

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)

SAC
ROS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

L.D. 1946

Date: 4-11-22

(Filing No. H-975)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1451, L.D. 1946, "An Act To Ensure Constitutionally Adequate Contact with Counsel"

Amend the bill by striking out the title and substituting the following:

'Resolve, Establishing the Committee To Ensure Constitutionally Adequate Contact with Counsel'

Amend the bill by striking out everything after the title and inserting the following:

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

Whereas, this resolve establishes the Committee To Ensure Constitutionally Adequate Contact with Counsel to conduct a review to ensure that residents of Department of Corrections correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities and criminal defendants in court facilities have constitutionally adequate contact with counsel; and

Whereas, the review must be initiated before the 90-day period expires in order that the review may be completed and a report submitted in time for submission to the next legislative session; 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, be it

Sec. 1. Committee established. Resolved: That the Committee To Ensure Constitutionally Adequate Contact with Counsel, referred to in this resolve as "the constitutional communications committee," is established.

Sec. 2. Committee membership. Resolved: That, notwithstanding Joint Rule 353, the constitutional communications committee consists of 16 members appointed as follows:

COMMITTEE AMENDMENT

- 1 1. Two members of the Senate appointed by the President of the Senate, including
- 2 members from each of the 2 parties holding the largest number of seats in the Legislature;
- 3 2. Three members of the House of Representatives appointed by the Speaker of the
- 4 House, including members from each of the 2 parties holding the largest number of seats
- 5 in the Legislature;
- 6 3. The Commissioner of Corrections or the commissioner's designee;
- 7 4. The Attorney General or the Attorney General's designee;
- 8 5. The Commissioner of Public Safety or the commissioner's designee;
- 9 6. The Executive Director of the Maine Commission on Indigent Legal Services or the
- 10 executive director's designee;
- 11 7. The president of a statewide association of sheriffs or the president's designee;
- 12 8. The president of a statewide association of criminal defense lawyers or the
- 13 president's designee;
- 14 9. The president of a statewide association of prosecutors or the president's designee;
- 15 10. A representative of a civil rights organization whose primary mission includes the
- 16 advancement of racial justice, appointed by the President of the Senate;
- 17 11. A representative of a civil liberties organization whose primary mission is the
- 18 protection of civil liberties, appointed by the Speaker of the House;
- 19 12. A representative of a statewide prisoners' rights organization, appointed by the
- 20 President of the Senate; and
- 21 13. A representative of a statewide organization whose mission includes advocating
- 22 for victims and survivors of domestic violence, appointed by the Speaker of the House.

23 **Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate chair

24 and the first-named House of Representatives member is the House chair of the

25 constitutional communications committee.

26 **Sec. 4. Appointments; convening of committee. Resolved:** That all

27 appointments must be made no later than 30 days following the effective date of this

28 resolve. The appointing authorities shall notify the Executive Director of the Legislative

29 Council once all appointments have been completed. After appointment of all members,

30 the chairs shall call and convene the first meeting of the constitutional communications

31 committee. If 30 days or more after the effective date of this resolve a majority of but not

32 all appointments have been made, the chairs may request authority and the Legislative

33 Council may grant authority for the constitutional communications committee to meet and

34 conduct its business.

35 **Sec. 5. Duties. Resolved:** That the constitutional communications committee shall:

- 36 1. Review the federal and state constitutional and statutory requirements concerning
- 37 adequate communications with counsel for those involved in the criminal justice system;
- 38 2. Review recent policies and practices that have resulted in reported violations of the
- 39 requirements in the State;

1 3. Review how other jurisdictions ensure confidential communications by telephone,
2 video or electronic communication or in person between counsel and criminal defendants
3 that are incarcerated or detained or in court facilities for court proceedings;

4 4. Review how other jurisdictions ensure opportunities for document review by
5 incarcerated persons without interception, monitoring, copying, redaction or other action
6 or review of documents by anyone acting on behalf of a correctional facility, a jail or the
7 State;

8 5. Review remedies used by other jurisdictions when the constitutional and statutory
9 requirements are not met, including, but not limited to, exclusion of evidence,
10 disqualification to participate in prosecution, licensure discipline and expanded
11 opportunities for post-conviction review; and

12 6. Develop recommendations to implement in this State to ensure that residents of
13 Department of Corrections correctional and detention facilities, persons who are
14 incarcerated in county jails and other county correctional facilities and criminal defendants
15 in court facilities have constitutionally adequate contact with counsel.

16 **Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide
17 necessary staffing services to the constitutional communications committee, except that
18 Legislative Council staff support is not authorized when the Legislature is in regular or
19 special session.

20 **Sec. 7. Report. Resolved:** That, no later than November 2, 2022, the constitutional
21 communications committee shall submit a report that includes a summary of its activities
22 and recommendations, including suggested legislation, to the Joint Standing Committee on
23 Judiciary for presentation to the First Regular Session of the 131st Legislature.

24 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
25 takes effect when approved.'

26 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
27 number to read consecutively.

28 **SUMMARY**

29 This amendment replaces the bill with a resolve that establishes the 16-member
30 Committee To Ensure Constitutionally Adequate Contact with Counsel. The constitutional
31 communications committee is established to ensure that residents of Department of
32 Corrections correctional and detention facilities, persons who are incarcerated in county
33 jails and other county correctional facilities and criminal defendants in court facilities have
34 adequate contact with counsel. The constitutional communications committee must submit
35 a report to the Joint Standing Committee on Judiciary by November 2, 2022.

36 **FISCAL NOTE REQUIRED**

37 (See attached)



130th MAINE LEGISLATURE

LD 1946

LR 2256(02)

An Act To Ensure Constitutionally Adequate Contact with Counsel

Fiscal Note for Bill as Amended by Committee Amendment *ACH-975*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Legislative Cost/Study

Legislative Cost/Study

The general operating expenses of this study are projected to be \$1,250 in fiscal year 2021-22 and \$1,500 in fiscal year 2022-23. The Legislature's budget for the 2022-2023 biennium includes an estimated \$6,108 in fiscal year 2022 and \$10,000 in fiscal year 2022-23 for the costs of legislative studies, as well as \$31,260 of balances carried over from prior years for this purpose. Whether these amounts are sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature. The additional costs of providing staffing assistance to the study during the interim can be absorbed utilizing existing budgeted staff resources.

Fiscal Detail and Notes

Any additional costs for the departments and agencies selected to serve on the committee are assumed to be minor and can be absorbed within existing budgeted resources.