**Committee to Ensure Constitutionally Adequate Contact with Counsel – Compiled Questions and Answers from the First Meeting**

**Wednesday, September 21, 2022**

**Department of Public Safety – Paul Cavanaugh**

Questions

1. With regard to the confidentiality of attorney-client telephone conversations for persons who are in custody in a jail, municipal detention facility or correctional facility:
2. Please provide copies of any training materials, policies, procedures or guidance that are provided to members of the Maine State Police. .

Please provide materials related to procedures to be followed by a member of the Maine State Police who comes into possession of attorney-client telephone conversations.

Answers

 1(A). The MSP has a directive to its members that they are not to listen to phone calls between anyone in custody and their attorneys. Should such a call be identified while the member is listening, the member is to immediately stop listening, document relevant information about the call and how long they listened and report the incident to their supervisor and appropriate prosecutorial office. There are no documents or material to provide the committee.

 1(B) Our answer is the same here as above.

**Maine Criminal Justice Academy – Director Desjardins**

Questions

During the course of the meeting, the Committee discussed training of correctional officers, law enforcement officers and requested more information regarding the extent to which correctional officers and law enforcement officers are trained about how to ensure attorney - inmate confidentiality. This includes confidentiality during attorney calls, attorney visits, and of the handling of legal mail and documents. Does the MCJA have written training materials related to these topics? If so, could you please provide them to us?

Answers

As you’re probably aware the Mainer Criminal Justice Academy’s Board of Trustees approves the curricula for the basic certification training and certifies all law enforcement and corrections officers in Maine. The current basic training programs for both corrections and law enforcement have lesson blocks with sections that inform the students on the constitutional protections of individuals and includes attorney/client privilege.

The Basic Law Enforcement Training Program (BLETP) has additional instruction related to Constitutional protections, including Admissions and Confessions and the guidance from Supreme Court decisions, i.e. the Mirada decision and other prevailing legal decisions. These blocks are typically delivered by attorneys from the Maine Attorney General’s Office and have been a part of our curricula for many years.

Topics related to facility policies, internal system management, managing interactions with attorneys, etc. wouldn’t fall within the scope our basic training programs nor does the Academy have exclusive jurisdiction in these regards. I would defer to the specific agencies on how they train locally on specific or advanced trainings methods .

Attached are a few examples of the training goals and objects in our basic training programs and I’m happy to help provide additional information or refer you to the instructors that cover the material.

*Attachments*

* *3.1.0 Constitutional Law final LP*
* *3.3.0 Search and Seizure*
* *3.4.0 Admissions & Confessions*
* *3.5.0 Maine Criminal Law & Investigations*
* *BCTP Curriculum Outline*
* *Corrections Law Lesson Plan*

**Attorney General’s Office- Lisa Marchese**

Questions

1. The Committee requests copies of any training materials provided by the Office of the Attorney General to AAGs or Office of the Attorney General investigators related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.
2. The Committee requests copies of any policies, procedures, or guidance materials related to the use and confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities.  Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations, including any materials related to procedures to be followed in the event an AAG or investigator comes into possession of confidential communications.

Answers

The Office of the Attorney General has no written training material or policies, procedures or written guidance relating to confidential communications with DOC or County jail residents.    I have been with the Criminal Division of the  Attorney General’s Office for 36 years, the last 8 years as Division Chief, and I would represent that we maintain very few written policies or procedures that govern our day to day practice.  Although there is no written training material or guidance as it relates to privileged communications, we have a very specific practice in place if an AAG or a law enforcement officer we are working with comes into possession of privileged communications. This practice has been discussed with attorneys in the criminal division on numerous occasions and with the law enforcement agencies we work with. I wish to assure you and all individuals working on this important issue that the prosecution team, including law enforcement, does not want to possess or listen to any privileged communications. We recognize and respect that a person has a constitutional right to confidential communications with their attorney.    If an AAG or law enforcement officer we are working with believes they have been inappropriately provided a privileged call, that person immediately stops listening to the recording. If it is a law enforcement officer, that officer notifies the AAG assigned to the case, who immediately notifies me as the Division Chief and the defense attorney.  If an AAG comes into possession of a privileged phone call, that attorney stops listening and notifies me as the Division Chief and the defense attorney.  At this point in the process, we defer to the defense attorney as to how the recording should be handled.  Different defense attorneys take different approaches. In most cases, the Court is notified.

Although the OAG does not have written policies or procedures relating to privileged calls, in July of 2020, the OAG collaborated with the District Attorneys and sent a letter to all Sheriff and Jail Administrators, with a copy to the Executive Director of MCLIS, reminding them of the importance of protecting privileged communications.

*Attachments*

* *Jail cell letter*

**Department of Corrections – Commissioner Liberty**

Questions

The *Committee to Ensure Constitutionally Adequate Contact with Counsel* held its first meeting on Wednesday, September 7. During the course of the meeting, the Committee identified a number of questions and requests for the Department of Corrections.  Those questions are below:

1. The Committee requests copies of any correctional officer training materials provided by or known to the DOC related to confidentiality of attorney communications with residents at DOC facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.
2. The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with residents at DOC facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations.
3. The Committee requests copies of any written materials that are provided or available to residents regarding recording of telephone calls. If no such information is provided, it would be helpful to know that as well.
4. The Committee requests copies of any forms provided to residents that are used by the resident to provide the telephone numbers of their attorneys for the purpose of ensuring confidentiality of attorney calls.
5. The Committee requests copies of any policies, procedures, or guidance, including materials related to the use of video, laptops, or electronic means by a resident to confidentially communicate with attorneys.
6. The Committee requests copies of any policies, procedures, or guidance, including materials related to ensuring confidentiality of attorney visits with residents at DOC facilities.
7. The Committee requests copies of any policies, procedures, or guidance, including materials related to ensuring confidentiality (including storage policies) of legal materials held by residents at DOC facilities.
8. The Committee would like copies of any policies regarding strip/ body searches of residents following visits by attorneys to residents of Long Creek Development Center.
9. The Committee requests staffing data for DOC facilities, including, to the extent this information is available, the total positions at each facility and the current vacancy rate.
10. The Committee is interested in better understanding the degree to which the DOC provides guidance, technical assistance or oversight to DOC and to county and municipal facilities to help those facilities ensure that attorney client confidentiality is maintained.
11. The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with DOC residents who are present in courthouses.

Answers

* + - 1. Staff receive initial training during their Maine Criminal Justice Academy program, including a course titled Corrections Law which specifically addresses the issue of privileged communication.
* Attached is the PowerPoint for this course.
* Staff are also provided refreshed trainings throughout their employment on the issue of privileged communication.
* MDOC facility staff are required to read and sign off that they understand the pertinent policies.

2. Attached are MDOC policies that include and or overlap with the topic of privileged communication:

* Adult Facility Policy 21.2,
	+ - Prisoner Mail, Procedure D and Procedure K.1;
		- Adult Facility Policy 21.3, Prisoner Telephone System, Procedures A.16, 17, 18, Procedure B, and Procedure F.1;
		- Adult Facility Policy 21.4, Prisoner Visitation, Procedure A.10, 18 and Procedure K.1;
		- Juvenile Facility Policy 16.1, Resident Mail, Procedure A.13, Procedure C;
		- Juvenile Facility Policy 16.2, Access to Telephones, Procedure A. 11, 12, 13, Procedure C, and Procedure G.1;
		- Juvenile Facility Policy 16.3, Visitation, Procedure A.10, 15 and Procedure O.1.
		- Juvenile Facility Policy 14.1, Access to Legal Rights.

3. Residents of MDOC facilities receive a number of written documents that mention this topic, including:

* The adult facility phone policy is in each adult facility library and uploaded onto the facility Edovo tablet system.
* The juvenile facility phone policy is in the Long Creek library.
* The handbooks (attached) also make reference to the topic
	+ Mountain View, pages 10, 23
	+ Maine State Prison, page 23
	+ Bolduc Correctional , page 41
	+ Downeast Correctional Facility, page 18
	+ Women’s Services (MCC female), page 25
	+ Maine Correctional Center (male), pages 27-29
* The general phone policy (attached as Policy Supplemental to Handbook) is also contained in the adult facility handbooks
* In all MDOC facilities (including juvenile) there are signs next to the resident phones that state:

“WARNING It is possible that communications by or with prisoners (residents) made through any phone used by prisoners (residents) will be listened to and/or recorded by an investigative officer or other employee of the Maine Department of Corrections authorized to exercise law enforcement powers. This does NOT apply to attorney/client privileged calls.”

4. Residents of adult facilities fill out the attached form called Legal phone call list form .i.e., *Resident Telephone System Legal Call Number List.*

Juveniles at LCYDC do not need a form, as each juvenile has an attorney, and the facility is aware who represents each juvenile. The phone numbers for these attorneys are all designated as privileged.

* + If a juvenile wants to designate an additional attorney, they simply inform LCYDC staff. The addition happens seamlessly.

5. Generally speaking the MDOC does not encourage the use of video visitation, texting, and/or email for privileged communication between a resident and their legal counsel.

Primarily because:

* Resident use of email via departmental issued laptops and/or computer is only approved for those residents in certain educational programs.
* “Video visitation” is a term MDOC uses to designate a virtual visit by a family member/friend and includes a process for signing up for and agreeing to the technology utilization and other requirements for these sorts of visits.
* Those residents with access to text messaging via the Edovo tablet system are aware there is no way to designate recipients of text messages are legal counsel, and therefor there should be no belief that text messages can remain confidential.

6. Many of the attached policies relate to this question, including:

* Adult facility visit policy  (Procedure A.10, 18 and Procedure K.1);
* Juvenile facility visit policy (Procedure A.10, 15 and Procedure O.1);
* Signs in the visit rooms at all the MDOC facilities, including the juvenile facility state clearly:

“WARNING It is possible that communications by or with prisoners (residents) made during visits will be listened to and/or recorded by an investigative officer or other employee of the Maine Department of Corrections authorized to exercise law enforcement powers. This does NOT apply to attorney/client communications.”

7. The attached policies address this:

* The facility mail policy addresses
* The facility property policy
* Juvenile facility mail policy
1. The Committee would like copies of any policies regarding strip/ body searches of residents following visits by attorneys to residents of Long Creek Development Center.

Unclothed body searches of juvenile residents following visits from anyone (not exclusive to legal counsel) do not occur –unless there is reasonable suspicion that cannot be confirmed through less intrusive means.

* The attached juvenile facility visit policy outlines this (procedure L)
* LCYDC reports the last time an unclothed body search took place, post visit was prior to 2019.
1. As of 9/3/2022:

|  |  |  |
| --- | --- | --- |
|  | Total # officer or juvenile program worker positions | Vacancies |
| **MSP** | 206 | 45 |
| **MCC** | 167 | 53 |
| **MVCF** | 83 | 16 |
| **LCYDC** | 74 | 15 |
| Total | 530 | 129 |

1. The MDOC conducts reviews of county jails’ compliance to standards as outlined in the Detention and Correctional Standards for Maine Counties and Municipalities, which is attached as *jail standards.*

* + Standard J.20 outlines the method for compliance related to privileged communication.

The MDOC is not aware of county jails requesting technical assistance related to this mandatory standard. The MDOC would provide assistance on this topic if requested.

11. This is outside the jurisdiction of the MDOC.

*Attachments*

* *Adult Facility Mail Policy* *–* *see meeting #1 materials*
* *Adult Facility Phone Policy – see meeting #1 materials*
* *Adult Facility Property Policy*
* *Adult Facility Visits Policy* – *see meeting #1 materials*
* *BCF Resident Handbook*
* *Corrections Law PowerPoint*
* *DCF Resident Handbook*
* *Jail Standards – see meeting #1 materials*
* *Juvenile Facility Mail Policy – see meeting #1 materials*
* *Juvenile Facility Phone Policy* *– see meeting #1 materials*
* *Juvenile Facility Visit Policy – see meeting #1 materials*
* *Juvenile Legal Rights Policy*
* *Legal Phone Call List Form*
* *MCC Male Resident handbook*
* *MSP Handbook*
* *MVCF Handbook*
* *Policy Supplement to Handbook*
* *Women’s Services Resident Handbook*

**Maine Prosecutors Association – Maeghan Maloney**

Questions

1. The Committee requests copies of any training materials provided by or known to the Maine Prosecutors Association related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. The Committee is particularly interested in any  materials related to confidentiality of telephone conversations.
2. The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities.  Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations, including any materials related to procedures to be followed in the event a DA or ADA or district attorney investigator comes into possession of confidential communications.

Answers

*Attachments*

* *DVI Policy*