

# MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date 12 November 1968

, Elmer Mitchell, Director, Division of Vocational Rehabilitation

Dept. Education

From Courtland D. Perry, Assistant Atty. Gen'l.

Dept. Mental Health and Corrections

Subject Maine State Prison Furnishing Prisoner Information and Access to Records to Outside Agency.

SYLLABUS:

When the furnishing of information regarding a prisoner, or permitting access to his records, is cardinal to institutional program and the involvement of an outside agency in that program, or the extension thereof, it may be done without violation of 34 M.R.S.A. 1964, §1, and it may be done without the necessity for the issuance of a subpoena. It is considered desirable to have a release of information form signed by each prisoner with respect to whom information is sought.

FACTS:

The Division of Vocational Rehabilitation of the Department of Education will be sending psychologists to the Maine State Prison to evaluate prisoners and to administer psychotherapy in connection with that division's participation with the Maine State Prison in vocational rehabilitation programming. It is considered primary that such psychologists have access to information and records concerning prisoners to facilitate the evaluation of prisoners and the administration of therapy.

QUESTION:

May the Maine State Prison furnish prisoner information and make available prisoner records to psychologists in the employ of the Division of Vocational Rehabilitation, information obtained to be used in the evaluation or treatment of prisoners in connection with the vocational rehabilitation program?

ANSWER:

Yes.

OPINION:

The Department of Mental Health and Corrections and its component institutions are subject to the following statute:

"...All orders of commitment, medical and administrative records in the department are held to be confidential. Such record may be subpoenaed by a court of record."

34 M.R.S.A. 1964, §1.

It appears clear that the only purpose for the enactment of the above quoted provision was to assure to patients and inmates of institutions under the control of the Department of Mental Health and Corrections, and to others served by the department, protection against the disclosure of information contained in records relating to them,

which may work to their detriment; no other purpose can be reasonably ascertained for this enactment. Accepting as valid this view of the purpose for the statute, the meaning and application of the phrase, "are held to be confidential" become uncertain. To apply the letter of the statute would be to say that patient and inmate records are to be kept secret and are to be divulged to no one under any circumstances. Applying the letter of the statute to the facts before us would be to say that psychologists in the employ of the Division of Vocational Rehabilitation, working in conjunction with the Maine State Prison in its efforts to effect the rehabilitation of prisoners would be precluded from access to such records, thus rendering the Division of Vocational Rehabilitation unable to render service in the rehabilitation process. Surely, the Legislature did not intend this result. With the phrase, "are held to be confidential," cloaked in uncertainty, despite the apparent clarity of its context; bearing in mind the cogent reasons for divulging information and permitting access to records for the purpose here described; and further, considering the authority of the department as expressed in 34 M.R.S.A. 1964, §527 to conduct rehabilitation programs, we direct our attention to an elemental principle of statutory construction,

".....it is fundamental that we look to the purpose for which a law is enacted and that we avoid a construction which leads to a result clearly not within the contemplation of the lawmaking body. Above all, we should seek to avoid an interpretation which leads to a result which is absurd, even though to do so we may have to disregard the strict letter of the enactment...."

Inhabitants of the Town of Ashland vs. John C. Wright 139 Me. 283,285 (1943)

".....There is also authority for the rule that uncertainty as to the meaning of a statute may arise from the fact that giving a literal interpretation to the words would lead to such unreasonable, unjust, impracticable, or absurd consequences as to compel a conviction that they could not have been intended by the Legislature...."  
50 Am. Jur. Stats. §226, (1944)

We submit that this rule of construction is applicable here, and that to hold the statute in question to restrict the divulging of information from, or access to, records of prisoners when the purpose for inquiry into such records is evaluation of the person, or to assist in the administration of treatment in connection with the vocational rehabilitation program as part of the Maine State Prison overall rehabilitation program, would be entirely inconsistent with the purpose of the statute, i.e., the protection of the prisoner; would be inconsistent with the conduct of effective institutional programming and would truly be unreasonable, unjust, impracticable and absurd.

We are, therefore, of the opinion that when the furnishing of information regarding a prisoner, or permitting access to his records, is cardinal to institutional program and the involvement of an outside agency in that program, or the extension thereof, it may be done without violation of 34 M.R.S.A. 1964, §1 and that it may be done without the necessity for the issuance of a subpoena.

We, however, approach the submission of this opinion with some caution, being sensitive to the proclivities of prisoners to protest and attack any considered infringe-

ment of rights and thus, further submit that it is desirable when an outside agency is involved, as here described, to secure from each prisoner his written consent to the disclosure of information and the grant of access to his records.

We attach our suggested form for use for this purpose.

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Courtland D. Perry  
Assistant Attorney General

Ref: A.G. Opinions

14 March 1962 - Confidentiality of Records

25 July 1967 - Privileged Communications Between Institutionalized Persons and  
Psychologists and Psychological Examiners

AUTHORIZATION TO FURNISH INFORMATION INCLUDING ACCESS TO RECORDS

I authorize and request the Warden of the Maine State Prison, or his delegate, to furnish \_\_\_\_\_, a psychologist, acting on behalf of the Division of Vocational Rehabilitation of the Maine Department of Education, all information concerning my case history pertinent to my rehabilitation, and to permit said \_\_\_\_\_ to have access to, and copies of, classification and other records on file at the Maine State Prison.

In granting this authorization it is my understanding that information furnished or obtained from examination of records will be used in the evaluation of my need or aptitude for, or participation in, vocational rehabilitation programs and for no other purpose, and that the same will be kept confidential.

Signed \_\_\_\_\_

Witness \_\_\_\_\_

DATE: \_\_\_\_\_