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JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

RANDALL A. LIBERTY
COMMISSIONER

Memo

To: Senator Beebe-Center, Senate Chair Criminal Justice Public Safety Committee
Representative Salisbury, House Chair Criminal Justice Public Safety Committee

From: Randall A. Liberty, Commissioner of the Maine Department of Corrections

Cc: Jerry Reid, Chief Legal Counsel for Governor Mills
Maryann Turowski, Senior Policy Advisor for Governor Mills

Date: January 3, 2023

Re: Report on Tribal-State collaboration

This report is submitted pursuant to 5 M.R.S. 11055(2), which requires the Department of Corrections to file biennial reports with this Committee describing our implementation of the Tribal-State Implementation Act.

Background:

In 2022, representatives of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation, and the Governor's Office negotiated the terms of legislation intended to expand economic opportunities for, and improve the welfare of, the Wabanaki Nations and their citizens, and to make structural changes in certain state agency decision-making to promote government-to-government dialogue with the Wabanaki Nations. That legislation, enacted as Public Law 2021, c. 681, contains three parts. First, it amends Maine's tax laws both to provide financial benefits to Tribal citizens residing on Tribal lands, and to encourage economic development on Tribal lands. Second, it provides each of the four Wabanaki Nations located in Maine the exclusive opportunity to conduct mobile sports wagering operations within the state. Third, it establishes in law a Tribal-State collaboration process designed to promote meaningful communication on issues of particular significance to the Tribes and their citizens.

The Tribal-State Collaboration Act:

The Tribal-State Collaboration Act, 5 M.R.S. 11051 *et seq.*, requires 15 agencies identified in the statute to engage in a Tribal collaboration process regarding contemplated programs, rules, or services that substantially and uniquely affect Maine's four federally recognized Tribes or their citizens. It is intended to be a user-friendly process free from unnecessary bureaucracy that will be implemented within existing resources. Title 5 M.R.S. 11053(1) requires each agency covered by the statute to adopt a collaboration policy.


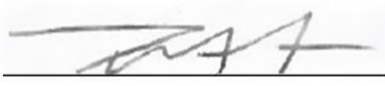
The Department of Corrections adopted its collaboration policy, which is appended to this report, on 12/20/22. The Department's Tribal liaison, as required by 5 M.R.S. 11053(3), is Anna Black who can be reached at Anna.Black@Maine.Gov or by phone at (207) 530-3794.

On December 6, 2022, the Governor's Office provided training on how to implement the statute in a manner that promotes effective communication and positive government-to-government relations with the Tribes. The Governor's Office has also requested that the Maine Indian Tribal State Commission (MITSC) help to facilitate training of state agency Tribal liaisons on issues of cultural competency, and MITSC has agreed to do so. We look forward to that training as soon as it can be arranged in 2023.

The Tribal-State Collaboration Act became law on August 8, 2022. The Department of Corrections has not yet had occasion to engage in Tribal collaboration under the statute but will be vigilant in looking for opportunities to do so in the coming biennium. We have no recommendations for changes to the statute at this time.

Randall A. Liberty
Commissioner
Maine Department of Corrections

Enc.

POLICY TITLE: MAINE TRIBAL AND MAINE DEPARTMENT OF CORRECTIONS COLLABORATION		PAGE 1 OF 5
POLICY NUMBER: 1.18		
CHAPTER 3: PERSONNEL		
	STATE of MAINE DEPARTMENT of CORRECTIONS Approved by Commissioner: 	PROFESSIONAL STANDARDS: See Section VIII
EFFECTIVE DATE: May 19, 2003	LATEST REVISION: December 20, 2022	CHECK ONLY IF APA []

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in Title 34-A M.R.S.A. § 1403 and the Tribal-State Collaboration Act, Title 5 M.R.S.A. §§ 11051 et seq.

II. APPLICABILITY

Entire Maine Department of Corrections

III. POLICY

The Maine Department of Corrections (Department) is committed to collaboration with each of Maine’s four federally-recognized Indian tribes regarding proposed programs, services, or rules that substantially and uniquely affect the tribes or their members.

IV. DEFINITIONS

1. Indian tribes – for the purposes of this policy, Indian tribes refer to the Houlton Band of Maliseet Indians, the Mi’kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation.

V. CONTENTS

- Procedure A: General
- Procedure B: Roles and Responsibilities
- Procedure C: Referral for Collaboration
- Procedure D: Collaboration Process
- Procedure E: Reporting

VI. ATTACHMENTS

None

VII. PROCEDURES

Procedure A: General

1. The Tribal-State Collaboration Act of 2022 (Act) requires certain state agencies to engage in a tribal collaboration process regarding proposed programs, services, or rules that substantially and uniquely affect Maine’s four federally-recognized Indian tribes or their members.
2. The purpose of the Act is to promote respectful dialogue and improve communication between the Department and the tribes.
3. The goal is to ensure the tribes are afforded a reasonable opportunity to be heard during the development of programs, services, or rules that substantially and uniquely affect the tribes or their members.
4. The Department strives:
 - a. to administer the law in a manner that is practical, user-friendly, and efficient and that accommodates the unique circumstances of the Department’s work; and
 - b. to ensure that tribal collaboration, when it occurs, is both a meaningful process and one that does not result in unnecessary administrative burdens for tribal or state governments.
5. The Department shall seek and consider comments from the tribes and the Maine Indian State Tribal Commission when creating and revising this collaboration policy.
6. In the context of rulemaking, the Department shall engage in collaboration consistent with applicable provisions of the Administrative Procedures Act, 5 M.R.S. §§ 8051 et seq. (APA), as well as the Tribal-State Collaboration Act, 5 M.R.S. §§ 11051 et seq.
7. The Department shall use reasonable efforts to complete collaboration before the formal publication of a proposed rule pursuant to 5 M.R.S. § 8053(5) to avoid procedural confusion that could arise from collaboration occurring at the same time as the public notice and comment process under the APA. If it is necessary to engage in collaboration following the publication of the proposed rule, the Department shall work closely with the Attorney General’s Office to ensure compliance with both statutes.
8. In the context of emergency rulemaking pursuant to 5 M.R.S. § 8054, the Department shall provide notice and engage in collaboration to the extent practicable.
9. All staff shall be required to acknowledge that they have read and understand this policy.
10. This policy shall be posted on the Department’s website.

Procedure B: Roles and Responsibilities

1. The Department’s Director of Government Affairs shall serve as the Tribal Liaison for the Department. The Tribal Liaison’s responsibilities shall include, but not be limited to:

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- a. administrating the Act as it relates to the Department of Corrections;
 - b. promoting awareness of the Act and this policy within the Department;
 - c. ensuring Department staff who have direct interactions with tribes or work on matters that have direct implications for tribes have access to annual training materials provided by the Governor’s advisor on tribal-state affairs;
 - d. identifying which proposed programs, services, or rules substantially and uniquely affect the tribes or their members;
 - e. providing the point of contact that each of the tribes has provided with written notice of the proposal prior to the development of those programs, services, and rules;
 - f. allowing the tribes a reasonable opportunity to provide information, advice, and opinions on the proposal;
 - g. considering the comments that are received and taking appropriate action as a result, including, but not limited to, informing the staff who are making the final decision on a proposal of the comments received;
 - h. informing the tribes of decisions made by communicating in writing with the point of contact that each of the four tribes has provided; and
 - i. documenting the above notification and decision process and developing a records retention schedule.
2. The Department’s Director of Education, Staff Development & Training, in consultation with the Tribal Liaison, shall:
- a. ensure that Department staff whose work substantially and uniquely affects Indian tribes or tribal members receive training about the Act and this policy, including training offered by the Governor’s office on effective communication and collaboration under the Act and any training on cultural competency offered by the tribes; and
 - b. include appropriate references about the Act and this policy in Department training materials.
3. The Department’s Director of Human Resources shall include appropriate references about the Act and this policy in Department employment materials.
4. The Department’s Diversity, Equity & Inclusion Manager may be consulted by the Department’s Tribal Liaison in the Department’s efforts in administering this policy.

Procedure C: Referral for Collaboration

- 1. The first step in the collaboration process is the identification of a proposed program, service, or rule that substantially and uniquely affect the tribes or their members.
- 2. In making this determination, the Tribal Liaison shall consider whether the proposal will have a meaningful and significant impact on an Indian tribe or its members that is distinct from the general population. When in doubt, the Tribal Liaison shall consider whether some initial, informal communication with potentially affected tribes would assist in making this determination.

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3. When proposing a new program, service, or rule, staff shall evaluate whether it may affect tribal interests such that collaboration would be appropriate, and if so, shall refer the proposal to the Tribal Liaison.
4. The Tribal Liaison shall evaluate the proposed program, service, or rule to determine if it warrants collaboration.
5. If the standard for collaboration is not met, but the Tribal Liaison determines that some communication with one or more tribes would nonetheless be beneficial, the Tribal Liaison shall ensure that occurs.

Procedure D: Collaboration Process

1. Once the determination has been made that collaboration is appropriate, the Tribal Liaison shall communicate in writing with the point of contact that each of the four tribes has provided for the purpose of collaboration.
2. The Tribal Liaison shall explain that the Department is initiating the collaboration process, provide a description of the proposal, identify the time period within which comments are requested, and offer to answer any questions.
3. When setting the time period, the Tribal Liaison:
 - a. shall take into account the nature of the proposal, its relative complexity, the magnitude of its impact, the relative urgency to act, and other factors; and
 - b. may extend or truncate, as appropriate, the time period, depending on the level of interest the tribes express.
4. Comments may be submitted in writing or provided orally in a meeting or via teleconference.
5. The Tribal Liaison shall consider information, advice, and opinions received from the Tribes in the course of collaboration.
6. The Tribal Liaison shall provide a written response to submissions received from the tribes and may choose to also provide oral feedback in the interests of respectful dialogue.
7. The Tribal Liaison shall use reasonable efforts to complete the process before the Department takes final action.
8. The Tribal Liaison shall include any written materials received or generated in the collaboration process in the record of its decision-making. To the extent the tribes provide comments orally, the Tribal Liaison shall prepare a memorandum summarizing those comments.

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Procedure E: Reporting

1. The Department's Tribal Liaison shall file a report every two years with the legislative criminal justice committee and with the Maine Indian Tribal State Commission beginning January 11, 2023. The report shall include this policy, the name and contact information of the Department's Tribal Liaison, a description of training provided, a description of any actions proposed during the upcoming biennium, to the extent known, that would trigger collaboration, a summary of any collaboration the Department engaged in during the preceding biennium, and any recommendations for changes to the Act.

VIII. PROFESSIONAL STANDARDS

None

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