

# MAINE STATE LEGISLATURE

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# 132nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2025

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Legislative Document

No. 1780

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H.P. 1191

House of Representatives, April 24, 2025

**An Act to Secure Under Authority of a Subpoena Pretrial  
Statements from a Witness Other than the Defendant in a Criminal  
Proceeding**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

Presented by Representative SINCLAIR of Bath.

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

2               **Sec. 1. 15 MRSA §1322** is enacted to read:

3       **§1322. Witnesses other than defendant**

4               **1. Request for statement.** Any person, other than the defendant, with information  
5 relevant to the proceeding shall give a statement upon request of the defendant. The  
6 defendant may obtain the statement of the person by serving a written notice of statement  
7 upon the person whose statement is sought and upon the prosecution no later than 14 days  
8 before the date scheduled for the statement.

9               **2. Notice of statement.** The notice of statement under this section must state the time  
10 and place for the taking of the statement along with a description of the information sought  
11 in the statement or any materials to be examined. The defendant issuing the notice shall  
12 make reasonable efforts to confer with the person whose statement is requested in good  
13 faith regarding scheduling of a statement before serving a notice of statement. The notice  
14 of statement must describe the method by which the statement must be recorded, which  
15 may be by audio recording, audiovisual recording or stenographic means. A statement may  
16 be taken in person, by telephone or by remote electronic means.

17               **3. Process.** A notice of statement under this section, and the taking of the statement,  
18 are governed by the following procedures:

19               A. A subpoena must be served with the notice of statement to secure the presence of  
20 the person and any materials to be examined during the statement. A copy of the  
21 subpoena and the notice of statement must be sent to the prosecution and filed with the  
22 court;

23               B. Notwithstanding anything to the contrary in subsection 1 or 2, if a defendant is  
24 charged with a crime under Title 17-A, chapter 9 and the victim of that crime is a family  
25 or household member as defined by Title 19-A, section 4102, subsection 6 and it is the  
26 victim's statement that is sought, then the subpoena and notice of statement must be  
27 served upon the District Attorney's office handling that prosecution and not directly  
28 upon the victim. The State shall provide the notice and subpoena to the victim.

29               (1) A notice under this paragraph must be served upon the District Attorney's office  
30 no later than 45 days before the date scheduled for the statement.

31               (2) The State shall provide certification to the defendant and the court that the  
32 notice and subpoena were provided to the victim no later than 14 days before the  
33 date scheduled for the statement.

34               (3) Statements taken from victims of crimes of domestic violence must be taken  
35 through hybrid means unless the counsel for the defendant can provide a safe and  
36 secure location for a statement to be taken in person.

37               (4) If the State cannot locate the named victim to provide notice and subpoena  
38 required under this section, the court shall consider that failure as a failure to appear  
39 by a witness under paragraph D.

40               For the purposes of this paragraph, "hybrid means" means the use of telephone, Internet  
41 or other remote audio and video communication technologies to conduct hearings or

1 other judicial proceedings at which one or more, but not all, attorneys, parties and  
2 witnesses participate without being present in the same physical location as the court;

3 C. After the statement is taken, the defendant shall file a confirmation that the statement  
4 was taken;

5 D. If a person who has been served a notice of statement and a subpoena fails to appear  
6 or provide the requested information or materials, the defendant may file a motion  
7 requesting the court to issue an order barring that person from appearing as a witness  
8 in the case on any topic described in the notice of statement; and

9 E. At any time during the taking of the statement, a person may terminate the statement  
10 if the examination is being conducted in bad faith or in such a manner as to  
11 unreasonably annoy, embarrass or oppress the person. The defendant may file a motion  
12 to have the court order a person to resume the statement. The defendant bears the  
13 burden of proving to the court by a preponderance of the evidence that the examination  
14 was not being conducted in such a manner as to unreasonably annoy, embarrass or  
15 oppress the person. If the statement has been terminated, the statement may be resumed  
16 thereafter only upon an order of the court in which the action is pending.

17 **4. Remedy.** The following remedies are available under this section.

18 A. A court that receives a request under subsection 3, paragraph D for an order barring  
19 a person from appearing as a witness shall schedule a hearing to determine:

20 (1) Whether the potential witness was served the notice of statement and subpoena;  
21 and

22 (2) Whether the potential witness appeared as required by the notice of statement.

23 B. If the court finds by clear and convincing evidence that a properly served person did  
24 not appear, the court shall issue an order barring that potential witness from any future  
25 testimony in the pending matter.

26 C. If a person terminates a statement under subsection 3, paragraph E, the defendant  
27 may move to have the person barred from appearing as a witness. The court shall  
28 schedule a hearing on the motion to determine if the statement was being conducted in  
29 bad faith or in such a manner as to unreasonably annoy, embarrass or oppress the  
30 person. If a court finds by clear and convincing evidence that the statement was not  
31 being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass  
32 or oppress the person, the court shall issue an order barring that person from appearing  
33 as a witness in the pending matter.

34 D. Any person who is barred from appearing as a witness under paragraph B or C may  
35 not appear as a witness in any future criminal proceedings involving the same alleged  
36 conduct.

37 **5. No contact order.** This section and the procedure under this section may not be  
38 construed to modify an order of a court prohibiting contact between a defendant and a  
39 named person in that order.

## 40 SUMMARY

41 This bill allows a defendant to request that any person with information relevant to the  
42 proceeding give a statement upon being served a written notice of statement no later than

1 14 days before the date scheduled for the statement to be taken. The bill provides a  
2 procedure to bar a person who fails to appear for a scheduled statement from appearing as  
3 a witness in any case on the topic described in the notice of statement. The bill also allows  
4 a person to terminate a statement if the examination is being conducted in bad faith.