or welfare.

A. The court shall make a fresh determination of the question of jeopardy and may not give preclusive effect to the findings of fact made at the conclusion of the hearing under section 4034, subsection 4. [PL 2001, c. 696, §30 (NEW).]

B. The court shall make findings of fact on the record upon which the jeopardy determination is made. [PL 2001, c. 696, §30 (NEW).]

C. The court shall make a jeopardy determination with regard to each parent who has been properly served. [PL 2001, c. 696, §30 (NEW).]

[PL 2001, c. 696, §30 (AMD).]

2-A. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption:

A. That the person seeking custody or contact with the child would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the person:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The person seeking custody or contact with the child may produce evidence to rebut the presumption; and [PL 2007, c. 513, §6 (AMD).]

B. That the parent or person responsible for the child would create a situation of jeopardy for the child if the parent or person allows, encourages or fails to prevent contact between the child and a person who:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The parent or person responsible for the child may produce evidence to rebut the presumption. [PL 2005, c. 366, §7 (NEW).]

[PL 2007, c. 513, §6 (AMD).]

3. Grounds for disposition. If the court determines that the child is in circumstances of jeopardy to the child's health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036. If, after reasonable effort, the department has been unable to serve a parent by the time of the hearing under subsection 1, the court may order any disposition under section 4036 until such time as the parent is served and a jeopardy determination is made with regard to that parent. If possible, this dispositional phase must be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence must be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.
[PL 2001, c. 696, §31 (AMD).]

4. Final protection order.
[PL 1997, c. 715, Pt. A, §8 (RP).]

4-A. Jeopardy order. The court shall issue a jeopardy order within 120 days of the filing of the child protection petition.

This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.
[PL 1997, c. 715, Pt. A, §9 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 184, §5 (AMD). PL 1991, c. 176, §2 (AMD). PL 1995, c. 481, §2 (AMD). PL 1997, c. 475, §1 (AMD). PL 1997, c. 715, §§A6-9 (AMD). PL 2001, c. 696, §§30,31 (AMD). PL 2005, c. 366, §7 (AMD). PL 2007, c. 513, §6 (AMD).

§1658. Termination of parental rights and responsibilities

1. Petitioner. A petition for termination of a parent's parental rights and responsibilities with respect to a specific child may be filed by another parent or the parent or guardian of a child's minor parent on any grounds set forth in subsection 3-A. A parent may not file a petition under this section to terminate the parent's own parental rights and responsibilities.
[PL 2021, c. 676, Pt. A, §30 (AMD).]

1-A. Filing and contents of petition. A petition to terminate parental rights and responsibilities must be filed in the District Court and in the same case as a prior adjudication of parental rights and responsibilities, if any. The petition must be sworn and must include at least the following:

A. The name and date and place of birth of the child; [PL 2021, c. 340, §2 (NEW).]

B. The name and address of the petitioner and the nature of the petitioner's relationship to the child; [PL 2021, c. 340, §2 (NEW).]

C. The name of each of the child's parents; [PL 2021, c. 340, §2 (NEW).]

D. A summary statement of the alleged facts that the petitioner believes constitute grounds for termination under subsection 2; [PL 2021, c. 340, §2 (NEW).]

E. A statement of the effects of a termination order; and [PL 2021, c. 340, §2 (NEW).]

F. A statement that the parent whose rights and responsibilities are the subject of the petition to terminate parental rights and responsibilities is entitled to legal counsel in the termination proceedings and that, if the parent wants an attorney and is unable to afford one, the parent should contact the court as soon as possible to request appointed counsel. [PL 2021, c. 340, §2 (NEW).]
[PL 2021, c. 340, §2 (NEW).]

2. Grounds for petition. The following allegations, if proven, are sufficient grounds to terminate a parent's parental rights and responsibilities under this section:

A. The parent was convicted of a crime involving sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction, that resulted in the conception of the child; [PL 2021, c. 340, §2 (AMD).]

B. The child was conceived as a result of an act of sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction; or [PL 2021, c. 340, §2 (AMD).]

C. A final order, other than in a protection from abuse matter under former chapter 101 or chapter 103, that has been in effect for at least 12 months grants the petitioner exclusive parental rights and responsibilities with respect to all aspects of the child's welfare, with the exception of the right and responsibility for support, without reserving for the parent any rights to make decisions, to have access to records or to have contact with the child, and termination of the parent's parental rights and responsibilities is necessary to protect the child from serious harm or the threat of serious harm. [PL 2023, c. 405, Pt. A, §35 (AMD).]
[PL 2023, c. 405, Pt. A, §35 (AMD).]

2-A. Procedure on petition to terminate parental rights and responsibilities. Once a petition to terminate parental rights and responsibilities is filed, the following procedure applies.

A. The court shall appoint an attorney for a parent who is the subject of a petition to terminate parental rights and responsibilities under this section and who is indigent. In a contested action, the court may also appoint counsel for any indigent petitioner who files a petition under this section when the parent who is the subject of the petition is represented by counsel. [PL 2021, c. 340, §2 (NEW).]

B. The court shall appoint a guardian ad litem for the child if the petition to terminate parental rights and responsibilities is brought under subsection 2, paragraph C. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. [PL 2021, c. 340, §2 (NEW).]

C. The court may hold a status conference prior to scheduling a hearing on the petition to terminate parental rights and responsibilities. [PL 2021, c. 340, §2 (NEW).]

D. The court may refer the parties to mediation prior to conducting a hearing on a petition to terminate parental rights and responsibilities. [PL 2021, c. 340, §2 (NEW).]

E. A parent may consent to an order terminating the parent's rights and responsibilities after a judge has fully explained the effects of the termination order and if such consent is written and voluntarily and knowingly executed in court. A parent's consent to the order is not a sufficient basis to enter an order in the absence of the findings required in subsection 3-A and any other applicable provisions of this section. [PL 2021, c. 340, §2 (NEW).]

F. The federal Indian Child Welfare Act of 1978, 25 United States Code, Section 1901 et seq. and the Maine Indian Child Welfare Act govern all proceedings under this section that pertain to an Indian child as defined in those Acts. [PL 2023, c. 359, §3 (AMD).]

G. Proceedings and records under this section are not public unless the court orders otherwise. The Supreme Judicial Court may adopt rules governing requests for access to these proceedings and records. [PL 2021, c. 340, §2 (NEW).]

[PL 2023, c. 359, §3 (AMD).]

3. Termination.

[PL 2021, c. 340, §2 (RP).]

3-A. Termination. The court:

A. Shall order termination of the parent's parental rights and responsibilities if the court finds based on a preponderance of the evidence that the petitioner has proven the allegations in subsection 2, paragraph A unless the court determines that the exception in subsection 4 applies; or [PL 2021, c. 340, §2 (NEW).]

B. May order termination of the parent's parental rights and responsibilities if the court finds based on clear and convincing evidence:

(1) That the petitioner has proven the allegations in subsection 2, paragraph B; or

(2) That the petitioner has proven the allegations in subsection 2, paragraph C and, if so, that the termination is also in the best interest of the child. Evidence that termination is necessary to protect the child from harm or threat of serious harm may include, but is not limited to, proof of:

(a) The parent's conduct demonstrating an intent to permanently forgo all parental duties or relinquish parental claims regarding the child when that conduct results in harm or threat of harm to the child; or

(b) The parent's acts of abuse, as defined in section 4102, subsection 1, upon the petitioner or a minor child in the parent's or petitioner's household. [PL 2023, c. 646, Pt. C, §6 (AMD).]

Except as provided in this section or in Title 18-C, section 9-204, a court may not terminate the parental rights and responsibilities of a parent on a petition filed by another parent or the parent or guardian of a child's minor parent.

[PL 2023, c. 646, Pt. C, §6 (AMD).]

4. Exception. The court is not required to terminate the parental rights and responsibilities of a parent convicted of gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B that resulted in the conception of the child if:

A. The parent or guardian of the other parent filed the petition; [PL 2015, c. 427, §1 (RPR).]

B. The other parent informs the court that the sexual act was consensual; and [PL 2015, c. 427, §1 (RPR).]

C. The other parent opposes the termination of the parental rights and responsibilities of the parent convicted of the gross sexual assault. [PL 2015, c. 427, §1 (RPR).]

[PL 2015, c. 427, §1 (RPR).]

5. Effects of termination order. An order terminating parental rights and responsibilities under this section has the effects set forth in Title 22, section 4056.
[PL 2021, c. 340, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 363, §1 (NEW). PL 2015, c. 427, §1 (RPR). PL 2021, c. 340, §2 (AMD). PL 2021, c. 676, Pt. A, §30 (AMD). PL 2023, c. 359, §3 (AMD). PL 2023, c. 405, Pt. A, §35 (AMD). PL 2023, c. 646, Pt. C, §6 (AMD).

Maine

CHILD WELFARE SERVICES OMBUDSMAN

21ST ANNUAL REPORT • 2023

CHILDREN'S OMBUDSMAN

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The 2023 Maine Child Welfare Ombudsman Annual Report was written and prepared by:

CHRISTINE E. ALBERI, Esq.
Executive Director, Ombudsman

I am honored to present the twenty-first annual report of the Maine Child Welfare Ombudsman. Maine Child Welfare Ombudsman, Inc. ("the Ombudsman") is a statutorily created non-profit solely dedicated to fulfilling the duties and responsibilities promulgated in 22 M.R.S.A. § 4087-A. The Ombudsman provides neutral objective assessment of concerns raised by individuals involved in child welfare cases through the Maine Department of Health and Human Services, Office of Child and Family Services ("the Department"). Our work continues this year with the addition of two new staff members, and I am very grateful for the increased support from the Governor and Legislature that has made this possible.

While discussions about child welfare frequently revolve around policy and practice, staffing and funding, parents' rights, and court procedures, I encourage everyone to keep at the forefront of their minds the purpose behind these and other discussions: the protection of Maine's children. Even in a system dedicated to child welfare, children seem to get lost in the shuffle. On the news, we hear stories about children involved in the most tragic child welfare cases, but in the vast majority of cases involving abused and neglected children, the children remain unnamed and their stories untold.

The examples in the following paragraph are all from actual cases involving Maine's children. Each of these children were removed from the harmful situations that they were in by the diligent work of Department caseworkers and supervisors, in collaboration with the courts and staff from the Office of the Attorney General. As these examples illustrate, frontline staff are engaged in protecting children under the most difficult of circumstances. Caseworkers, in particular, deserve our highest levels of support.

Consider the siblings who were screamed at by both parents, their prescription medications sold, and locked into an almost bare room for hours with no food or access to a bathroom; the child whose parents were actively using fentanyl and who witnessed their parent's frightening auditory and visual hallucinations; the children who were sexually abused and exposed to repeated instances of domestic violence; the newborn infant who was not gaining weight due to their parents' active refusal to feed them enough; and the child who was abandoned by their parent who was frequently intoxicated and physically abusive, who blamed the child for their desire to commit suicide.

The cumulative effects that abuse and neglect have on children can be devastating and life-long. We often discuss the trauma that removal of children from a parent's home can cause, but children also deserve to live in a home free from fear, abuse, neglect, and uncertainty. Children deserve caregivers who can give with peace and safety. The role of the child welfare system is to provide this for them. As soon as it is discovered that a child is unsafe, the child welfare system must intervene.

I would like to thank Governor Janet Mills and the Maine Legislature for the ongoing support to our program, and their continued dedication to improving child welfare and protecting the children of Maine.

Christine E Alling

Child Welfare Ombudsman

WHAT IS *the Maine Child Welfare Services Ombudsman?*

The Maine Child Welfare Services Ombudsman Program is contracted directly with the Governor's Office and is overseen by the Department of Administrative and Financial Services.

The Ombudsman is authorized by 22 M.R.S.A. §4087-A to provide information and referrals to individuals requesting assistance and to set priorities for opening cases for review when an individual calls with a complaint regarding child welfare services in the Maine Department of Health and Human Services.

MERRIAM-WEBSTER ONLINE defines an *Ombudsman* as:

1: a government official (as in Sweden or New Zealand) appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials

2: someone who investigates reported complaints (as from students or consumers), reports findings, and helps to achieve equitable settlements

The Ombudsman will consider the following factors when determining whether or not to open a case for review:

1. The degree of harm alleged to the child.
2. If the redress requested is specifically prohibited by court order.
3. The demeanor and credibility of the caller.
4. Whether or not the caller has previously contacted the program administrator, senior management, or the governor's office.
5. Whether the policy or procedure not followed has shown itself previously as a pattern of non-compliance in one district or throughout DHHS.
6. Whether the case is already under administrative appeal.
7. Other options for resolution are available to the complainant.
8. The complexity of the issue at hand.

An investigation may not be opened when, in the judgment of the Ombudsman:

1. The primary problem is a custody dispute between parents.
2. The caller is seeking redress for grievances that will not benefit the subject child.
3. There is no specific child involved.
4. The complaint lacks merit.

The office of the Child Welfare Ombudsman exists to help improve child welfare practices both through review of individual cases and by providing information on rights and responsibilities of families, service providers and other participants in the child welfare system.

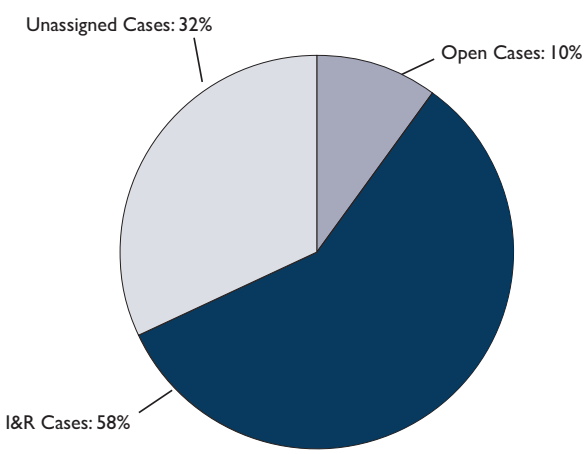
More information about the Ombudsman Program may be found at http://www.cwombudsman.org

DATA
from the Child Welfare Services Ombudsman

The data in this section of the annual report are from the Child Welfare Services Ombudsman database for the reporting period of October 1, 2022, through September 30, 2023.

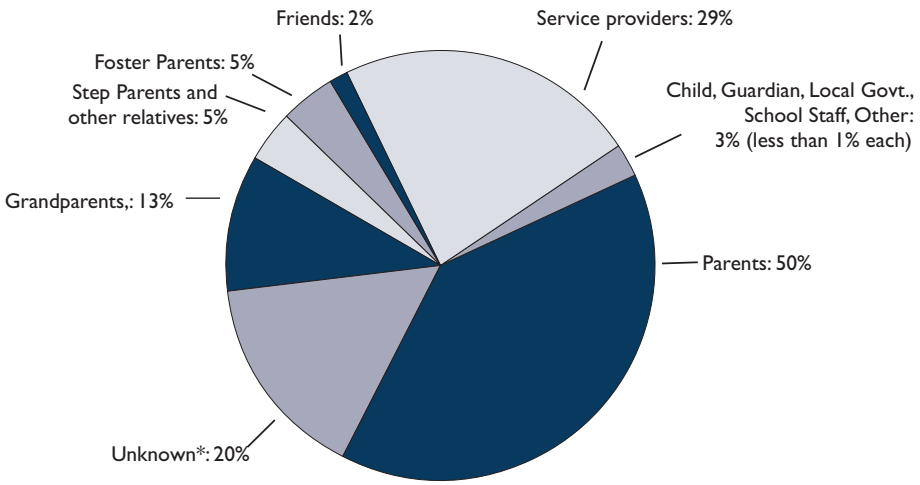
In Fiscal Year 2023, 737 inquiries were made to the Ombudsman Program, a decrease of 64 inquiries from the previous fiscal year. As a result of these inquiries, 77 cases were opened for review (10%), 422 cases were given information or referred for services elsewhere (59%), and 248 cases were unassigned (31%). An unassigned case is the result of an individual who initiated contact with the Ombudsman Program, but who then did not complete the intake process. Our scheduling protocols allow each caller an opportunity to set up a telephone intake appointment.

HOW DOES THE OMBUDSMAN PROGRAM CATEGORIZE CASES?



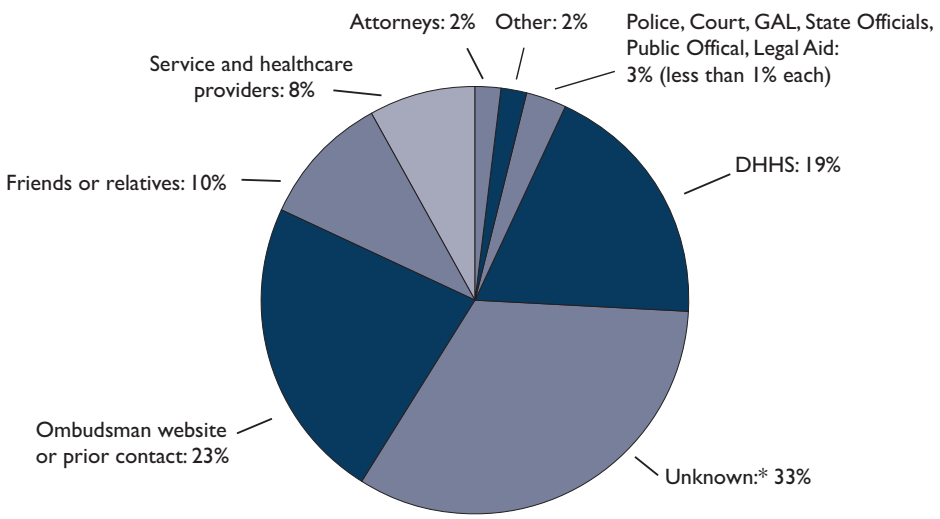
WHO CONTACTED THE OMBUDSMAN PROGRAM?

In Fiscal Year 2023, the highest number of contacts were from parents, followed by grandparents, other relatives, stepparents, and then foster parents.



HOW DID INDIVIDUALS LEARN ABOUT THE OMBUDSMAN PROGRAM?

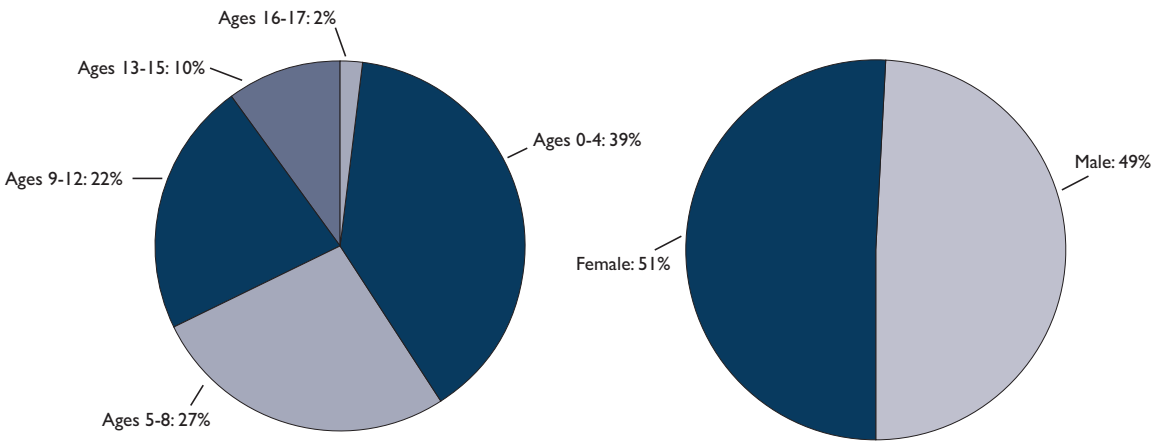
In 2023, 23.9% of contacts learned about the program through the Ombudsman website or prior contact with the office. 19% of contacts learned about the Ombudsman Program through the Department of Health and Human Services.



* *Unknown* represents those individuals who initiated contact with the Ombudsman, but who then did not complete the intake process for receiving services, or who were unsure where they obtained the telephone number.

WHAT ARE THE AGES & GENDER OF CHILDREN INVOLVED IN OPEN CASES?

The Ombudsman Program collects demographic information on the children involved in cases opened for review. There were 151 children represented in the 77 cases opened for review: 49 percent were male and 51 percent were female. During the reporting period, 66 percent of these children were age 8 and under.



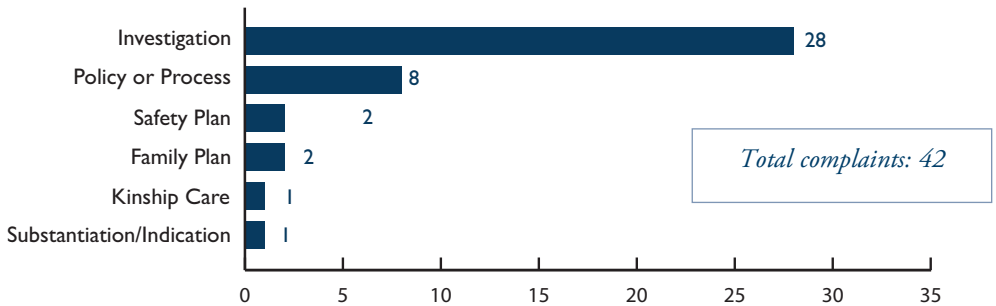
HOW MANY CASES WERE OPENED IN EACH OF THE DEPARTMENT'S DISTRICTS?

			DISTRICT	CHILDREN	
DISTRICT #	OFFICE	CASES	% OF TOTAL	NUMBER	% OF TOTAL
0	Intake	1	1%	1	1%
1	Biddeford	7	9%	16	11%
2	Portland	11	14%	21	14%
3	Lewiston	11	14%	20	13%
4	Rockland	9	9%	16	11%
5	Augusta	22	29%	38	25%
6	Bangor	10	13%	21	14%
7	Ellsworth	5	7%	12	8%
8	Houlton	3	4%	6	4%
TOTAL		**77**	**100%**	**162**	**100%**

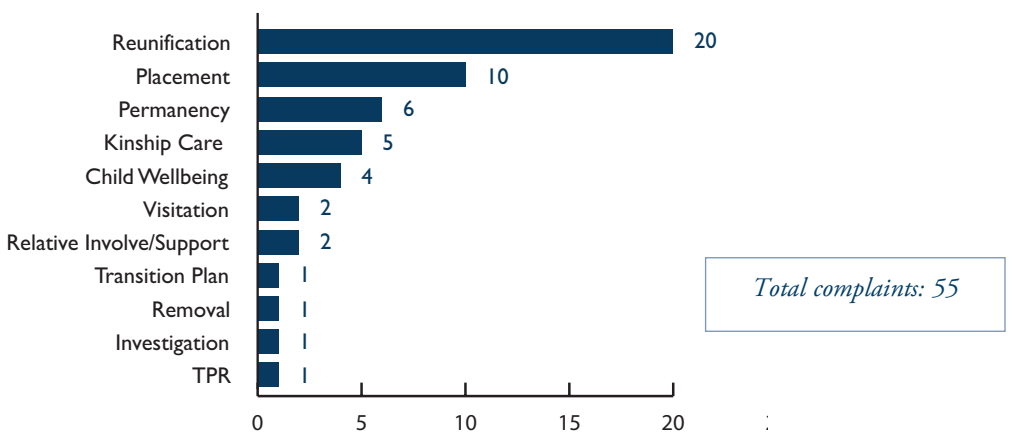
WHAT ARE THE MOST FREQUENTLY IDENTIFIED COMPLAINTS?

During the reporting period, 77 cases were opened with a total of 98 complaints. Each case typically involved more than one complaint. There were 42 complaints regarding Child Protective Services Units or Intakes, 55 complaints regarding Children's Services Units, most during the reunification phase.

Area of Complaint: **CHILD PROTECTIVE SERVICES (INITIAL INVESTIGATIONS)**



Area of Complaint: **CHILDREN'S SERVICES UNITS (REUNIFICATION)**



HOW MANY CASES WERE CLOSED & HOW WERE THEY RESOLVED?

During the reporting period, the Ombudsman Program closed 82 cases that had been opened for review. These cases included 108 complaints and those are summarized in the table below.

VALID/RESOLVED complaints are those complaints that the Ombudsman has determined have merit, and changes have been or are being made by the Department in the best interests of the child or children involved.

VALID/NOT RESOLVED complaints are those complaints that the Ombudsman has determined have merit, but they have not been resolved for the following reasons:

1. ACTION CANNOT BE UNDONE: The issue could not be resolved because it involved an event that had already occurred.

2. DEPARTMENT DISAGREES WITH OMBUDSMAN: The Department disagreed with the Ombudsman's recommendations and would not make changes.

3. CHANGE NOT IN THE CHILD'S BEST INTEREST: Making a change to correct a policy or practice violation is not in the child's best interest.

4. LACK OF RESOURCES: The Department agreed with the Ombudsman's recommendations but could not make a change because no resource was available.

NOT VALID complaints are those that the Ombudsman has reviewed and has determined that the Department was or is following policies and procedures in the best interests of the child or children.

RESOLUTION	CHILD PROTECTIVE SERVICES UNITS	CHILDREN'S SERVICES UNITS	TOTAL
Valid/Resolved	1	0	1
Valid/Not Resolved*	22	21	44
1. Action cannot be undone	23	21	
2. Dept. disagrees with Ombudsman	0	0	
Not Valid	34	29	63
TOTAL	**58**	**50**	**108**

* Total of numbers 1, 2

During the surveys of the 82 closed cases, the Ombudsman identified 6 additional complaint areas that were not identified by the original complainant. The complaints were found to be valid in the following categories: 14 investigation, 1 trial placement, 8 reunification, 4 safety planning, 4 Policy or Process (findings policy, documentation, consultation with expert medical opinion), and 1 Intake Screening.

POLICY AND PRACTICE
Findings and Recommendations

The findings and recommendations in this section are compiled from surveys of the findings made in the course of case-specific Ombudsman reviews. The Ombudsman and the Office of Child and Family Services, Department of Health and Human Services ("the Department") have an agreed upon collaborative process to finalize case-specific reviews.

Protecting children from child abuse and neglect is extremely difficult work with limited windows of opportunity to intervene. Ideally, enough services and resources would be available to families so that children are never unsafe. Unfortunately, we must continually face the reality that there are children that are or will be unsafe in their parents' care and the state is responsible for protecting those children. When we have those opportunities to intervene to protect children it is crucial that we act based on the facts available. This report is not meant as a call to take more children into state custody or reunify fewer children with parents, but to improve child welfare practice so that in each case and for each child the correct decisions can be made.

Out of the 82 cases surveyed this year, 49 had substantial issues. Cases with substantial issues are defined as cases where there was a deviation from best practices, adherence to policy, or both that had a material effect on the safety and best interests of the children, or rights of the parents. Out of these 49 cases, 27 primarily involved investigations and 18 primarily involved reunification. The remaining 4 cases had varying issues.

- Unfortunately, this year's review of case-specific reports continues to show a decline in child welfare practice. As has been true in previous annual reports, this year shows continued struggles with decision-making around child safety. Primarily, the Department has had difficulty in two areas: 1) during initial investigations into child safety and decision-making around whether a child is safe during an investigation, and 2) during reunification when making safety decisions about whether to send a child home.

Much of the public focus in child welfare has been on child deaths that continue to be reported in the news. These children who have died deserve our full attention and respect. It is equally important to remember that there are many children who are harmed repeatedly in the care of their parents, but never appear in the news. Children are living in difficult and traumatic circumstances all over the state every day. We have the responsibility, as a state, to protect those children. While there are many interlocking pieces to our child welfare system, including the courts, providers, relatives, and governmental entities--the Office of Child and Family Services has been tasked with protecting children who are experiencing abuse and neglect. They are the first responders to calls about unsafe children, and the first line of defense for those children.

The Ombudsman recommends that:

- The Department must continue to fully support the use of safety science in order to effect positive systemic change. Maine has contracted with Collaborative Safety LLC and begun to use Safety Science to review critical incidents, to improve practice, and determine the systemic and root causes of oversights and erroneous practice decisions. The results of the first year of these types of critical incident reviews have been released by the Department in the Maine Safety Science Model 2022 Report. The Department must take the findings in this, and in future safety science reports, and implement changes based on the outcomes of the safety science reviews. The Department must focus on child welfare practice issues within their own districts that are within their control, such as the need for increased staff training, time pressures affecting decision-making, and difficulties with safety planning.

- Continued support and funding for an increase in the availability of services is necessary for the well-being of children and families, prevention of child maltreatment, and for the success of reunification of children with parents. Essentially every case specific review completed this year by the Ombudsman detailed a case and a family that were negatively affected by a lack of services for both children and adults. Mental health services, substance use treatment services, trauma informed services, domestic violence services, housing, and transportation, are all examples of services that that are necessary for the safety and well-being of children.
- The Department should explore all possible methods, including statute changes, to provide increased transparency to the legislature and to the public about struggles within and progress towards addressing the complex problems that arise within the child welfare system.
- The Department must consider the opinions of outside stakeholders, in both assessing and naming the primary issues in child welfare, but also in providing solutions for those issues. And finally, it is crucial that frontline staff's experiences and opinions are given the utmost consideration and their recommendations are implemented when possible.

Note: there are two case-specific reviews that were considered for this report that have pending criminal charges due a death and a serious injury and therefore are not included in the below case summaries.

A. Reunification

A child abuse or neglect investigation is opened after an individual makes a report to the child protective hotline and that report meets the threshold necessary to assign it to a district office for investigation. Investigation policy requires that children be observed and interviewed, parents and caregivers that reside both in and out of homes are assessed and interviewed, home environments are observed, relevant collateral contacts are spoken to, additional information relevant to child safety is followed up on, and that all areas of child abuse and neglect are explored over the course of an investigation. In other words, child protective investigators must collect enough information to determine whether children are safe in their homes.

If the children are deemed unsafe during investigation, multiple avenues are available to protect those children. Ideally, the unsafe circumstance can be remediated through service arrangement to address an issue within the home, by an unsafe individual leaving the home, or by the child and safe parent leaving the home. The child can also move to the home of another safe parent or caregiver by agreement of the parents. These would be considered safety plans and are entered into voluntarily by the parents.

If safety planning or other action will not keep a child safe, a court petition can be filed. A jeopardy petition allows children to stay in parents' legal custody while waiting for a court date, and a petition for preliminary protection order can remove children from a parent's custody immediately.

In order to make safety decisions correctly during an investigation, 1) enough facts and evidence must be collected, and 2) the facts and evidence need to be interpreted correctly. This year a survey of case-specific ombudsman reviews found challenges in both areas. In some instances, not enough information was gathered to make an informed decision about safety, and in others, enough information was gathered but the appropriate action was not taken to protect the child.

Some examples of divergence from investigation policy were: an adult caregiver's significant child protective history was not considered; adult caregivers were not background checked and assessed for safety; parents and children residing out of the home were not interviewed or located; multiple family members were interviewed together; parents were interviewed together about domestic violence; collaterals were not contacted; multiple investigations were completed without addressing deficiencies in previous investigations; child abuse

pediatricians were not consulted about bruising and other injuries; and in one case an infant was not seen or located during an investigation of older children in the home.

Perhaps more concerning were investigations that gathered enough information to determine that children were unsafe but no safety planning or court action was taken to protect the children. These were not close cases, but instances where children were experiencing significant abuse and/or neglect. In many cases a court petition was filed eventually, but only after the children remained unsafe in the home for an unnecessary duration and were subjected to additional instances of abuse and/or neglect. See below under the case summaries for more detailed examples.

Safety plans continued to be of serious concern in this year's reviews. Safety plans were implemented and then not monitored, safety plans were not designed in a way that would ensure child safety, and multiple safety plans were made after previous plans failed.

B. Reunification

Once a child enters state custody, the parents are provided with a reunification plan that details services and behavioral change needed to ensure that the children can be safely returned to the parents. In order to make the determination that children are safe to return to one or both parents, the Department must both provide the parents with good faith reunification services, but also perform ongoing assessment of the parent's progress in their services towards alleviating jeopardy.

For example, if a parent has a substance use issue that is causing the child to be unsafe, the parent might enroll in substance use counseling and medication assisted treatment. The Department would have an obligation to assess how the parent is progressing in treatment by talking to providers, obtaining treatment records, visiting the parent in the home and talking to the parent about their treatment engagement, providing support and encouragement to the parent, sending the parent for random substance screens, completing medication counts, and interviewing other collaterals such as family members. In assessing progress in substance use treatment, history of prior treatment and length and type of use, and the amount of time the parent has been sober are all relevant to determining the safety of the child going forward. This is one example of one issue that has contributed to unsafe circumstances for a child, but this example also makes clear that the evaluation of a parent's progress is complex and time-consuming work.

Decision-making around reunification of children with parents, including trial placements, continues to be a challenge for the Department. This includes effective monitoring of trial placements for child safety. Trial placements are a moment of higher risk for children, and policy requires that assessment of safety increase during this period.

Reunification issues this year have included delays in filing petitions to terminate parents' rights; lack of monitoring for trial home placements especially when children were placed out of state; lack of contact with providers; inconsistent random drug screening; court petitions dismissed by the Department before issues causing children to be unsafe are resolved; regular monthly contacts not held with parents; and service cases opened for lengthy periods without court petitions filed.

C. Case Summaries

1. Investigation

1. A parent drove while intoxicated with the child and was arrested for multiple charges including assault on an officer. The parent had past charges of operating under the influence (OUI), disorderly conduct, and both parents had domestic violence charges. A safety plan was implemented but was terminated a month later and the child was allowed back in the parents' care unsupervised with no apparent improvement in circumstances. A parent continued to care for the child while impaired on drugs and alcohol and the other parent relapsed on drugs. A jeopardy petition was filed months later and a new safety plan was implemented, but the child remained in parental custody. The parent was arrested multiple times during the case. The child was unsafe in the care of the parents for over eight months.

2. A steady string of child protective reports were made for the nine months prior to the children entering custody. The facts found early in the first investigation warranted an emergency petition and subsequently there was enough information to warrant either a jeopardy petition or service case. Later investigations did not follow up on missed opportunities in previous investigations.

3. The children were taken on a high-speed police chase where drugs were found in a the car, the children were often tardy or absent from school and sometimes it was hours until the parent could be located. A child briefly entered custody due to serious medical neglect, the children met the legal threshold for truancy but no findings were made or jeopardy petition filed, the parent was summonsed for possession of methamphetamine and firearms during a traffic stop, and a bus driver found the parent passed out in a vehicle in the driveway. The children entered state custody when the children and parent were staying with the parent's significant other and during a bail check police discovered drug paraphernalia.

4. A parent took three years to reunify with a young child due to severe substance use issues. Once the child was returned and the case closed, the parent relapsed. Two investigations were opened with new reports, one with a service case and one without. The most recent investigation involved the parent admitting to relapse and the child's exposure to a domestic violence incident that involved strangulation. The parent was substantiated for threat of physical abuse and neglect, but months passed without any further work on the case or intervention such as a court filing.

5. A parent with severe mental health issues continued to care for the children for five months after the first appropriate chance to ask the court for a preliminary protection order passed. The children eventually entered state custody.

6. The parent drove while severely intoxicated with the child in the car. A very young child in the parents' care was unsafe while the parent was highly impaired. In three months, five reports were received about the parent's alcohol misuse. Four investigations and one service case were opened. Three weeks passed after the parent's OUI before a safety plan was implemented that the parent would not drive or be alone with the children. The first safety plan was violated so a second safety plan was implemented. A service case was opened but the parents refused to follow a third safety plan. A jeopardy petition was filed. During the three months of safety planning only one call to a collateral was made. The jeopardy petition was dismissed by the Department without a sufficient period of monitoring and no services for the other parent. A new report was made several months later with allegations that the parent was again drinking and caring for the children.

7. A child was not protected after the child was sexually abused and the child's primary caregiver did not believe the abuse happened.

8. A parent with a long history of substance use and mental health issues, and who had been a perpetrator of domestic violence, got into a car accident with the young child where the young child was seriously injured. The parent was impaired on substances and the child was not restrained in the car seat. Although findings were made after the investigation was closed the other parent allowed joint custody and unsupervised time with the unsafe parent to continue. Multiple investigations were opened after this. The unsafe parent was showing erratic and assaultive behavior and was abusing substances. Providers reported the parent tested positive for fentanyl. The other parent had been unable to protect the child through court action and the Department would not file in court.

9. No findings were made after children disclosed that their caregiver hit them with a metal coat hanger, "bashed" a child's head against the wall, and smacked a child around, all of which caused the children to be fearful and upset. The children involved had already experienced significant trauma in their lives with other caregivers.

10. An investigation was completed where all family members were interviewed together, the home was visited and family interviewed for less than an hour, the allegations in the report were only addressed for ten minutes, and one brief collateral call was made to the other family member who was not home.

2. Reunification

1. A mother tested positive for cocaine and fentanyl during pregnancy and had a previous termination of parental rights for an older child, as well as multiple serious mental health diagnoses that were untreated at the time of the birth. The child entered state custody but the mother did not engage in reunification services until a year after the child's birth. The mother became pregnant again and finally began intensive services. One month later the mother tested positive for fentanyl. The new baby was born and a request for a preliminary protection order was filed but then vacated by the Department after either one or two months of sobriety. The infant had tested positive for unprescribed drugs at birth. The newborn infant remained in the mother's custody for many months before the mother again tested positive for fentanyl and the baby entered state custody.

2. One five-year-old child has had the Department involved for all but 16 non-consecutive months of the child's life. The child has been in state custody twice. The parent has extensive history including not being able to reunify with older children. The parent has followed the same pattern of behavior throughout and despite this, trial placement started only six months into the current involvement. The most recent incident that precipitated the child re-entering custody was a frightening incident of domestic violence, where the child and parent had to be rescued by police. Both parents had been using heroin and cocaine.

3. Two years and ten months after children entered state custody petitions to terminate the parents' rights have not been filed. The Department stated that a petition to terminate the rights would be filed at the two-year mark but this did not occur. The parents have a significant child protective history including their rights terminated to two older children.

4. The child entered state custody after being exposed to domestic violence in the parent's care, including an assault on the child's other parent and on the child's caregiver during a safety plan. The court ordered the parent to participate in several services, but the parent only completed some and did not engage in individual counseling or a mental health evaluation as required. Other providers were not contacted. There were also concerns about the parents' continued relationship and reports that the parent had not changed despite participation in services. The other parents' providers had not been contacted in over a year. Eighteen months into the case, a trial placement began.

5. After children entered state custody regular monthly contacts with parents did not occur for eight months. Regular contact with the parents' services providers did not occur. Despite continuing reports of domestic violence, trial placement began. Visits to the home during trial placement did not occur as outlined in policy.

6. The family had a history of 18 years of child protective involvement, including 42 reports made to Intake and 12 investigations. The Department had not intervened during any period until the children's recent entry into state custody. As a result of this the children have significant needs including mental health issues, behavioral issues, and engagement in the juvenile justice system. The investigation before the current case closed without intervention or services despite the risk level having been assessed as high and the parent arrested for disorderly conduct in front of the children. Police reported serious concerns for neglect, physical abuse, and emotional maltreatment. These issues are ongoing and services and resources in the state are not sufficient to help the children.

7. A child with highly challenging behaviors returned home on trial placement before the parent had alleviated jeopardy and without adequate services in place. The parent did not have a safe and stable place to live. The parent also did not attend substance use counseling or mental health treatment consistently, not attending random drug screens, and had not completed a psychological evaluation. This continued during the trial placement. The parent refused to take the child to counseling and the child frequently missed specialized programming. Concerns about the child being brought around the other unsafe parent were not assessed.

8. After the court denied termination of the parents' rights despite ongoing safety concerns, children were reunified. Less than six months later the children witnessed a serious incident of domestic violence. There were also concerns for neglect and the condition of the home. A safety plan was implemented and an unsafe person was assigned to monitor the plan. Then a partial out of home safety plan was created. Safety plans and a service case continued for approximately a year with multiple reports and ongoing issues including bruising on the children. A jeopardy petition was filed ten months after it was clear that further intervention was needed. The three oldest children entered custody, while the youngest and most vulnerable remained in the care of the parent.

9. A child was in state custody for four years and the courts, the Guardian ad litem, and the Department have made a series of decisions over the four years that delayed permanency too long for the child, resulting in an outcome that was not in the child's best interests. These decisions left the child at serious risk of emotional harm.

10. A petition to terminate the parents' rights was denied by the court due to lack of communication with the parents' providers. The child has been in state custody for four years. Psychological evaluations were completed for both parents and these findings, as well as the jeopardy findings, were not shared with the parents' counselors or other mental health providers. The counseling services provided did not appear to focus on one of the important aspects of reunification.

3. Positive Findings

The following represents positive findings taken from case specific reviews representing each district in the state:

1. When the parents were in jail the caseworkers made many efforts to keep both parents engaged. The caseworker understood the parent's previous history of substance use and previous attempts at treatment and slowed down the case to accommodate this. The caseworker toured the parent's sober living facility and met the other residents prior to allowing overnight visits. The caseworker transported the children

to the first overnight visit. Regular family team meetings were held throughout the case and were well attended by providers. The children were successfully reunified with the parent.

2. The caseworker was able to clearly articulate and document how the parent's cognitive limitations negatively impacted the parent's ability to care for the child. A neuropsychological evaluation with a parenting component was requested to better inform decision-making. A petition to terminate the parents' rights was filed in accordance with the statute.

3. In multiple investigations victims of domestic violence were referred to domestic violence programs and/or referred to the district's domestic violence liaison, caseworkers met with victims of domestic violence separately from perpetrators, and appropriate findings were made regarding an unsafe parent exhibiting a pattern of domestically violent behaviors towards partners.

4. Child protective caseworkers worked closely with law enforcement, Spurwink, and the Child Advocacy Center to investigate allegations of sexual abuse. The caseworker's interviews with the mother and alleged perpetrator were thorough and all of the allegations were carefully considered. Multiple collateral contacts were made during both investigations, which were generally thorough.

5. The caseworker performed a thorough investigation both before and after the children entered custody. The caseworker supported visits for the children and their fathers and was careful to assess how the children felt about visiting with (and ultimately living with) an out-of-state father. Good faith reunification services were offered to the out-of-state father and the appropriateness of the placement was carefully assessed.

6. The initial investigation and safety planning was thorough and all plans were monitored effectively, both by checking in at the homes frequently and contacting plan monitors. Plans were modified due to changing facts and circumstances. Caseworkers visited children and homes frequently and checked in with children and their providers, grandparents, and foster parents as appropriate. Caseworkers investigated new information and allegations. The caseworker's ongoing assessment of how the parent was doing in reunification and articulation of how the mother could alleviate jeopardy were very thorough.

7. The caseworker made an unannounced visit to the home and then called police for assistance when there was an adult in distress. A preliminary protection order was denied and the caseworker continued to investigate. Further information was gathered, and another preliminary protection order was granted. A close relative was encouraged to make repairs to the home to become a kinship foster placement and was encouraged to keep in contact with the child. The new caseworker had the Guardian ad litem attend the first visit with the child to ease the transition.

8. The caseworker held several family team meetings in the most recent involvement and made sure that all of the providers were sharing information. The caseworker also made sure that providers had the most accurate history of the case. The caseworker held detailed conversations with the child and despite significant needs the child understood the caseworker well.

D. Katahdin

On January 18, 2022, the new child welfare database, Katahdin, went live. This was a long-planned move due to the age of the previous database, the Maine Automated Child Welfare Information System (MACWIS).

Any child welfare database serves different purposes for different individuals. Caseworkers must be able to easily enter and upload the correct data and documents, be able to see the history of cases and families and provide discovery to the attorneys if there is a court case. Supervisors, program administrators, and

central office staff must be able to use a database to supervise cases and perform reviews of cases and critical incidents. Quality Assurance staff use the database to collect federal reporting data and perform case reviews that inform practice improvements in individual cases, as well as systemic reviews. Other central office staff use the database to present to the safety science selection team and the Serious Injury and Death Review Panel.

Katahdin has been in use for over a year. In any transition to such a complex database, there will be setbacks and training issues, and cultural adjustment to the change. However, Katahdin's issues go deeper this. Katahdin is negatively affecting the ability of child welfare staff to effectively do their work, and therefore keep children safe.

The Department has been working to address multiple issues within Katahdin, and has already implemented many fixes, but Katahdin continues to be a complex problem without an easy solution.

ACKNOWLEDGMENTS

As the twenty-first year of the Maine Child Welfare Ombudsman Program comes to a close, we would like to acknowledge and thank the many people who have continued to assure the success of the mission of the Child Welfare Ombudsman: to support better outcomes for children and families served by the child welfare system. Unfortunately, space does not allow the listing of all of these dedicated individuals and their contributions.

The staff of public and private agencies that provide services to children and families involved in the child welfare system, for their efforts to implement new ideas and provide care and compassion to families at the frontline, where it matters most.

Senior management and staff in the Office of Child and Family Services, led by Director Dr. Todd Landry, for their ongoing efforts to make the support of families as the center of child welfare practice, to keep children safe, and to support social workers who work directly with families.

The Program Administrators of the District Offices, as well as the supervisors and social workers, for their openness and willingness to collaborate with the Ombudsman to improve child welfare practice.

The Board of Directors of the Maine Child Welfare Services Ombudsman, Katherine Knox, Pamela Morin, Donna Pelletier, Courtney Beer, Craig Hickman, and Anne Sedlack.

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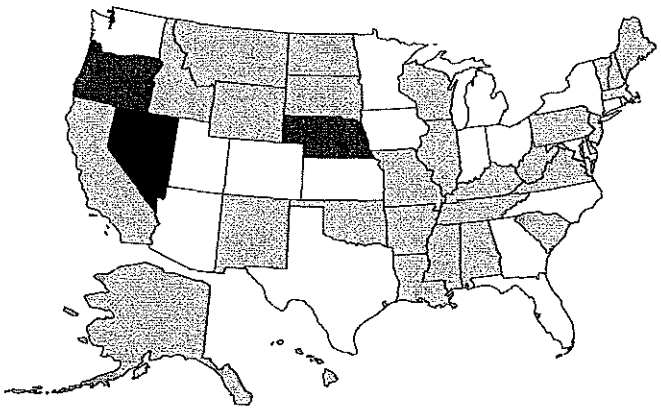
NCJJ Snapshot

November 2010 / Vol. 15 , No. 11

What States Allow for Open Abuse/Neglect/Dependency Hearings?

Linda A. Szymanski, Esq., Chief of Legal Research, NCJJ

Dependency Hearings: Open or Closed?



Thus far in the 2010 Legislative session, 18 jurisdictions have statutes and/or court rules that permit or require dependency hearings to be open to the general public. The juvenile court judge then has the discretion to close the hearing on good cause shown. These jurisdictions are: Arizona, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Nevada, New York, North Carolina, Ohio, Texas, Utah, and Washington.

Effective October 1, 2009, Connecticut enacted legislation to establish a pilot program to increase public access to proceedings in which a child was alleged to be dependent or was the subject of a petition for termination of parental rights. Under the terms of the new law, the Judicial Department was required to adopt policies and procedures for the operation of the pilot program, after consultation with the Juvenile Access Pilot Program Advisory Board.

In Nevada, by statute, the confidentiality of a dependency proceeding is based on population. Generally, each judicial district that includes a county whose population is 400,000 or more must hold open dependency hearings, unless the judge decides to close them. A Nevada judicial district that includes a county whose population is less than 400,00 must close such hearings, unless the judge decides to open them. Thus, Nevada is counted twice here.

In Nebraska and Oregon, by statute, dependency hearings are open to the general public, with no restrictions.

Thirty-two jurisdictions have statutes and/or court rules that generally close dependency hearings to the public: Alabama, Alaska, Arkansas, California, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

On July 13, 2009, the Governor of Arizona approved legislation that allows any person to request the court to reopen a previously closed hearing, if that hearing relates to a child abuse case that resulted in a fatality or a near fatality. In considering the request to reopen, the court must consider the child's best interests, privacy rights of the parties, whether all parties have agreed to allow open proceedings, and if an open hearing could harm a criminal investigation.

Effective July 1, 2009, New Mexico amended its statute and added language concerning a child who is subject to an abuse and neglect hearing. Under the new language, if a child is subject to an abuse and neglect proceeding and is present at the hearing, he or she may object to the presence of the media in the courtroom. The court may exclude the media if it finds that the presence of the media is contrary to the best interests of the child.

Over the past decade, the trend has been for much greater openness in dependency hearings.

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THE MAINE MONITOR
REPORTING IN THE PUBLIC INTEREST

CHILD WELFARE, COURTS & PUBLIC SAFETY ·

‘Secret courts and secret decisions’: Calls for transparency in Maine’s child welfare system

By Josh Keefe
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Why you can trust The Maine Monitor

Do confidentiality rules protect children and their families, or shield government agencies from public scrutiny?

Supporters of Walk A Mile In Their Shoes, a nonprofit child welfare advocacy organization, called for more transparency in the Department of Health and Human Services at a rally at the statehouse in Augusta on April 30, 2024. Photo by Josh Keefe.

On a gray morning last week, former state senator Bill Diamond stood at a rally in front of the statehouse and implored Maine’s government to do more to prevent child abuse —

and be transparent about its efforts.

A nearby sign attached to a stone column listed the names of eight Maine children on blue sneakers: eight children who have died in the past three decades, and whose names have become synonymous with the state's child welfare system, including Maddox Williams, Marissa Kennedy and Logan Marr.

Diamond was describing a horrific addition to that list. Ten-year-old Braxtyn Smith died at a Bangor hospital in February. Police said the boy's death followed months of physical abuse by his mother, father and grandmother, who have all been charged with depraved indifference murder.

Diamond wanted to know if Maine's Department of Health and Human Services, which oversees the state's child protective system, had ever made contact with the boy, who was homeschooled, or his family. The department has refused to say, citing confidentiality laws.

"There are good reasons for confidentiality," Diamond said. "But in terms of transparency, it's appeared over the years that they've used that as a reason not to talk at all. I think there are openings there where they could talk and they could help the situation."

Others at the rally agreed. A social worker called for the department to stop "operating behind closed doors." A school superintendent implored the state to "open up the system so we know what we're working with." A foster mom said it is "crucial for the Iron Curtain to be pulled back so we can get the transparency needed to reform policies that continue to fail our children."

But the speeches were light on policy specifics, and what the transparency they envision looks like in practice is somewhat nebulous.

All child welfare systems face a tension between protecting the confidentiality of vulnerable parents and children, and the need to inform the public about how the system operates, particularly in high-profile cases of abuse or neglect.

The debate over how to balance those two interests is an old one, but critics in Maine and elsewhere have argued that more transparency is needed to ensure that confidentiality rules are protecting children and their families, not shielding child welfare agencies from public scrutiny.

RELATED STORY: Diagnosing abuse requires collaboration and expert advice, child advocates say

Like many such agencies across the country, Maine's beleaguered office suffers from high staff vacancies and turnover, leaving its caseworkers overburdened. Efforts in the legislature this year to create a standalone child welfare office failed, as the debate continues about how to address concerns that the system is not adequately protecting children.

Maine's rate of child maltreatment is more than double the national average and the fourth-highest in the country, according to the most recent federal data. Homicides and deaths of children involved with the child welfare system rose from seven in 2007, when the state began tracking this, to a high of 34 in 2021, before declining to 23 last year.

At the same time, Maine is one of just a handful of states that increased the rate of removing children from their families between 2018 and 2022.

The public knows almost nothing about most of these cases — often only hearing about them if there is a death and the case enters the criminal justice system.

The department says it is bound by federal confidentiality rules and would lose funding if it violated them. Advocates like Diamond say the department's interpretation of the rules is overly broad and self-serving.

Lawmakers tasked with oversight bemoan the department's power as they face off with the attorney general's office over access to department records.

Advocates like former Maine Secretary of State Bill Diamond implored Maine's government to do more to prevent child abuse. Photo by Josh Keefe.

Meanwhile, state law keeps child protection court proceedings — and the department's contested actions — out of public view.

"State and federal confidentiality laws prohibit the department from commenting on child protective matters in most instances, subject to very limited statutory exceptions," said DHHS spokesperson Lindsay Hammes.

Federal rules attach confidentiality requirements to funding for state child welfare agencies to make sure victims of abuse aren't hurt by details of their case being made public, said Brian Blalock, senior directing attorney with the nonprofit Youth Law Center.

But over the last two decades, those federal rules have been loosened to give states more leeway to provide information to the public, especially around child deaths, Blalock said.

"There's a real legitimate tension between the harm not preserving confidentiality can cause these families and communities, and the harm if there's not enough transparency and accountability," Blalock said. "I think it's a huge issue, but it gets so complicated so quickly."

Confidential records

The complications are illustrated by a case currently in front of the Maine Supreme Judicial Court. It involves DHHS's refusal to respond to a subpoena from the legislature's government oversight committee demanding case files related to four children who died in 2021.

DHHS supplied the records to the Office of Program Evaluation and Government Accountability (OPEGA), the independent office that performs investigations on behalf of the Government Oversight Committee. But the department refused to turn the records over to the committee.

Representing the department, the attorney general's office argued doing so would violate federal law and risk "losing funding critical to the administration of its Maine Child Welfare Services program."

A district court ruled in favor of DHHS, but Maine's top court took up the case on appeal. It heard oral arguments in December and has yet to issue a ruling.

Both sides have argued that the federal laws in question vindicate their position.

The Child Abuse Prevention and Treatment Act strikes a balance between "the families' right to privacy, and the right of children to be free from abuse and neglect," the attorney general's office said. The state is only allowed to share records with government entities that need the information to "protect children from child abuse and neglect."

The attorney general's office said OPEGA is one such entity, because it would use the information to suggest improvements to the child welfare system. The committee, it argued, is too removed from protecting children to have a legitimate need for the records.

Photo by Josh Keefe.

Attorneys representing the committee contended that federal laws don't say the records can't be shared, only that the state needs to have a system to ensure confidentiality outside "legitimate state purposes." They argued the committee has a "legitimate state purpose" in seeing the records to "examine the efficacy of services provided by the department."

The conflict over the records may stem in part from the federal government's lack of clarity around its disclosure laws. Researchers at the Children's Advocacy Institute at the University of San Diego School of Law criticized the Administration for Children and Families for not instituting "formal, binding regulatory instructions" around disclosure.

"States are struggling to understand exactly what their responsibilities are with regard to the public disclosure mandate," researchers wrote in 2015. An institute spokesperson said she was not aware of federal action to provide greater clarification in the intervening years.

Sen. Jeff Timberlake, R-Androscoggin, sits on the government oversight committee. It's the committee's job to oversee the department, which requires being able to see those records, Timberlake said. He claimed refusing to turn them over wasn't about protecting kids, but "protecting DHHS and its employees."

Both Timberlake and the committee chair, Sen. Craig Hickman, D-Kennebec, introduced bills last year that would have clarified the committee's ability to access confidential information. But both bills failed to gain traction after objections from Gov. Janet Mills' administration.

Timberlake also introduced a bill last session to separate the Office of Child and Family Services from the rest of DHHS, and make it a standalone department. The bill passed the Senate but was never picked up by the House. It mirrored legislation Diamond put forward while a legislator in 2021.

Timberlake's bill was "designed to make Office of Child and Family Services much more visible and much more transparent," he said. The office is insulated from public view by layers of bureaucracy inside the Department of Health and Human Services, Maine's largest state agency.

"Part of what I was trying to do," Timberlake told *The Maine Monitor*, "was be able to dig down through and peel the layers of the onion back."

Closed courts

While records are generally confidential, a number of states have open child welfare court proceedings, meaning observers — including journalists and policymakers — can observe the system in action. In Maine, cases are closed to the public.

When a *Monitor* reporter asked a Portland court clerk not if he could attend one of the cases, but simply when and where they took place, he was told even that information was secret.

Seventeen states have open child welfare proceedings, but judges can close them at their discretion. Another two states have fully open systems, according to a 2011 analysis of state laws by the National Center for Juvenile Justice.

That same analysis found that 31 states — including Maine — have closed proceedings but allow judges to open individual cases.

Maine's rate of child maltreatment is more than double the national average and the fourth-highest in the country, according to the most recent federal data. Photo by Gabe Souza.

Vivek Sankaran, director of the Child Advocacy Law Clinic at the University of Michigan, often wonders who closed courts are protecting.

“Are they protecting the agency and the courts, and the inside players?” he asked. “I think there’s certainly a lot of that going on. For me, the need for transparency outweighs everything.”

The closed court system means the only cases that become public are those that enter the criminal justice system, typically because of child deaths. Those cases, which are horrific and outliers, are often the only glimpse the public and legislators get into a system that handles more than 26,000 referrals a year.

Physical abuse allegations make up less than a quarter of child protective cases in Maine each year, while most are related to neglect or lack of housing. Advocates say this distorts reality because stories of failures on the other end of the spectrum, in which children are removed and families torn apart unnecessarily, never become public.

“Secrecy is behind a lot of unnecessary removals because they can’t be observed in the moment and can’t be talked about afterwards,” said Matthew Fraidin, a professor at the University of the District of Columbia School of Law who has written about confidentiality in the child welfare system. “So everything is driven by one horrible death. It’s horrible but it’s not the real story of child welfare.”

He said “secret courts and secret decisions” are an “invitation to bias.”

The closed-off nature of this system also presents difficulties for lawyers representing parents, said Taylor Kilgore, an attorney based in Turner. They can’t see the arguments other lawyers have made unless a case goes to the Maine Judicial Supreme Court and the court publishes a decision (the court uses pseudonyms in their published decisions to protect the identities of those involved).

“If somebody has made the exact same argument I’m making, and they failed on it, I don’t really have a way to know that,” Kilgore said.

In addition, the Maine Judicial Supreme Court is increasingly publishing memorandums instead of full decisions, Kilgore said. While full decisions are many pages long and discuss the legal issues involved, memorandums of decision can be as short as a few sentences and typically say little more than how the court ruled.

“There really isn’t a lot of information there for any of us to go on,” Kilgore explained.

Fraidin said this lack of transparency can equate to a lack of accountability.

“Secrecy also means there’s no real incentive for the state to improve its functioning because they don’t have an incentive to learn from their mistakes and ups and downs,” he said. “Because nobody’s watching.”

An Argument For, and One Against, Open Family Courts

BY MATTHEW FRAIDIN & ANNA JACOBI

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Sunshine Is Good for Children

Matthew Fraidin, Associate Professor of Law at the University of the District of Columbia David A. Clarke School of Law.

Fraidin, who oversees a clinical program where students represent birth parents in maltreatment cases, delivered the following remarks within his testimony at a Washington, D.C. City Council hearing in 2009:

In my law students' cases, more than 60 percent of the children taken from their families have been returned *without ever being found abused or neglected*. Yes, more than 60 percent of the children taken from their living rooms and schoolhouses, from their brothers and sisters and teachers and grandparents and friends...do not need to be there, by the government's own admission.

They take the children, the Court rubber-stamps the removal, and only later, when my students find the information the agency missed, explain to the agency the information it distorted, and demonstrate that the child would be safest and healthiest in her own home, does the government agree – voluntarily! – to send the child home and dismiss its own case.

Secret proceedings means that you can't meet the children whose lives are turned upside-down, perhaps never to be righted – for no reason. You can't observe the rubber-stamp hearings. You can't watch a case worker hem and haw an explanation about why a distraught child hasn't been referred to a therapist, despite a court order directing the referral. You can't see a lawyer guessing at his client's position, rather than knowing it, because the lawyer hasn't met with the client since the previous court hearing.

You can't sit in the back of a courtroom and shake your head in frustration and disgust at a judge who openly flouts the law, refusing to let a child live with her beloved aunt, simply because it is that judge's "personal policy" not to allow children to live with relatives unless [the child welfare agency] agrees.

You can't know what's going on, and you can't do anything about it.

One of my former child clients, now dead by gunshot, asked his group home not to house him with a roommate because, he admitted, he was disliked by some of the other children and felt uncomfortable with them. The group home ignored him, as well as my similar request on his behalf. Another resident of the group home – also now-deceased by gunshot — came in and stabbed my client in the shoulder with a screwdriver. Bad enough, but the

roommate allowed other boys into the shared room. The other boys stole some of my child client's clothing. It was all he had, in two garbage bags and a battered suitcase. He'd been in foster care since he was nine years old, and had carted sneakers and clothing to the dozen or more homes he'd lived in.

He was enraged by the theft, and broke some of the thief's property and kicked a hole in a wall. Arrested for the destruction of property, he was locked up overnight, for the first time ever, and charged as a juvenile. The CFSA worker was set to tell the delinquency judge that the child's best interests would be served by going to Oak Hill [D.C.'s juvenile jail] because it would "be therapeutic for him."

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I remonstrated with the worker in the courthouse hallway and burned up telephone lines for hours until I located a foster parent with an empty bed and persuaded CFSA that a foster home would be more appropriate for the child than Oak Hill.

Until now, no one has known about this.

We want children to grow up to understand that their actions have consequences. While parents try to teach this value to their charges, the adults surrounding children in the foster care system are not responsible for what they do and don't do. In our secret system, adults don't have to live the value, to practice what they preach.

Yes, we must ensure that the right adults have the right information to help children. It is equally important, however, to make sure we don't give adults a blank check to go along with that power. We have to make sure they use their power to help children. We are all responsible and we all must watch: family, friends, neighbors, the press.

No one can be healthy in the dark: sunshine is good for children.

Journalist vs. Social Worker: My Internal Conflict about Access to Dependency Court Proceedings

Anna Jacobi, former Teach for America volunteer and graduate student at the University of California-Berkeley School of Social Work

Jacobi wrote the following piece during her time as a fellow in the Journalism for Social Change program:

On one hand, I can see the need for lifting the veil of secrecy that shrouds the dependency court process. Perhaps the need for confidentiality does not help to protect kids in care, but instead may hurt them.

court participants: the youth.

I brought up the debate with a number of teens in a group home in Oakland and they immediately opposed the idea of *any* reporters in the courtroom. "My business out there for everyone? You crazy!" one said.

They vehemently agreed that they would definitely not attend a court hearing where a reporter *may* be present.

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Even if that reporter had signed a code of ethics, I asked? No way, they shot back.

Even if there would be no way anyone would know which case was being reported on or who was being discussed? No. No way.

From the youths' perspective, they explained that their "business" is already public enough without needing any reporter to make it more so. So, if the impact of opening the dependency court proceedings is to further *disengage* youth in foster care themselves from the court process, what is the purpose? It makes an already scary system even scarier.

People who work directly with youth in foster care during the dependency court proceedings are troubled by the potential negative impact of opening access to reporters. Aileen Collins, a fellow volunteer for Court Appointed Special Advocates Court, questions whether opening access will actually help.

"My worry is that only certain cases will get attention, and ultimately, the goal of creating accountability will not be achieved," she explains. "I am also concerned that children's privacy will be jeopardized and cases will be sensationalized."

JD Delaney, an 18-year-old in foster care in Santa Clara County, articulates both the positives and the negatives of opening access to dependency court.

"Positively, it can probably help out the system a bit and make sure that all the youths' needs are met," she said. "Judges have a lot of kids and they can't really remember everything. And so having someone record it or write about it will help the judge know everything that is said so that the judge can get things done."

However, JD said, "I know I wouldn't want to share some of the stuff I would normally share in court if I knew that there would be journalists there." She also questioned how the presence of reporters might in fact discourage youth participation from her peers. "Youth may not speak at all. They may just stop going to court because they may not want other people to hear about what's going on in their life. I mean, would you want a complete stranger to know the deepest things about you?"

The skepticism around journalists being able to ethically report on dependency court processes also highlights broader confidentiality issues that are inherent to the foster care system.

was wary: "That's just signing a piece of paper."

For me, JD's skepticism about the long-term impact captures my own questions. Who would this really be benefitting? If shining light on a somewhat shady system means making the people that it is meant to protect uncomfortable, are journalists really helping?

From one day to the next, depending on the hat that I either chose or am forced to wear, my own opinion about whether or not I am in favor of media access to dependency court drastically changes. I can see the *systematic* benefit that more accountability can provide, but also the potential for *individual* harm if youth are less likely to engage in their own court process.

At the end of the day, I do firmly believe that journalists can ethically report on dependency court proceedings. However, given the potential for negative impact on actual youth in care, I side with JD: The final decision about whether or not to allow journalists in the courtroom should be solely in the hands of the youth.

If they are comfortable with it, great. If in any way having a media representative present will disengage the youth from the dependency court process, that reporter has no place in the courtroom.

If opening access to dependency court proceedings means the choice between journalists or youth in care participating in the court proceedings, the inclusion of media is not an option. Regardless of what hat I am wearing, I feel that foster youth have a right to participate in their "business" in court and if anyone gets in the way of that, journalist or otherwise, they are doing a disservice to the youth involved.

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EXPLORE THE IMPRINT

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ABOUT THE AUTHOR

Matthew Fraidin & Anna Jacobi

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Office of
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NO. 2 FY 24/25
DATE December 20, 2024

An Order Establishing the
The Maine Artificial Intelligence Task Force

WHEREAS, the recent proliferation of technologies that rely on artificial intelligence (AI) has significant policy implications for Maine's people, economy, and workforce;

WHEREAS, AI's potential positive impacts could include creation of new jobs and businesses, gains in productivity and efficiency, and reduced barriers to entry in some technical fields;

WHEREAS, up to a fifth of American jobs are considered "highly exposed" to AI – jobs for which AI could present both opportunities to increase performance and risks of displacement or other negative impacts;

WHEREAS, both established businesses and a growing community of startups in Maine have already begun to adopt AI-based technologies into their core business practices;

WHEREAS, AI relies on collecting and interpretating large amounts of data from end users, which makes it susceptible to reinforcing biases, removing transparency from decision-making, and misusing private consumer information;

WHEREAS, at least 26 other states have established or are in the process of developing task forces or similar bodies to study policy issues related to AI;

WHEREAS, Maine's Office of Information Technology has already taken steps to analyze risk for state infrastructure and has begun to develop capabilities to support state agency usage of AI tools;

WHEREAS, private industry, academia, and local and state government entities can collaboratively support and reinforce long-term AI policy strategies that leave Maine communities with less risk and better prepared for the future;

NOW THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to authority conferred by Me. Const. Art. V, Pt. 1, §§ 1 & 12, do hereby Order the following:

I. Task Force Established; Purpose

A. The Maine Artificial Intelligence Task Force ("Task Force") is hereby established.
B. The purpose of the Task Force is to investigate the implications of recent and anticipated advances in the field of AI for the State of Maine and make recommendations to:

1. Prepare Maine's economy and workforce for the opportunities and risks likely to result from advances in AI;
2. Protect Maine residents from potentially harmful uses of AI technologies, such as safeguarding consumer data privacy, mitigating bias in datasets, and mandating disclosure around AI utilization;
3. Explore the most promising uses for State agencies, quasi-State agencies, and other public entities such as municipalities to deploy AI technologies to address capacity gaps and improve service delivery to the populations they serve.

II. Membership, Chairs, and Advisory Committee

A. The Task Force shall consist of the following members:

1. The Commissioner of the Department of Labor or their designee;
2. The Commissioner of the Department of Economic and Community Development or their designee;
3. The Commissioner of the Department of Administrative and Financial Services designee;
4. The Commissioner of the Department of Education or their designee;
5. The Commissioner of the Department of Health and Human Services or their designee;
6. The Chancellor of the University of Maine System or their designee;
7. The President of the Maine Community College System or their designee;
8. The Director of Governor's Office of Policy Innovation and the Future or their designee;
9. The Director of the Maine Technology Institute or their designee;
10. Two members of the Senate appointed by the President of the Senate, including one member from each of the two parties holding the largest number of seats in the Legislature;
11. Two members of the House of the Representatives appointed by the Speaker of the House, including one member from each of the two parties holding the largest number of seats in the Legislature;
12. A municipal leader;
13. A representative of Maine workers;
14. A representative from a civil rights advocacy organization;
15. A representative from a consumer protection organization;
16. A representative from a large employer or industry group;
17. A representative from a small or medium business;
18. A representative from Maine's entrepreneurship community;

19. A leader from a Maine health care organization.

B. A Technical Advisory Committee shall inform the Task Force's work. The Technical Advisory Committee shall consist of the following members:

1. The Director of the Governor's Energy Office or their designee;
2. The President of the Maine Connectivity Authority or their designee;
3. The Maine Attorney General or their designee;
4. The Maine Chief Information Officer;
5. The Director of the Maine Office of Information Technology AI Center of Excellence;
6. Two subject matter experts in AI technologies;
7. A subject matter expert in legal issues presented by AI;
8. A subject matter expert in Maine workforce data;
9. A subject matter expert in financial markets.

C. The Governor shall designate two members to serve as Co-Chairs of the Task Force and, unless otherwise indicated, shall appoint the members of the Task Force and Technical Advisory Committee identified in Sections II(A)&(B). The Co-chairs may, in their discretion, appoint additional experts to the Technical Advisory Committee.

III. **Funding and Staffing**

A. The Governor's Office of Policy Innovation and the Future and the Office of Information Technology shall provide such staff as may be necessary to fulfill the Task Force's charge within existing resources and may seek staffing and financial support from other state agencies and private entities to accomplish the goals and work of the Task Force. Members of the Task Force and Technical Advisory Committee shall serve without compensation.

IV. **Proceedings, Records, and Report**

A. The Co-Chairs will preside at, set the agenda for, and schedule Task Force meetings. To the extent practical the Commission should conduct its work in a manner that is open and accessible to the public. Records, proceedings and deliberations of the Commission are not subject to the requirements of 1 M.R.S. c. 13, in accordance with sections 402(2)(F), (3)(J) and § 403(6) of that Chapter. The Commission may conduct its work through subcommittees, which may include non-Task Force members in advisory roles.

B. The Task Force shall issue a public report of its findings to the Governor and the State Legislature no later than October 31, 2025.

Date: December 20, 2024

Janet T. Mills, Governor