

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1421 - L.D. 2106

**An Act to Limit Consent for Entry into Nonpublic Areas of and to Limit
Access to Protected Records Maintained by Certain Public Entities**

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

Sec. 1. 5 MRSA §200-O is enacted to read:

§200-O. Model policies and guidance for limiting authority to consent for entry or records review

1. Model policies and guidance. No later than 60 days after the effective date of this section, the Attorney General shall publish model policies and guidance for ensuring that facilities providing services to members of the public remain safe and accessible to all state residents regardless of immigration status by limiting, to the fullest extent possible consistent with state and federal law, voluntary consent for entry into nonpublic areas of the facility by law enforcement officers for immigration enforcement purposes and disclosure of protected records held by the facility to law enforcement officers for immigration enforcement purposes. The Attorney General shall review and may amend the published model policies and guidance on a biennial basis.

2. Mandatory adoption of model policies and guidance. The following facilities shall adopt the model policies and guidance published by the Attorney General under subsection 1, or establish equivalent policies and guidance, within 3 months of the date that the Attorney General publishes the model policies and guidance applicable to the facility and within 3 months of the date that the Attorney General publishes any amended model policies and guidance applicable to the facility:

- A. Public schools and postsecondary educational institutions as provided in Title 20-A, section 14;
- B. State institutions as provided in Title 22, section 1730-B; and
- C. State libraries as provided in Title 27, section 109-A.

3. Optional adoption of model policies and guidance. The following facilities may, but are not required to, adopt the model policies and guidance or an amendment to the model policies and guidance published by the Attorney General under subsection 1:

A. A private preschool, private elementary school, private secondary school or private postsecondary educational institution that is not subject to Title 20-A, section 14, subsection 5;

B. A health care facility that is not subject to Title 22, section 1730-B, subsection 5. For purposes of this paragraph, "health care facility" has the same meaning as in section 19201, subsection 2-B;

C. A facility that provides residential or community supports for adults or children or a facility or program that provides health care, assisted living services, behavioral health services, services to persons with intellectual disabilities, autism spectrum disorder or acquired brain injuries or similar services that is not subject to Title 22, section 1730-B, subsection 5;

D. A child care facility or family child care provider licensed under Title 22, section 8301-A;

E. A public library that is not subject to Title 27, section 109-A, subsection 5. For purposes of this paragraph, "public library" has the same meaning as in Title 27, section 110, subsection 10; and

F. A house of worship or other place where religious services are conducted.

Sec. 2. 20-A MRSA §14 is enacted to read:

§14. Limited authority of public schools and postsecondary educational institutions to consent for entry into nonpublic areas and to access records

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Education record" has the same meaning as in the federal Family Educational Rights and Privacy Act of 1974, 20 United States Code, Section 1232g(a)(4), and its implementing regulations.

B. "Law enforcement officer" has the same meaning as defined in Title 16, section 638, subsection 2 and includes a "federal officer" as defined in Title 25, section 1502-A, subsection 1.

C. "Nonpublic area" means an area of a building or facility that the public is not free to enter or access and includes a restricted access area within a building or facility that is otherwise predominately open to the public. "Nonpublic area" also includes all areas within a building or facility during any time that the building or facility is closed for operation.

D. "Public school" means a "public preschool program" as defined in section 1, subsection 23-A; a "publicly supported secondary school" as defined in section 1, subsection 23-B; and a "public school" as defined in section 1, subsection 24.

E. "State postsecondary educational institution" means a university within the University of Maine System; a college within the Maine Community College System; and the Maine Maritime Academy.

2. Voluntary consent for entry into nonpublic areas prohibited. A person acting on behalf of a public school or state postsecondary educational institution may not provide voluntary consent permitting a law enforcement officer to enter a nonpublic area of the

public school or state postsecondary educational institution for immigration enforcement purposes.

3. Voluntary consent to access education records prohibited. A person acting on behalf of a public school or state postsecondary educational institution may not provide voluntary consent permitting a law enforcement officer to access education records for immigration enforcement purposes. This subsection may not be construed to prevent a person acting on behalf of a public school or state postsecondary educational institution from disclosing education records in response to a request from a law enforcement officer to the extent that the disclosure is required by a court order or by state or federal law.

4. Mandatory compliance activities. Notwithstanding subsections 2 and 3, if a public school or state postsecondary educational institution is required by federal law to permit a law enforcement officer to inspect specific records or to conduct interviews regarding the eligibility of noncitizens to work in the United States or to attend school in the United States:

A. The public school or state postsecondary educational institution shall designate a nonpublic area within the public school or state postsecondary educational institution where federal immigration officials may conduct these inspections and interviews; and

B. The public school or state postsecondary educational institution may permit law enforcement officers to access a specific location to verify eligibility for employment or school attendance, if federal law requires that law enforcement officers be provided access to that specific location within the public school or state postsecondary educational institution when conducting these inspections and interviews.

5. Required policy and guidance. Each public school and state postsecondary educational institution in the State shall adopt the model policies and guidance published by the Attorney General under Title 5, section 200-O or establish equivalent policies and guidance as required by Title 5, section 200-O, subsection 2.

6. Violation; exemption. Prior to the date that a public school or state postsecondary educational institution adopts, or is required to adopt, whichever is earlier, a policy and guidance pursuant to Title 5, section 200-O, subsection 2, a person acting on behalf of the public school or state postsecondary educational institution does not violate subsection 2 or subsection 3 if the person provides voluntary consent permitting a law enforcement officer to enter a nonpublic area of a public school or state postsecondary educational institution or to access education records and if the person is acting in good faith.

7. Other educational facilities. A private preschool, private elementary school, private secondary school or private postsecondary educational institution that is not subject to subsection 5 may, but is not required to, adopt the model policies and guidance or an amendment to the model policies and guidance published by the Attorney General pursuant to Title 5, section 200-O, subsection 1.

Sec. 3. 22 MRSA §1730-B is enacted to read:

§1730-B. Limited authority of certain health care facilities to consent for entry into nonpublic areas and to access records

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Health care facility" has the same meaning as in Title 5, section 19201, subsection 2-B.

B. "Law enforcement officer" has the same meaning as defined in Title 16, section 638, subsection 2 and includes a "federal officer" as defined in Title 25, section 1502-A, subsection 1.

C. "Nonpublic area" means an area of a building or facility that the public is not free to enter or access and includes a restricted access area within a building or facility that is otherwise predominately open to the public. "Nonpublic area" also includes all areas within a building or facility during any time that the building or facility is closed for operation.

D. "Protected health care information" has the same meaning as "health care information" as defined in section 1711-C, subsection 1, paragraph E and includes individually identifiable health care information, the disclosure of which is restricted by the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations.

E. "State institution" has the same meaning as in Title 34-B, section 1001, subsection 8.

2. Voluntary consent for entry into nonpublic areas prohibited. A person acting on behalf of a state institution may not provide voluntary consent permitting a law enforcement officer to enter a nonpublic area of the state institution for immigration enforcement purposes.

3. Voluntary consent to access protected health care information prohibited. A person acting on behalf of a state institution may not provide voluntary consent permitting a law enforcement officer to access protected health care information for immigration enforcement purposes. This subsection may not be construed to prevent a person acting on behalf of a state institution from disclosing protected health care information in response to a request from a law enforcement officer to the extent that the disclosure is required by a court order or by state or federal law.

4. Mandatory compliance activities. Notwithstanding subsection 2, if a state institution is required by federal law to permit a law enforcement officer to inspect specific records that do not contain protected health care information or to conduct interviews regarding the eligibility of noncitizens to work in the United States:

A. The state institution shall designate a nonpublic area within the state institution where federal immigration officials may conduct these inspections and interviews; and

B. The state institution may permit law enforcement officers to access a specific location to verify eligibility for employment, if federal law requires that law enforcement officers be provided access to that specific location within the state institution when conducting these inspections and interviews.

5. Required policy and guidance; licensure. Each state institution shall adopt the model policies and guidance published by the Attorney General under Title 5, section 200-O or establish equivalent policies and guidance as required by Title 5, section 200-O, subsection 2. Beginning January 1, 2027, the department may verify compliance with this requirement as part of any applicable initial licensure or license renewal process under this Title.

6. Violation; exemptions. The following provisions govern violations of this section.

A. Violations of this section are not subject to section 47, subsections 3 and 4.

B. Prior to the date that a state institution adopts, or is required to adopt, whichever is earlier, a policy and guidance pursuant to Title 5, section 200-O, subsection 2, a person acting on behalf of the state institution does not violate subsection 2 or subsection 3 if the person provides voluntary consent permitting a law enforcement officer to enter a nonpublic area of a state institution or to access protected health care information for immigration purposes and if the person is acting in good faith.

7. Other facilities. A health care facility or a facility providing residential or community supports for adults or children or a facility or program that provides health care, assisted living services, behavioral health services, services to persons with intellectual disabilities, autism spectrum disorder or acquired brain injuries or similar services that is not subject to subsection 5 may, but is not required to, adopt the model policies and guidance or an amendment to the model policies and guidance published by the Attorney General pursuant to Title 5, section 200-O, subsection 1.

Sec. 5. 27 MRSA §109-A is enacted to read:

§109-A. Limited authority of certain libraries to consent for entry into nonpublic areas and to access records

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Law enforcement officer" has the same meaning as defined in Title 16, section 638, subsection 2 and includes a "federal officer" as defined in Title 25, section 1502-A, subsection 1.

B. "Nonpublic area" means an area of a building or facility that the public is not free to enter or access and includes a restricted access area within a building or facility that is otherwise predominately open to the public. "Nonpublic area" also includes all otherwise public areas within a building or facility during any time that the building or facility is closed for operation.

C. "Protected patron record" means a record maintained by a state library or public library that is confidential pursuant to section 121, subsection 1.

D. "Public library" has the same meaning as in section 110, subsection 10.

E. "State library" means the Maine State Library; the Law and Legislative Reference Library; and a library of the University of Maine System, the Maine Community College System and the Maine Maritime Academy.

2. Voluntary consent for entry into nonpublic areas prohibited. A person acting on behalf of a state library may not provide voluntary consent permitting a law enforcement officer to enter a nonpublic area of the state library for immigration enforcement purposes.

3. Voluntary consent to access protected patron records prohibited. A person acting on behalf of a state library may not provide voluntary consent permitting a law enforcement officer to access protected patron records for immigration enforcement purposes. This subsection may not be construed to prevent a person acting on behalf of a state library from disclosing protected patron records in response to a request from a law

enforcement officer to the extent that the disclosure is required by a court order or by state or federal law.

4. Mandatory compliance activities. Notwithstanding subsection 2, if a state library is required by federal law to permit a law enforcement officer to inspect specific records other than protected patron records or to conduct interviews regarding the eligibility of noncitizens to work in the United States:

A. The state library shall designate a nonpublic area within the state library where law enforcement officers may conduct these inspections and interviews; and

B. The state library may permit law enforcement officers to access a specific location to verify eligibility for employment if federal law requires that law enforcement officers be provided access to that specific location within the state library when conducting these inspections and interviews.

5. Required policy and guidance. Each state library shall adopt the model policies and guidance published by the Attorney General under Title 5, section 200-O or establish equivalent policies and guidance as required by Title 5, section 200-O, subsection 2.

6. Violation; exceptions. Prior to the date that a state library adopts, or is required to adopt, whichever is earlier, a policy and guidance pursuant to Title 5, section 200-O, subsection 2, a person acting on behalf of the state library does not violate subsection 2 or subsection 3 if the person provides voluntary consent permitting a law enforcement officer to enter a nonpublic area of a state library or to access protected patron records for immigration purposes and if the person is acting in good faith.

7. Other public libraries. A public library that is not subject to subsection 5 may, but is not required to, adopt the model policies and guidance or an amendment to the model policies and guidance published by the Attorney General pursuant to Title 5, section 200-O, subsection 1.