

STATE OF MAINE

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

—
S.P. 970 - L.D. 2250

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

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

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

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

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

Whereas, legislative action is immediately necessary to ensure the State's Department of Corrections is in compliance with relevant standards for the United States Department of Justice's upcoming audit, ensuring the continuation of grant funding; 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 enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §7070, sub-§2, ¶D-1, as repealed and replaced by PL 2019, c. 451, §1 and amended by PL 2023, c. 412, Pt.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

When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public.

The State Human Resources Officer, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; ~~and~~

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

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

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

- (1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

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

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

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

- (1) Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred;
- (2) Whether the individual under subparagraph (1) is still employed at the correctional facility;
- (3) Whether the individual under subparagraph (1) has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and

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

Sec. 4. 30-A MRSA §503, sub-§1-B is enacted to read:

1-B. Investigation of allegation of sexual misconduct or sexual harassment by county jail employee. Notwithstanding subsection 1, paragraph B, subparagraph (5), in the case of an allegation of sexual misconduct or sexual harassment within a county jail or detention facility, a determination that the allegation was substantiated, unsubstantiated or unfounded may be disclosed to the alleged victim. Unless the allegation is determined to be unfounded, the following information may also be shared with the alleged victim:

A. Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred;

B. Whether the individual under paragraph A is still employed at the county jail or detention facility;

C. Whether the individual under paragraph A has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and

D. Whether the prosecuting agency declined to indict the individual under paragraph A based on the allegation of sexual misconduct or sexual harassment.

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