

MAINE STATE LEGISLATURE

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MAJORITY

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STATE OF MAINE

SENATE

131ST LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S P 635, L D 1603, "An Act to Implement the Recommendations of the Committee To Ensure Constitutionally Adequate Contact with Counsel"

Amend the bill by striking out everything after the enacting clause and inserting the following

'PART A

Sec. A-1. 4 MRSA §1804, sub-§3, ¶N, as amended by PL 2021, c 481, §3, is further amended to read

N Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D, and

Sec. A-2. 4 MRSA §1804, sub-§3, ¶O, as enacted by PL 2021, c 481, §4, is amended to read

O Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit Any summons or subpoena may be served by registered mail with return receipt Subpoenas issued under this paragraph may be enforced by the Superior Court, and

Sec. A-3. 4 MRSA §1804, sub-§3, ¶P is enacted to read

P Develop and maintain a registry of names, telephone numbers and other contact information for attorneys who provide legal services to persons who are incarcerated The commission shall on a weekly basis provide these names, telephone numbers and other contact information to all sheriffs' offices and to the Department of Corrections On the Monday following transmission of the information, the sheriffs' offices and the Department of Corrections have constructive notice that communications to and from these attorneys by residents of jails and correctional facilities are subject to the

COMMITTEE AMENDMENT

1 attorney-client privilege The attorneys' names, telephone numbers and other contact
2 information are confidential

3 **Sec. A-4. 5 MRSA §200-N** is enacted to read

4 **§200-N. Confidential attorney-client communications**

5 **1. Policies.** By January 1, 2024, the Attorney General shall adopt a written policy for
6 the protection of confidential attorney-client communications by employees and agents of
7 the Attorney General, which must include, at a minimum, processes to protect and ensure
8 confidentiality of attorney-client communications and processes to be followed in the event
9 that there is a breach of attorney-client confidentiality

10 **2. Training.** By January 1, 2024, the Attorney General shall develop a training
11 program for all state, county and municipal law enforcement officers and investigators
12 who, as part of a criminal investigation, may inadvertently hear confidential attorney-client
13 communications, which must include, at a minimum, practices and procedures for
14 protecting and ensuring confidential attorney-client communications and practices and
15 procedures to be followed in the event that there is a breach of attorney-client
16 confidentiality

17 **Sec. A-5. 15 MRSA §714** is enacted to read

18 **§714. Intercepted attorney-client communications of jail and correctional facility**
19 **residents**

20 **1. Intercepted attorney-client communications of jail and correctional facility**
21 **residents.** If the sender or the recipient of an intercepted oral communication or wire
22 communication was, at the time the communication was made, a resident in either a jail or
23 an adult or juvenile correctional facility administered by the Department of Corrections and
24 the other party was an attorney and if the resident demonstrates that the jail or correctional
25 facility had actual or constructive notice at the time the communication was made of the
26 attorney's name and, if the communication involved the use of a telephone, the jail or
27 correctional facility had actual or constructive notice at the time that the communication
28 was made of the attorney's telephone number and the communication was made directly to
29 or from that telephone number

30 **A** The contents of the intercepted oral communication or wire communication and the
31 fact and circumstances of the communication are not admissible in a criminal
32 proceeding, including a proceeding under chapter 305-A,

33 **B** A person who viewed or listened to the intercepted communication and did not
34 immediately discontinue viewing or listening to the communication as soon as the
35 person had sufficient information to determine that the sender or the recipient of the
36 communication was, at the time the communication was made, a resident in a jail or
37 correctional facility and the other part was an attorney, is disqualified from
38 participating in an investigation of the resident and from appearing as a witness in a
39 criminal proceeding in which the resident is a defendant, including a proceeding under
40 chapter 305-A, and

41 **C** A person who viewed or listened to the intercepted communication and saw or heard
42 information that may be relevant to a pending or anticipated charge against the resident
43 or a defense the resident may assert, or may lead to the discovery of that evidence, is

1 disqualified from participating in the investigation of the resident and from appearing
 2 as a witness in the pending or anticipated criminal proceeding in which the resident is
 3 a defendant, including a subsequent proceeding under chapter 305-A on the pending or
 4 anticipated charge

5 For purposes of this subsection, the inclusion of the attorney's name and telephone number
 6 on a list transmitted by the Maine Commission on Indigent Legal Services pursuant to Title
 7 4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of
 8 Corrections constitutes constructive notice to a jail in the same county as the sheriff's office
 9 or to all correctional facilities administered by the Department of Corrections, respectively,
 10 beginning on the Monday following the transmission

11 2. Application of other law or rule. This section does not limit the applicability of
 12 any other provision of law or of the Maine Rules of Evidence regarding the admissibility
 13 or inadmissibility in evidence of attorney-client communications that do not meet the
 14 requirements of this section

15 **Sec. A-6. 25 MRSA §2802, first ¶**, as amended by PL 2019, c 103, §1, is further
 16 amended to read

17 There is created a board of trustees for the academy consisting of ~~18~~ 19 members as
 18 follows the Commissioner of Public Safety, ex officio, the Attorney General, ex officio,
 19 the Game Warden Colonel in the Department of Inland Fisheries and Wildlife, ex officio,
 20 the Commissioner of Corrections, ex officio, the Chief of the State Police, ex officio, and
 21 the following to be appointed by the Governor a county sheriff, a chief of a municipal
 22 police department, 2 officers of municipal police departments who are not police chiefs, an
 23 educator who is not and has never been a sworn member of a law enforcement agency, a
 24 criminal prosecutor from one of the offices of the District Attorney, a representative of a
 25 federal law enforcement agency, 3 citizens each of whom is not and has never been a sworn
 26 member of a law enforcement agency, a municipal official who is not and has never been
 27 a sworn member of a law enforcement agency, one nonsupervisory corrections officer
 28 representing a state or county correctional facility, one person who is an attorney who
 29 represents defendants in criminal cases and one person knowledgeable about public safety
 30 who has been recommended to the Governor by the Wabanaki tribal governments of the
 31 ~~Arroostook Band of Micmaqs~~ Mi'kmaq Nation, the Houlton Band of Maliseet Indians, the
 32 Passamaquoddy Tribe at Motahkmikuk, the Passamaquoddy Tribe at Sipayik and the
 33 Penobscot Nation The member appointed by the Governor based on the recommendation
 34 of the Wabanaki tribal governments must be recommended by the tribal governments by a
 35 process determined by those governments that provides for the board membership to rotate
 36 among the tribal governments

37 **Sec. A-7. 25 MRSA §2803-B, sub-§1, ¶M**, as amended by PL 2021, c 342, §2,
 38 is further amended to read

39 M Freedom of access requests The chief administrative officer of a municipal, county
 40 or state law enforcement agency shall certify to the board annually that the agency has
 41 adopted a written policy regarding procedures to deal with a freedom of access request
 42 and that the chief administrative officer has designated a person who is trained to
 43 respond to a request received by the agency pursuant to Title 1, chapter 13, ~~and~~

44 **Sec. A-8. 25 MRSA §2803-B, sub-§1, ¶N**, as enacted by PL 2021, c 342, §3, is
 45 amended to read

1 N Unannounced execution of search warrants, and

2 **Sec. A-9. 25 MRSA §2803-B, sub-§1, ¶O** is enacted to read

3 O By January 1, 2024, the confidentiality of attorney-client communications, which
 4 must include, at a minimum, processes to protect and ensure confidentiality of
 5 attorney-client communications and processes to be followed in the event that there is
 6 a breach of attorney-client confidentiality

7 **Sec. A-10. 25 MRSA §2804-C, sub-§2-G** is enacted to read

8 **2-G. Training regarding confidential attorney-client communications.** Beginning
 9 January 1, 2024, the board shall include in the basic law enforcement training program a
 10 block of instruction on the confidentiality of attorney-client communications, including the
 11 processes that law enforcement agencies use to protect and ensure the confidentiality of
 12 attorney-client communications and the processes that law enforcement agencies follow in
 13 the event that there is a breach of attorney-client confidentiality

14 **Sec. A-11. 25 MRSA §2804-D,** as amended by PL 2017, c 436, §1, is further
 15 amended to read

16 **§2804-D. Basic corrections training**

17 **1. Required.** As a condition to the continued employment of any person as a
 18 corrections officer, that person must successfully complete, within the first 12 months of
 19 employment, a basic training course as approved by the board. Thereafter, as a condition
 20 of continued employment as a corrections officer, the officer must satisfactorily maintain
 21 the basic certification. The board, under extenuating and emergency circumstances in
 22 individual cases, may extend the 12-month period for not more than 180 days. The board,
 23 in individual cases, may waive basic training requirements when the facts indicate that an
 24 equivalent course has been successfully completed in another state or federal jurisdiction.
 25 A full-time correctional trade instructor must meet the training requirements established
 26 under this subsection for corrections officers. Beginning January 1, 2018, the basic training
 27 course must include 8 hours of training in how to identify, understand and respond to signs
 28 of mental illnesses and substance use disorder that is provided by a trainer who is certified
 29 by a nationally recognized organization that provides evidence-based mental health first
 30 aid training. Beginning January 1, 2024, the basic training course must include a block of
 31 instruction on the confidentiality of attorney-client communications, including the
 32 processes that correctional facilities and jails use to protect and ensure the confidentiality
 33 of attorney-client communications and the processes that correctional facilities and jails
 34 follow in the event that there is a breach of attorney-client confidentiality

35 **Sec. A-12. 30-A MRSA §291** is enacted to read

36 **§291. Confidential attorney-client communications**

37 By January 1, 2024, each district attorney shall adopt a written policy for the protection
 38 of confidential attorney-client communications by employees and agents of the district
 39 attorney's office, which must include, at a minimum, processes to protect and ensure
 40 confidentiality of attorney-client communications and processes to be followed in the event
 41 that there is a breach of attorney-client confidentiality

42 **Sec. A-13. 34-A MRSA §1208, sub-§8** is enacted to read

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8. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards

A By January 1, 2024, for the protection of confidential attorney-client communications by each county and municipal detention facility The standards must include, at a minimum

(1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to residents of the facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each facility must proactively and by request of the attorney or the attorney's client who is a resident of the facility confirm the registration of an attorney's name, telephone number and other contact information, and

(2) Processes to be followed in the event that there is a breach of attorney-client confidentiality, and

B By January 1, 2024, requiring each county and municipal detention facility to designate space within the facility for attorney-client meetings and the exchange of case materials and to make that space available to residents of the facility and their attorneys on a timely basis

Sec. A-14. 34-A MRSA §1402, sub-§14 is enacted to read

14. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards

A By January 1, 2024, for the protection of confidential attorney-client communications by each correctional facility The standards must include, at a minimum

(1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each correctional facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to persons who are residents of the correctional facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each correctional facility must proactively and by request of the attorney or the attorney's client confirm the registration of an attorney's name, telephone number and other contact information, and

(2) Processes to be followed in the event that there is a breach of attorney-client confidentiality, and

B By January 1, 2024, requiring each correctional facility to designate space within the correctional facility for attorney-client meetings and the exchange of case materials and to make that space available to residents of the correctional facility and their attorneys on a timely basis

PART B

1 **Sec. B-1. Report on courthouse space.** The State Court Administrator shall submit
2 a report by January 1, 2024 to the Joint Standing Committee on Criminal Justice and Public
3 Safety and the Joint Standing Committee on Judiciary on the availability of space in public
4 areas of courthouses and in secure holding areas of courthouses for confidential attorney-
5 client communications, including the review of written, video and audio materials related
6 to criminal cases. The report must include an assessment of the space available in each
7 courthouse and, to the extent space is inadequate for confidential attorney-client
8 communications, a plan for the development of adequate space within that courthouse

9 **Sec. B-2. Development of policies and procedures.** The County Corrections
10 Professional Standards Council, established in the Maine Revised Statutes, Title 5, section
11 12004-G, subsection 6-D, shall convene meetings of state, county and municipal law
12 enforcement agencies, county and municipal jails, the judicial branch, the Department of
13 Corrections, the Maine Sheriffs' Association, the Office of the Attorney General, the Maine
14 Prosecutors Association, the Maine Association of Criminal Defense Lawyers and the
15 Maine Commission on Indigent Legal Services to develop a consistent set of policies and
16 procedures to be implemented by all law enforcement agencies, district attorneys' offices,
17 jails, holding facilities, short-term detention areas and correctional facilities, as applicable
18 to the agencies, offices and facilities, that protect and ensure attorney-client
19 communications are confidential and that clearly describe the following

20 1 The process for protecting and ensuring the confidentiality of attorney-client
21 communications,

22 2 The policies to be followed in the event that there is a breach of attorney-client
23 confidentiality, and

24 3 The methods by which attorneys and persons who are residents of jails and
25 correctional facilities will be made aware of confidential channels for attorney-client
26 communications and the methods by which persons who are residents of jails and
27 correctional facilities will be provided with information regarding their right to confidential
28 attorney-client communications '

29 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
30 number to read consecutively

SUMMARY

31
32 This amendment, which is the majority report of the committee, replaces the provision
33 of the bill that describes the consequences of the interception of an oral or wire
34 communication between a person residing in either a jail or in an adult or juvenile
35 correctional facility and an attorney. Under the amendment, if the defendant can show that
36 the jail or correctional facility had actual or constructive notice of the attorney's name and,
37 if the communication involved the use of a telephone, the jail or correctional facility had
38 actual or constructive notice of the attorney's telephone number and the communication
39 was made directly to or from that telephone number

40 1 The contents and existence of the communication are not admissible in a criminal
41 proceeding, including a post-conviction review proceeding,

42 2 A person who viewed or listened to the communication and did not immediately
43 discontinue doing so as soon as the person had sufficient information to determine that the

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COMMITTEE AMENDMENT "A" to S P 635, L D 1603

1 communication was protected, is disqualified from participating in an investigation of the
2 resident and from appearing as a witness in a criminal proceeding in which the resident is
3 a defendant, including a post-conviction review proceeding, and

4 3 A person who viewed or listened to the intercepted communication and saw or heard
5 information that may be relevant to a pending or anticipated charge against the resident or
6 a defense the resident may assert, or that may lead to the discovery of that evidence, is
7 disqualified from participating in an investigation of the resident or appearing as a witness
8 in the pending or anticipated criminal proceeding in which the resident is a defendant,
9 including a subsequent post-conviction review proceeding on the pending or anticipated
10 criminal proceeding

11 The amendment also removes the requirement that all county jails and correctional
12 facilities designate, within 18 months of the effective date of this legislation, a private and
13 secure space within the jail or correctional facility for residents of the facility to store and
14 view materials, including audiovisual materials, related to criminal proceedings and post-
15 conviction review proceedings involving those residents

16 **FISCAL NOTE REQUIRED**

17 (See attached)

COMMITTEE AMENDMENT



131st MAINE LEGISLATURE

LD 1603

LR 2478(02)

An Act to Implement the Recommendations of the Committee To Ensure Constitutionally Adequate Contact with Counsel

Fiscal Note for Bill as Amended by Committee Amendment "A" (S.387)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Office of the Attorney General, the Maine Commission on Indigent Legal Services the Judicial Department, the Department of Corrections and the Department of Public Safety to implement the provisions of this bill can be absorbed within existing budgeted resources