

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1603

S.P. 635

In Senate, April 11, 2023

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

Reported by Senator CARNEY of Cumberland for the Joint Standing Committee on
Judiciary pursuant to Joint Order 2023, S.P. 594.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

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

2 **PART A**

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

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

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

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

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

16 P. Develop and maintain a registry of names, telephone numbers and other contact
17 information for attorneys who provide legal services to persons who are incarcerated.
18 The commission shall on a weekly basis provide these names, telephone numbers and
19 other contact information to all sheriffs' offices and to the Department of Corrections.
20 On the Monday following transmission of the information, the sheriffs' offices and the
21 Department of Corrections have constructive notice that communications to and from
22 these attorneys by residents of jails and correctional facilities are subject to the
23 attorney-client privilege. The attorneys' names, telephone numbers and other contact
24 information are confidential.

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

26 **§200-N. Confidential attorney-client communications**

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

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

39 **Sec. A-5. 15 MRSA §713, sub-§1**, as enacted by PL 2011, c. 507, §7, is amended
40 to read:

1 **1. Contents obtained under the laws of another jurisdiction.** The contents of an
2 interception of any oral communication or wire communication that has been legally
3 obtained under the laws of another jurisdiction in which the interception occurred are
4 admissible in the courts of this State, subject to the Maine Rules of Evidence; ~~and~~

5 **Sec. A-6. 15 MRSA §713, sub-§2**, as amended by PL 2021, c. 365, §4 and affected
6 by §37, is further amended to read:

7 **2. Contents obtained under this chapter.** The contents of an interception of any oral
8 communication or wire communication that has been legally obtained pursuant to section
9 712, subsection 2 or 3 are admissible in the courts of this State, subject to the Maine Rules
10 of Evidence, if related to the administration of criminal justice as defined in Title 16,
11 section 703, subsection 1 for the purposes of the Criminal History Record Information Act
12 or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and
13 Investigative Record Information Act; the administration of juvenile justice; or the
14 statutory functions of a state agency; ~~and~~

15 **Sec. A-7. 15 MRSA §713, sub-§3** is enacted to read:

16 **3. Intercepted attorney-client communications.** The contents of an intercepted oral
17 communication or wire communication and the circumstances or fact of the communication
18 are not admissible in a criminal proceeding, including a proceeding under chapter 305-A,
19 and any person who accesses, monitors, records, copies, transmits or receives a copy of the
20 communication is disqualified from participating in an investigation and from appearing as
21 a witness in the proceeding if:

22 A. The defendant was either the sender or receiver of that communication, the
23 defendant resided in an adult section of a jail at the time the communication was made,
24 the other party to the communication was an attorney and the defendant demonstrates
25 that the jail had actual or constructive notice of the attorney's name and, if the
26 communication involved the use of a telephone, the attorney's telephone number, at the
27 time the communication was intercepted; or

28 B. The defendant was either the sender or receiver of that communication, the
29 defendant resided in an adult or juvenile correctional facility administered by the
30 Department of Corrections at the time the communication was made, the other party to
31 the communication was an attorney and the defendant demonstrates that the
32 correctional facility had actual or constructive notice of the attorney's name and, if the
33 communication involved the use of a telephone, the attorney's telephone number, at the
34 time the communication was intercepted.

35 For purposes of this subsection, the inclusion of the attorney's name and telephone number
36 on a list transmitted by the Maine Commission on Indigent Legal Services pursuant to Title
37 4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of
38 Corrections constitutes constructive notice, beginning on the Monday following the
39 transmission, to a jail in the same county as the sheriff's office or to all correctional facilities
40 administered by the Department of Corrections, respectively.

41 This subsection does not limit the applicability of any other provision of law or of the
42 Maine Rules of Evidence regarding the admissibility of attorney-client communications
43 that do not meet the requirements of this subsection.

1 **Sec. A-8. 25 MRSA §2802, first ¶**, as amended by PL 2019, c. 103, §1, is further
2 amended to read:

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

23 **Sec. A-9. 25 MRSA §2803-B, sub-§1, ¶M**, as amended by PL 2021, c. 342, §2,
24 is further amended to read:

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

30 **Sec. A-10. 25 MRSA §2803-B, sub-§1, ¶N**, as enacted by PL 2021, c. 342, §3, is
31 amended to read:

32 N. Unannounced execution of search warrants; and

33 **Sec. A-11. 25 MRSA §2803-B, sub-§1, ¶O** is enacted to read:

34 O. By January 1, 2024, the confidentiality of attorney-client communications, which
35 must include, at a minimum, processes to protect and ensure confidentiality of attorney-
36 client communications and processes to be followed in the event that there is a breach
37 of attorney-client confidentiality.

38 **Sec. A-12. 25 MRSA §2804-C, sub-§2-G** is enacted to read:

39 **2-G. Training regarding confidential attorney-client communications.** Beginning
40 January 1, 2024, the board shall include in the basic law enforcement training program a
41 block of instruction on the confidentiality of attorney-client communications, including the
42 processes that law enforcement agencies use to protect and ensure the confidentiality of
43 attorney-client communications and the processes that law enforcement agencies follow in
44 the event that there is a breach of attorney-client confidentiality.

1 **Sec. A-13. 25 MRSA §2804-D**, as amended by PL 2017, c. 436, §1, is further
2 amended to read:

3 **§2804-D. Basic corrections training**

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

22 **Sec. A-14. 30-A MRSA §291** is enacted to read:

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

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

29 **Sec. A-15. 34-A MRSA §1208, sub-§8** is enacted to read:

30 **8. Standards regarding attorney-client communications.** The commissioner shall
31 establish mandatory standards:

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

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

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

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

5 C. Within 18 months of the effective date of this paragraph, requiring each county and
6 municipal detention facility to designate a private and secure space within the facility
7 for residents of the facility to store and view materials, including audiovisual materials,
8 related to criminal proceedings and post-conviction review proceedings involving
9 those residents.

10 **Sec. A-16. 34-A MRSA §1402, sub-§14** is enacted to read:

11 **14. Standards regarding attorney-client communications.** The commissioner shall
12 establish mandatory standards:

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

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

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

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

29 C. Within 18 months of the effective date of this paragraph, requiring each correctional
30 facility to designate a private and secure space within the correctional facility for
31 residents of the correctional facility to store and view materials, including audiovisual
32 materials, related to criminal proceedings and post-conviction review proceedings
33 involving those residents.

34 **PART B**

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

1 the Department of Corrections and each county sheriff's office weekly. The attorneys'
2 names, telephone numbers and other contact information are confidential and do not
3 constitute public records under the Freedom of Access Act;

4 5. Directs the commissioner to establish by January 1, 2024, standards for all county
5 jails, holding facilities, short-term detention areas and correctional facilities requiring each
6 facility to maintain a registry of the names, telephone numbers and other contact
7 information of attorneys who provide legal services to persons who reside in the facility
8 and that each facility proactively and by request of the attorney or the attorney's client
9 confirm the registration of the attorney's name, telephone number and other contact
10 information;

11 6. Provides that, if an oral or wire communication between a person residing in an adult
12 jail or in an adult or juvenile correctional facility and the person's attorney is intercepted,
13 the contents of and the existence of the communication are not admissible in a criminal
14 proceeding, including a post-conviction review proceeding, if the defendant can show that
15 the jail or correctional facility had actual or constructive notice of the attorney's name and,
16 if the communication involved the use of a telephone, the attorney's telephone number, at
17 the time the communication was intercepted. The inclusion of the attorney's name and
18 telephone number on the list transmitted by the Maine Commission on Indigent Legal
19 Services to the department and each county sheriff's office constitutes constructive notice
20 to each correctional facility and jail beginning on the Monday following the transmission;

21 7. Directs the commissioner to establish standards for all county jails, holding facilities,
22 short-term detention areas and correctional facilities requiring each facility, by January 1,
23 2024, to designate space within the facility for attorney-client meetings and the exchange
24 of case materials; and

25 8. Directs the commissioner to establish standards for all county jails and correctional
26 facilities requiring each facility, within 18 months of the effective date of the legislation,
27 to designate a private and secure space within the facility for residents of the facility to
28 store and view materials, including audiovisual materials, related to criminal proceedings
29 and post-conviction review proceedings involving those residents.

30 Part B of the bill directs the State Court Administrator to submit a report by January 1,
31 2024 to the Joint Standing Committee on Criminal Justice and Public Safety and the Joint
32 Standing Committee on Judiciary on the availability of space in public areas and in secure
33 holding areas of each courthouse for confidential attorney-client communications,
34 including the review of materials related to criminal cases. It also directs the County
35 Corrections Professional Standards Council to convene meetings of state, county and
36 municipal law enforcement agencies, county and municipal jails, the judicial branch, the
37 department, the Maine Sheriffs' Association, the Office of the Attorney General, the Maine
38 Prosecutors Association, the Maine Association of Criminal Defense Lawyers and the
39 Maine Commission on Indigent Legal Services to develop a consistent set of policies and
40 procedures to be implemented by all law enforcement agencies, district attorneys' offices,
41 jails, holding facilities, short-term detention areas and correctional facilities regarding the
42 processes for protecting and ensuring the confidentiality of attorney-client
43 communications, the policies to be followed in the event that there is a breach of attorney-
44 client confidentiality and the methods by which attorneys and persons who are residents of
45 jails and correctional facilities will be made aware of confidential channels for their
46 communications.