



132nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2025

Legislative Document

No. 1780

H.P. 1191

House of Representatives, April 24, 2025

**An Act to Secure Under Authority of a Subpoena Pretrial
Statements from a Witness Other than the Defendant in a Criminal
Proceeding**

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative SINCLAIR of Bath.

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

2 **Sec. 1. 15 MRSA §1322** is enacted to read:

3 **§1322. Witnesses other than defendant**

4 **1. Request for statement.** Any person, other than the defendant, with information
5 relevant to the proceeding shall give a statement upon request of the defendant. The
6 defendant may obtain the statement of the person by serving a written notice of statement
7 upon the person whose statement is sought and upon the prosecution no later than 14 days
8 before the date scheduled for the statement.

9 **2. Notice of statement.** The notice of statement under this section must state the time
10 and place for the taking of the statement along with a description of the information sought
11 in the statement or any materials to be examined. The defendant issuing the notice shall
12 make reasonable efforts to confer with the person whose statement is requested in good
13 faith regarding scheduling of a statement before serving a notice of statement. The notice
14 of statement must describe the method by which the statement must be recorded, which
15 may be by audio recording, audiovisual recording or stenographic means. A statement may
16 be taken in person, by telephone or by remote electronic means.

17 **3. Process.** A notice of statement under this section, and the taking of the statement,
18 are governed by the following procedures:

19 A. A subpoena must be served with the notice of statement to secure the presence of
20 the person and any materials to be examined during the statement. A copy of the
21 subpoena and the notice of statement must be sent to the prosecution and filed with the
22 court;

23 B. Notwithstanding anything to the contrary in subsection 1 or 2, if a defendant is
24 charged with a crime under Title 17-A, chapter 9 and the victim of that crime is a family
25 or household member as defined by Title 19-A, section 4102, subsection 6 and it is the
26 victim's statement that is sought, then the subpoena and notice of statement must be
27 served upon the District Attorney's office handling that prosecution and not directly
28 upon the victim. The State shall provide the notice and subpoena to the victim.

29 (1) A notice under this paragraph must be served upon the District Attorney's office
30 no later than 45 days before the date scheduled for the statement.

31 (2) The State shall provide certification to the defendant and the court that the
32 notice and subpoena were provided to the victim no later than 14 days before the
33 date scheduled for the statement.

34 (3) Statements taken from victims of crimes of domestic violence must be taken
35 through hybrid means unless the counsel for the defendant can provide a safe and
36 secure location for a statement to be taken in person.

37 (4) If the State cannot locate the named victim to provide notice and subpoena
38 required under this section, the court shall consider that failure as a failure to appear
39 by a witness under paragraph D.

40 For the purposes of this paragraph, "hybrid means" means the use of telephone, Internet
41 or other remote audio and video communication technologies to conduct hearings or

1 other judicial proceedings at which one or more, but not all, attorneys, parties and
2 witnesses participate without being present in the same physical location as the court;

3 C. After the statement is taken, the defendant shall file a confirmation that the statement
4 was taken;

5 D. If a person who has been served a notice of statement and a subpoena fails to appear
6 or provide the requested information or materials, the defendant may file a motion
7 requesting the court to issue an order barring that person from appearing as a witness
8 in the case on any topic described in the notice of statement; and

9 E. At any time during the taking of the statement, a person may terminate the statement
10 if the examination is being conducted in bad faith or in such a manner as to
11 unreasonably annoy, embarrass or oppress the person. The defendant may file a motion
12 to have the court order a person to resume the statement. The defendant bears the
13 burden of proving to the court by a preponderance of the evidence that the examination
14 was not being conducted in such a manner as to unreasonably annoy, embarrass or
15 oppress the person. If the statement has been terminated, the statement may be resumed
16 thereafter only upon an order of the court in which the action is pending.

17 **4. Remedy.** The following remedies are available under this section.

18 A. A court that receives a request under subsection 3, paragraph D for an order barring
19 a person from appearing as a witness shall schedule a hearing to determine:

20 (1) Whether the potential witness was served the notice of statement and subpoena;
21 and

22 (2) Whether the potential witness appeared as required by the notice of statement.

23 B. If the court finds by clear and convincing evidence that a properly served person did
24 not appear, the court shall issue an order barring that potential witness from any future
25 testimony in the pending matter.

26 C. If a person terminates a statement under subsection 3, paragraph E, the defendant
27 may move to have the person barred from appearing as a witness. The court shall
28 schedule a hearing on the motion to determine if the statement was being conducted in
29 bad faith or in such a manner as to unreasonably annoy, embarrass or oppress the
30 person. If a court finds by clear and convincing evidence that the statement was not
31 being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass
32 or oppress the person, the court shall issue an order barring that person from appearing
33 as a witness in the pending matter.

34 D. Any person who is barred from appearing as a witness under paragraph B or C may
35 not appear as a witness in any future criminal proceedings involving the same alleged
36 conduct.

37 **5. No contact order.** This section and the procedure under this section may not be
38 construed to modify an order of a court prohibiting contact between a defendant and a
39 named person in that order.

40 SUMMARY

41 This bill allows a defendant to request that any person with information relevant to the
42 proceeding give a statement upon being served a written notice of statement no later than

1 14 days before the date scheduled for the statement to be taken. The bill provides a
2 procedure to bar a person who fails to appear for a scheduled statement from appearing as
3 a witness in any case on the topic described in the notice of statement. The bill also allows
4 a person to terminate a statement if the examination is being conducted in bad faith.