

# 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 electronic originals  
(may include minor formatting differences from printed original)



# 131st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2024

---

Legislative Document

No. 2159

---

S.P. 915

In Senate, January 9, 2024

---

**An Act to Protect the Confidentiality of Attorney-Client E-mail  
Communications for Residents of Jails and Correctional Facilities**

---

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

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

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator CARNEY of Cumberland.  
Cosponsored by Representative MOONEN of Portland.

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

2 **Sec. 1. 4 MRSA §1804, sub-§3, ¶P**, as enacted by PL 2023, c. 394, Pt. A, §3, is  
3 amended to read:

4 P. Develop and maintain a registry of names, telephone numbers, e-mail addresses and  
5 other contact information for attorneys who provide legal services to persons who are  
6 incarcerated. The commission shall on a weekly basis provide these names, telephone  
7 numbers, e-mail addresses and other contact information to all sheriffs' offices and to  
8 the Department of Corrections. On the Monday following transmission of the  
9 information, the sheriffs' offices and the Department of Corrections have constructive  
10 notice that communications to and from these attorneys by residents of jails and  
11 correctional facilities are subject to the attorney-client privilege. The attorneys' names,  
12 telephone numbers, e-mail addresses and other contact information are confidential.

13 **Sec. 2. 5 MRSA §200-N**, as enacted by PL 2023, c. 394, Pt. A, §4, is amended to  
14 read:

15 **§200-N. Confidential attorney-client communications**

16 **1. Policies.** ~~By January 1, 2024, the~~ The Attorney General shall adopt a written policy  
17 for the protection of confidential attorney-client communications by employees and agents  
18 of the Attorney General, which must include, at a minimum, processes to protect and ensure  
19 confidentiality of attorney-client communications and processes to be followed in the event  
20 that there is a breach of attorney-client confidentiality.

21 **2. Training.** ~~By January 1, 2024, the~~ The Attorney General shall develop a training  
22 program for all state, county and municipal law enforcement officers and investigators  
23 who, as part of a criminal investigation, may inadvertently hear, view or read confidential  
24 attorney-client communications, which must include, at a minimum, practices and  
25 procedures for protecting and ensuring confidential attorney-client communications and  
26 practices and procedures to be followed in the event that there is a breach of attorney-client  
27 confidentiality.

28 **Sec. 3. 15 MRSA §709, sub-§4**, as amended by PL 1979, c. 701, §11, is further  
29 amended to read:

30 **4. Intercept.** "Intercept" means to hear, view, read or record or aid another to hear,  
31 view, read or record the contents of any wire communication or oral communication  
32 through the use of any intercepting device by any person other than:

- 33 A. The sender or receiver of that communication;
- 34 B. A person within the range of normal unaided hearing or subnormal hearing  
35 corrected to not better than normal; or
- 36 C. A person given prior authority by the sender or receiver.

37 **Sec. 4. 15 MRSA §714**, as enacted by PL 2023, c. 394, Pt. A, §5, is amended to  
38 read:

39 **§714. Intercepted attorney-client communications of jail and correctional facility**  
40 **residents**

1           **1. Intercepted attorney-client communications of jail and correctional facility**  
2 **residents.** If the sender or the recipient of an intercepted oral communication or wire  
3 communication was, at the time the communication was made, a resident in either a jail or  
4 an adult or juvenile correctional facility administered by the Department of Corrections and  
5 the other party was an attorney ~~and if the resident demonstrates that the jail or correctional~~  
6 ~~facility had actual or constructive notice at the time the communication was made of the~~  
7 ~~attorney's name and, if the communication involved the use of a telephone, the jail or~~  
8 ~~correctional facility had actual or constructive notice at the time that the communication~~  
9 ~~was made of the attorney's telephone number and the communication was made directly to~~  
10 ~~or from that telephone number:~~

11           A. The contents of the intercepted oral communication or wire communication and the  
12 fact and circumstances of the communication are not admissible in a criminal  
13 proceeding, including a proceeding under chapter 305-A;

14           B. A person who viewed ~~or~~, listened to or read the intercepted oral communication or  
15 wire communication and did not immediately discontinue viewing ~~or~~, listening to or  
16 reading the communication as soon as the person had sufficient information to  
17 determine that the sender or the recipient of the communication was, at the time the  
18 communication was made, a resident in a jail or correctional facility and the other ~~part~~  
19 party was an attorney, is disqualified from participating in an investigation of the  
20 resident and from appearing as a witness in a criminal proceeding in which the resident  
21 is a defendant, including a proceeding under chapter 305-A; and

22           C. A person who viewed ~~or~~, listened to or read the intercepted oral communication or  
23 wire communication and saw ~~or~~, heard or read information that may be relevant to a  
24 pending or anticipated charge against the resident or a defense the resident may assert,  
25 or may lead to the discovery of that evidence, is disqualified from participating in the  
26 investigation of the resident and from appearing as a witness in the pending or  
27 anticipated criminal proceeding in which the resident is a defendant, including a  
28 subsequent proceeding under chapter 305-A on the pending or anticipated charge.

29 For purposes of this subsection, ~~the inclusion of the attorney's name and telephone number~~  
30 ~~on a list transmitted by the Maine Commission on Indigent Legal Services pursuant to Title~~  
31 ~~4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of~~  
32 ~~Corrections constitutes constructive notice to a jail in the same county as the sheriff's office~~  
33 ~~or to all correctional facilities administered by the Department of Corrections, respectively,~~  
34 ~~beginning on the Monday following the transmission.~~

35           **1-A. Applicability of subsection 1.** Subsection 1 applies to an intercepted oral  
36 communication or wire communication for which:

37           A. The sender or recipient of the communication was, at the time the communication  
38 was made, a resident in either a jail or an adult or juvenile correctional facility  
39 administered by the Department of Corrections and the other party was an attorney;  
40 and

41           B. The resident under paragraph A demonstrates that the jail or correctional facility:  
42           (1) For an oral communication, had actual or constructive notice of the attorney's  
43 name at the time the communication was made;

1                   (2) Had actual or constructive notice of the attorney's name and telephone number  
2                   at the time the communication was made, if the communication involved the use  
3                   of a telephone and the communication was made directly to or from the attorney's  
4                   telephone number; or

5                   (3) Had actual or constructive notice of the attorney's name and e-mail address at  
6                   the time the communication was made or intercepted, if the communication  
7                   involved the use of e-mail and the communication was made directly to or from  
8                   the attorney's e-mail address.

9                   **1-B. Constructive notice.** For purposes of this section, the inclusion of an attorney's  
10                  name, telephone number or e-mail address on a list transmitted by the Maine Commission  
11                  on Indigent Legal Services pursuant to Title 4, section 1804, subsection 3, paragraph P to  
12                  a sheriff's office or to the Department of Corrections constitutes constructive notice of the  
13                  name, telephone number or e-mail address to a jail in the same county as the sheriff's office  
14                  or to all correctional facilities administered by the Department of Corrections, respectively,  
15                  beginning on the Monday following the transmission.

16                  **2. Application of other law or rule.** This section does not limit the applicability of  
17                  any other provision of law or of the Maine Rules of Evidence regarding the admissibility  
18                  or inadmissibility in evidence of attorney-client communications that do not meet the  
19                  requirements of this section.

20                  **Sec. 5. 34-A MRSA §1208, sub-§8,** as enacted by PL 2023, c. 394, Pt. A, §13, is  
21                  amended to read:

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

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

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

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

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

42                  **Sec. 6. 34-A MRSA §1402, sub-§14,** as enacted by PL 2023, c. 394, Pt. A, §14, is  
43                  amended to read:



1 as a witness in the pending or anticipated criminal proceeding in which the resident is a  
2 defendant, including a subsequent post-conviction review proceeding on the pending or  
3 anticipated criminal proceeding.

4 The bill also makes technical changes to remove previously expired deadlines.