

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

200
R. of S.

L.D. 2018

(Filing No. S- 635)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44

STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 819, L.D. 2018, Bill, "An Act Concerning the Freedom of Access Laws as They Relate to Disclosure of Public Employee Personnel Records"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, there is an omission in current law that may be interpreted to allow criminal justice intelligence and investigative records in the custody of the Department of Corrections to be examined or disseminated; and

Whereas, disclosure of these sensitive criminal justice records could endanger the life or safety of criminal justice personnel and the law must be clarified immediately to prevent such disclosure; 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, '

Further amend the bill by striking out all of sections 1 and 2 and inserting in their place the following:

'Sec. 1. 5 MRSA §7070, sub-§2, ¶E, as amended PL 1991, c. 229, §1, is further amended to read:

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to S.P. 819, L.D. 2018

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

E. Complaints Except as provided in section 7070-A complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed.

For purposes of this paragraph, "final written decision" means:

- (1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days;

Sec. 2. 5 MRSA §7070-A is enacted to read:

§7070-A. Personnel records; deadly force or physical force by law enforcement officer

The name of a law enforcement officer is not confidential under section 7070, subsection 2, paragraph E in cases involving:

- 1. Deadly force. The use of deadly force by a law enforcement officer; or
- 2. Physical force. The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in subsections 1 and 2, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

Sec. 3. 16 MRSA §614, sub-§1, as amended by PL 1985, c. 552, is further amended to read:

R. of S.

2 1. **Limitation on dissemination of intelligence and**
3 **investigative information.** Reports or records in the custody of a
4 local, county or district criminal justice agency, in the custody
5 of the office of State Fire Marshal, in the custody of the
6 Department of Corrections or in the custody of the criminal law
7 enforcement units of the Department of Marine Resources or the
8 Department of Inland Fisheries and Wildlife containing
9 intelligence and investigative information shall---be are
10 confidential and shall may not be disseminated, if there is a
11 reasonable possibility that public release or inspection of the
12 report or record may would:

- 14 A. Interfere with law enforcement proceedings;
- 16 B. Result in public dissemination of prejudicial
17 information concerning an accused person or concerning the
18 prosecution's evidence that will interfere with the ability
19 of a court to impanel an impartial jury;
- 20 C. Result in public dissemination of information about the
21 private life of an individual in which there is no
22 legitimate public interest and which that would be offensive
23 to a reasonable person;
- 24 D. Disclose the identity of a confidential source;
- 26 E. Disclose confidential information furnished only by the
27 confidential source;
- 28 F. Disclose investigative techniques and procedures or
29 security plans and procedures not generally known by the
30 general public; or
- 31 G. Endanger the life or physical safety of law enforcement
32 personnel.'

38 Further amend the bill by striking out all of sections 4, 5
39 and 6 and inserting in their place the following:

40 'Sec. 4. 25 MRSA §1631, sub-§17 is enacted to read:

42 17. Investigations of deadly force or physical force by law
43 enforcement officer. The name of a law enforcement officer in
44 cases involving:

- 46 A. The use of deadly force by a law enforcement officer; or
- 48 B. The use of physical force by a law enforcement officer
49 resulting in death or serious bodily injury.

2 In cases specified in paragraphs A and B, regardless of whether
4 disciplinary action is taken, the findings of any investigation
6 into the officer's conduct are no longer confidential when the
8 investigation is completed and a decision on whether to bring
criminal charges has been made, except that if criminal charges
are brought, the findings of the investigation remain
confidential until the conclusion of the criminal case.

10 Sec. 5. 30-A MRSA §503, sub-§1-A is enacted to read:

12 1-A. Investigations of deadly force or physical force by
14 law enforcement officer. The name of a law enforcement officer
16 is not confidential under subsection 1, paragraph B, subparagraph
18 (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or

B. The use of physical force by a law enforcement officer
20 resulting in death or serious bodily injury.

22 In cases specified in paragraphs A and B, regardless of whether
24 disciplinary action is taken, the findings of any investigation
26 into the officer's conduct are no longer confidential when the
28 investigation is completed and a decision on whether to bring
criminal charges has been made, except that if criminal charges
are brought, the findings of the investigation remain
confidential until the conclusion of the criminal case.

30 Sec. 6. 30-A MRSA §2702, sub-§1-A is enacted to read:

32 1-A. Investigations of deadly force or physical force by
34 law enforcement officer. The name of a law enforcement officer
36 is not confidential under subsection 1, paragraph B, subparagraph
38 (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or

B. The use of physical force by a law enforcement officer
40 resulting in death or serious bodily injury.

42 In cases specified in paragraphs A and B, regardless of whether
44 disciplinary action is taken, the findings of any investigation
46 into the officer's conduct are no longer confidential when the
48 investigation is completed and a decision on whether to bring
criminal charges has been made, except that if criminal charges
are brought, the findings of the investigation remain
confidential until the conclusion of the criminal case.'

COMMITTEE AMENDMENT " A " to S.P. 819, L.D. 2018

2
4
6
8

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

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

10
12

STATEMENT OF FACT

14
16
18
20
22

This amendment provides that in cases related to the use of deadly force or physical force resulting in death or serious bodily injury by a law enforcement officer, the name of the law enforcement officer is not confidential. The amendment also provides that the findings of an investigation are no longer confidential when a decision not to bring criminal charges has been made but if criminal charges are brought, the findings of the investigation remain confidential until conclusion of the case.

24
26
28

The amendment also changes the standard for maintaining confidentiality of certain intelligence and investigative records in situations when there is a reasonable possibility that public release or inspection would result in conditions specified in this bill and included within the confidentiality provisions records of the Department of Corrections.

Reported by Senator Gauvreau for the Committee on Judiciary.
Reproduced and Distributed Pursuant to Senate Rule 12.
(3/17/92) (Filing No. S-635)