

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2250

S.P. 970

In Senate, March 5, 2024

**An Act to Allow the Department of Corrections to Comply with the
Federal Prison Rape Elimination Act of 2003**

(AFTER DEADLINE)

(EMERGENCY)

Submitted by the Department of Corrections and approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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.

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

3 **Whereas,** the federal Prison Rape Elimination Act of 2003 requires the State's
4 Department of Corrections to comply with relevant standards established by the United
5 States Department of Justice to receive grant funding; and

6 **Whereas,** the State's Department of Corrections would not be able to comply with the
7 relevant standards under current state law for the United States Department of Justice's
8 upcoming audit; and

9 **Whereas,** noncompliance would result in a loss of over \$80,000 in grant funding and
10 would prohibit the State's Department of Corrections from accepting resident transfers from
11 facilities that meet relevant federal standards, including, but not limited to, county jails and
12 facilities in other states; and

13 **Whereas,** legislative action is immediately necessary to ensure the State's Department
14 of Corrections is in compliance with relevant standards for the United States Department
15 of Justice's upcoming audit, ensuring the continuation of grant funding; and

16 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
17 the meaning of the Constitution of Maine and require the following legislation as
18 immediately necessary for the preservation of the public peace, health and safety; now,
19 therefore,

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

21 **Sec. 1. 5 MRSA §7070, sub-§2, ¶D-1,** as repealed and replaced by PL 2019, c.
22 451, §1 and amended by PL 2023, c. 412, Pt. D, §3, is further amended by amending the
23 last blocked paragraph to read:

24 When there is a work requirement for public access to personal information under this
25 paragraph that is not otherwise protected by law, that information may be made public.
26 The State Human Resources Officer, upon the request of the employing agency, shall
27 make the determination that the release of certain personal information not otherwise
28 protected by law is allowed; ~~and~~

29 **Sec. 2. 5 MRSA §7070, sub-§2, ¶E,** as amended by PL 2023, c. 159, §1, is further
30 amended to read:

31 E. Except as provided in paragraph F and section 7070-A, complaints, charges or
32 accusations of misconduct, replies to those complaints, charges or accusations and any
33 other information or materials that may result in disciplinary action. If disciplinary
34 action is taken, the final written decision relating to that action is no longer confidential
35 after the decision is completed if it imposes or upholds discipline. The decision must
36 state the conduct or other facts on the basis of which disciplinary action is being
37 imposed and the conclusions of the acting authority as to the reasons for that action. If
38 an arbitrator completely overturns or removes disciplinary action from an employee
39 personnel file, the final written decision is public except that the employee's name must
40 be deleted from the final written decision and kept confidential. If the employee whose
41 name was deleted from the final written decision discloses that the employee is the

1 person who is the subject of the final written decision, the entire final written report,
2 with regard to that employee, is public.

3 For purposes of this paragraph, "final written decision" means:

4 (1) The final written administrative decision that is not appealed pursuant to a
5 grievance arbitration procedure; or

6 (2) If the final written administrative decision is appealed to arbitration, the final
7 written decision of a neutral arbitrator.

8 A final written administrative decision that is appealed to arbitration is no longer
9 confidential 120 days after a written request for the decision is made to the employer
10 if the final written decision of the neutral arbitrator is not issued and released before
11 the expiration of the 120 days; and

12 **Sec. 3. 5 MRSA §7070, sub-§2, ¶F** is enacted to read:

13 F. In the case of an allegation of sexual misconduct or sexual harassment within a
14 correctional facility, a determination that the allegation was substantiated,
15 unsubstantiated or unfounded, except that the determination may be disclosed to the
16 alleged victim. Unless the allegation is determined to be unfounded, the following
17 information may also be shared with the alleged victim:

18 (1) The subsequent work locations, if any, of the individual alleged to have
19 engaged in the sexual misconduct or sexual harassment;

20 (2) Whether the individual under subparagraph (1) is still employed at the
21 correctional facility;

22 (3) Whether the individual under subparagraph (1) has been criminally charged or
23 convicted of a crime arising out of the allegation of sexual misconduct or sexual
24 harassment; and

25 (4) Whether the prosecuting agency declined to indict the individual under
26 subparagraph (1) based on the allegation of sexual misconduct or sexual
27 harassment.

28 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
29 takes effect when approved.

30 SUMMARY

31 This bill amends the statutory confidentiality provisions related to personnel records in
32 order to allow the State's Department of Corrections to share certain information related to
33 allegations of sexual misconduct or sexual harassment and comply with the requirements
34 established by the United States Department of Justice under 28 Code of Federal
35 Regulations, Section 115.73 pursuant to the federal Prison Rape Elimination Act of 2003.