

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1685

H.P. 1174

House of Representatives, March 4, 1999

**An Act Governing Privileged Communications between Victims of
Crimes and Governmental Victim Witness Advocates.**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative POVICH of Ellsworth.
Cosponsored by Representatives: PEAVEY of Woolwich, TOBIN of Dexter.

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

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Sec. 1. 16 MRSA §53-C is enacted to read:

§53-C. Privileged communications to governmental victim witness advocates or coordinators

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Crime" means a criminal offense in which there is a victim, as defined in this section.

B. "Victim" means:

(1) A person against whom a crime has been committed;

(2) The immediate family of a victim of a crime if:

(a) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

(b) Due to death, age or physical or mental disease, disorder or defect, the victim is unable to participate as allowed under this chapter.

C. "Victim witness advocate" or "victim witness coordinator" means an employee of or volunteer for a district attorney, the Attorney General or the United States Attorney whose primary job function is to advise, counsel or assist victims or witnesses of crimes, to supervise other employees or volunteers who perform that function or to administer the program.

2. Privileged communications. Communications are privileged from disclosure as follows.

A. A victim may refuse to disclose and may deny permission to a victim witness advocate or coordinator to disclose confidential written or oral communications between the victim and the advocate or coordinator and written records, notes, memoranda or reports concerning the victim.

B. Except as provided in subsection 3, a victim, advocate or coordinator or the victim advocate's or coordinator's employer may not be required, through oral or written

2 testimony or through production of documents, to disclose to
3 a court in criminal or civil proceedings or to any other
4 agency or person confidential communications between the
5 victim and the advocate or coordinator.

6 3. Exceptions. Privileged communications may be disclosed
7 in the following cases:

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9 A. Disclosure may be made to the district attorney,
10 Attorney General or the United States Attorney or their
11 assistants:

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13 B. When disclosure is required under Title 22, chapter 1071
14 and that disclosure is in accordance with that chapter:

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16 C. When a court in the exercise of its discretion
17 determines the disclosure of information necessary to the
18 proper administration of justice, an inspection of records
19 may be held in camera by the judge to determine whether
20 those records contain relevant information. This proceeding
21 does not entitle an opposing party to examine the records
22 unless those records are made available by the court:

23
24 D. When a victim dies or is incapable of giving consent and
25 disclosure is required for an official law enforcement
26 investigation or criminal proceeding regarding the cause of
27 that victim's death or incapacitation; or

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29 E. Evidence of an exculpatory nature must be disclosed to
30 the criminal defendants pursuant to the Maine Rules of
31 Criminal Procedure, Rule 16.

32 33 34 35 **SUMMARY**

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37 This bill provides that information communicated to victim
38 witness advocates and coordinators remains confidential within
39 the office of the prosecutor. Such communications are currently
40 not explicitly confidential pursuant to law, and some trial
41 judges have ordered that such communications be made available to
42 defendants. This bill makes disclosure of exculpatory evidence
to criminal defendants mandatory.