

STATE OF MAINE

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

—  
H.P. 1405 - L.D. 2192

**Resolve, to Ensure That the Independent Commission to Investigate the Facts of the Tragedy in Lewiston Has Necessary Authority to Discharge Its Fact-finding Mission**

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

**Whereas,** Governor Janet T. Mills, by executive order of November 9, 2023, established the Independent Commission to Investigate the Facts of the Tragedy in Lewiston; and

**Whereas,** the independent commission was established for the purpose of conducting a thorough and objective investigation into the facts and circumstances of what happened on that tragic night in Lewiston, the months that led up to it and the police response to it; and

**Whereas,** the families of the victims and all people of the State deserve to know the truth about what happened; and

**Whereas,** in order to fulfill its fact-finding mission, the independent commission requires the ability to issue subpoenas to compel the testimony of witnesses and the production of documents and have access to agency records that may not otherwise be subject to disclosure under state law; and

**Whereas,** this legislation needs to take effect before the expiration of the 90-day period in order for the independent commission to complete its work in a timely fashion; and

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

**Sec. 1. Definitions. Resolved:** That, as used in this resolve, the following terms have the following meanings.

1. "Chair" means the chair of the independent commission.

2. "Independent commission" means the Independent Commission to Investigate the Facts of the Tragedy in Lewiston, established by executive order of Governor Janet T. Mills on November 9, 2023.

**Sec. 2. Issuance of subpoenas. Resolved:** That, by a majority vote of its members, the independent commission may issue subpoenas to compel the testimony of witnesses and the production of documents in accordance with this resolve.

**Sec. 3. Notice to witnesses. Resolved:** That a reasonable time before a witness testifies, a prospective witness must be notified of the investigation's subject matter and provided with a copy of this resolve. The information required by this section must be presented at the time of service of the subpoena.

**Sec. 4. Oaths. Resolved:** That all testimony of subpoenaed witnesses must be under oath administered by the chair or the chair's designee.

**Sec. 5. Testimony of witnesses under subpoena. Resolved:** That the independent commission's staff and its members may take testimony of witnesses under subpoena. All testimony of witnesses under subpoena must be taken in open session, except upon request of a witness or by a majority vote of the members of the independent commission, in which case testimony may be taken in executive session. Testimony may be taken in executive session upon a showing that confidentiality is necessary to fulfill the independent commission's fact-finding mission.

**Sec. 6. Transcripts of testimony of witnesses under subpoena. Resolved:** That the independent commission shall prepare a transcript of all testimony of witnesses taken under subpoena. A witness is entitled to obtain a copy of the transcript of the witness's own testimony, except that the independent commission may delay the release of a transcript until the independent commission determines that release will not compromise the integrity of its investigation.

**Sec. 7. Release of testimony under subpoena. Resolved:** That the independent commission, by a majority vote of its members, may release transcripts of witness testimony taken under subpoena, except that a transcript of the testimony may not be released without first affording the witness who gave the testimony or the witness's counsel an opportunity to object to the proposed release. The chair or the chair's designee shall rule on an objection. The ruling of the chair or the chair's designee may be overruled by a majority vote of the independent commission's members. The transcript of the testimony may be released over the objection of a witness upon a showing that the release of the transcript is necessary to the independent commission's fact-finding mission, outweighs the interests of the witness and is not in violation of any federal or state laws, rules or regulations.

**Sec. 8. Request for court to compel compliance; legal representation. Resolved:** That the independent commission, by a majority vote of its members, may apply to the Superior Court to compel compliance with a subpoena and may by lawful process seek to compel compliance in any state, federal or military court or tribunal. The Attorney General, the Attorney General's designee or private counsel approved by the Attorney General may represent the independent commission in such proceedings.

**Sec. 9. Compliance with state law and the Maine Rules of Civil Procedure. Resolved:** That any time the independent commission exercises its authority to issue a subpoena under this resolve, the independent commission shall comply with state law and the Maine Rules of Civil Procedure.

**Sec. 10. Availability of counsel to witnesses under subpoena; objections; privileges. Resolved:** That a witness appearing before the independent commission under subpoena may have counsel present to advise the witness at all times. The witness or counsel may, during the time the witness is giving testimony, object to any action of the independent commission that is detrimental to the witness's interests and is entitled to have a ruling by the chair or the chair's designee on the objection. The witness must be given the benefit of any privilege that the witness could claim in court as a party to a civil action, except that the chair or the chair's designee may direct compliance with any request for testimony to which an objection or claim of privilege has been made. The direction of the chair or the chair's designee may be overruled by a majority vote of the independent commission's members.

**Sec. 11. Access to state agency records not otherwise subject to disclosure. Resolved:** That, notwithstanding any provision of law to the contrary, the independent commission, by a majority vote of its members, is authorized to request and receive records in the possession of any state agency or instrumentality that the independent commission determines are necessary to fulfill its fact-finding mission, including confidential records and records not otherwise subject to public disclosure. The members of the independent commission and its staff are authorized to review records received under this section solely for the purpose of fulfilling the independent commission's fact-finding mission. During meetings of the independent commission, the contents of confidential records and records not otherwise subject to public disclosure may be reviewed only in executive session.

**Sec. 12. Cooperation with State Archivist. Resolved:** That the independent commission shall cooperate with the State Archivist to ensure that records of the independent commission are maintained in compliance with federal and state laws, rules and regulations.

**Sec. 13. Report on use of subpoena issuance. Resolved:** That the independent commission, in completing a final report of its work, shall include a detailed account of each subpoena issued.

**Sec. 14. Establishment of precedent. Resolved:** That nothing in this resolve may be used to establish a precedent authorizing independent commissions to issue subpoenas in the future.

**Sec. 15. Sunset. Resolved:** That the independent commission's authority to issue subpoenas under this resolve is effective until July 1, 2024. Any subpoena issued by the independent commission before July 1, 2024 remains valid after that date.

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