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**Committee To Ensure Constitutionally
Adequate Contact with Counsel**

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Office of Policy and Legal Analysis



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Committee To Ensure Constitutionally Adequate Contact with Counsel

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Executive Summary

Both the United States Constitution and the Maine Constitution provide that criminal defendants have the right to counsel. For clients who are not held in custody or released on bail pending the outcome of their cases, confidential communication with their attorneys is a matter of simply picking up the phone or visiting the attorney's office. However, individuals who are held in custody pending arraignment or disposition of a criminal case or who are serving a sentence in a correctional facility rely on a series of administrative processes to ensure that their communications with their attorneys remain confidential and are not overheard. Recently, local news stories have been published detailing instances in which attorney-client calls have been overheard by corrections workers or the prosecution.

Concern over the extent of these encroachments of the attorney-client privilege prompted the 130th Maine legislature to consider LD 1946, *An Act to Ensure Constitutionally Adequate Contact with Counsel*. The Judiciary Committee voted in favor of an amended version of the bill, Resolve 2021, c. 182, which established the *Committee to Ensure Constitutionally Adequate Contact with Counsel*.

The resolve required that the membership of the committee include the following:

1. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;
2. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature;
3. The Commissioner of the Department of Corrections or the commissioner's designee;
4. The Attorney General or the Attorney General's designee;
5. The Commissioner of the Department of Public Safety or the commissioner's designee;
6. The Executive Director of the Maine Commission on Indigent Legal Services or the executive director's designee;
7. The president of a statewide association of sheriffs or the president's designee;
8. The president of a statewide association of criminal defense lawyers or the president's designee;
9. The president of a statewide association of prosecutors or the president's designee;

10. A representative of a civil rights organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate;
11. A representative of a civil liberties organization whose primary mission is the protection of civil liberties, appointed by the Speaker of the House;
12. A representative of a statewide prisoners' rights organization, appointed by the President of the Senate; and
13. A representative of a statewide organization whose mission includes advocating for victims and survivors of domestic violence, appointed by the Speaker of the House

A list of members and the position they were appointed to fill is included as Appendix B.

The duties of the committee were established by the resolve as follows:

1. Review the federal and state constitutional and statutory requirements concerning adequate communications with counsel for those involved in the criminal justice system;
2. Review recent policies and practices that have resulted in reported violations of the requirements in the State;
3. Review how other jurisdictions ensure confidential communications by telephone, video or electronic communication or in person between counsel and criminal defendants who are incarcerated or detained or in court facilities for court proceedings;
4. Review how other jurisdictions ensure opportunities for document review by incarcerated persons without interception, monitoring, copying, redaction or other action or review of documents by anyone acting on behalf of a correctional facility, a jail or the State;
5. Review remedies used by other jurisdictions when the constitutional and statutory requirements are not met, including, but not limited to, exclusion of evidence, disqualification to participate in prosecution, licensure discipline and expanded opportunities for post-conviction review; and
6. Develop recommendations to implement in this State to ensure that residents of the Maine Department of Corrections' correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities and criminal defendants in court facilities have constitutionally adequate contact with counsel.

The resolve also directs the committee to submit to the Joint Standing Committee on Judiciary by November 2, 2022, a report that includes a summary of the activities and recommendations of

the committee, including suggested legislation, for presentation to the First Regular Session of the 131st Legislature.

The committee met five times in person, with remote participation available through Zoom for committee members and persons invited to present information to the committee. Members of the public and interested parties were able to watch and listen to the meetings in person and electronically. The committee's website, maintained by the Office of Policy and Legal Analysis, includes all the meeting dates, meeting materials, and audio and video links: <https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee>.

All of the written materials presented to or distributed to the committee have also been posted on the committee's webpage, according to the meeting date, at: <https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee>.

Recommendations

The committee, after five meetings, numerous presentations, testimony and serious discussion, makes the following recommendations.¹

A. Recommendations related to the establishment of consistent standards

Recommendation #1

Direct the County Corrections Professional Standards Council to convene meetings of State, county and municipal law enforcement agencies, jails, the Maine Judicial Branch, the Department of Corrections, the Maine Sheriff's Association, the Office of the Attorney General, the district attorney offices, the Maine Association of Criminal Defense Lawyers and the Maine Commission on Indigent Legal Services to develop a consistent set of policies and procedures to be implemented by all law enforcement agencies, district attorney offices, jails and correctional facilities that acknowledge that attorney-client communications are absolutely confidential and that clearly describe the following:

- A. The process for protecting and ensuring confidential attorney-client communications;
- B. The policies to be followed in the event there is a breach of confidentiality; and
- C. The methods by which attorneys and clients will identify confidential channels for communication and the methods by which incarcerated persons will be provided with information regarding their right to confidential attorney-client communications.

Recommendation #2

Require that all State, county and municipal law enforcement agencies, jails, the Department of Corrections, the Office of the Attorney General and district attorney offices adopt policies and

¹ The term "jails" as used in this report refers to municipal and county jails. While these facilities are administered at the local level, the Maine Department of Corrections establishes minimum jail standards. See the Department's *Detention and Correctional Standards for Maine Counties and Municipalities* (August 2020), available online at <https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/MAINE%20STANDARDS%20FOR%20COUNTY%20AND%20MUNICIPAL%20DETENTION%20FACILITIES.pdf>.

procedures, as applicable to their respective offices, that ensure the absolute confidentiality of attorney-client communications.

B. Recommendations related to training

Recommendation #3

Direct the Board of Trustees of the Maine Criminal Justice Academy to amend the curriculum of the Basic Law Enforcement training and Basic Correctional Officer training to include information related to the confidentiality of attorney-client communications and to the protection of those communications.

Recommendation #4

Any policy relating to protecting confidential communications between attorneys and clients adopted by the Office of the Attorney General's office must include training for any law enforcement officer who, as part of a criminal investigation, may inadvertently hear privileged communications. The training must clearly outline the process for protecting confidential attorney-client communications as well as the policies to be followed in the event there is a breach of confidentiality.

Recommendation #5

Amend Title 25, Section 2802 of the Maine Revised Statutes to require that the Board of Trustees of the Maine Criminal Justice Academy be increased from 18 to 19 by adding a seat that is designated for an attorney who represents defendants in criminal cases.

C. Recommendations related to registration of attorney phone numbers

Recommendation #6 (divided)

Majority recommendation: Direct the Maine Commission on Indigent Legal Services or its successor agency to develop and maintain a registry of the telephone numbers and other contact information given to them by attorneys providing legal services to persons who are incarcerated. The Maine Commission on Indigent Legal Services must provide the registry information to sheriffs' offices and to the Department of Corrections weekly. The sheriffs' offices and the Department of Corrections are deemed to be on notice on the Monday following transmission of the information.

Designate the attorney names, phone numbers and contact information on the registry as confidential for purposes of the public records law.

Minority recommendation: Direct the Maine Commission on Indigent Legal Services to develop and maintain an additional registry of the telephone numbers and other contact information given to them by attorneys providing legal services to persons who are incarcerated. The Maine Commission on Indigent Legal Services must, on a weekly basis, provide the registry information to the county jails and to the Department of Corrections.

Designate the attorney names, phone numbers and contact information on the registry as confidential for purposes of the public records law.

Recommendation #7

Direct the Department of Corrections and the jails to develop and maintain systems and processes for registering the names, telephone numbers and contact information of attorneys who provide legal services to persons who are incarcerated in order to protect the confidentiality of attorney-client communications.

Recommendation #8

Direct the Department of Corrections to adopt rules requiring correctional facilities to proactively confirm on a timely basis the registration of attorney telephone numbers and other contact information protected from monitoring for attorney-client confidentiality purposes and to provide confirmation of registration at the request of the incarcerated person or the attorney.

Recommendation #9

Direct the Department of Corrections to amend the standards for jails to require jails to proactively confirm on a timely basis the registration of attorney telephone numbers and other contact information protected from monitoring for attorney-client confidentiality purposes and to provide confirmation of registration at the request of the attorney or an incarcerated person.

D. Recommendations related to physical facilities and space

Recommendation #10 (divided)

Majority recommendation: Require that the Department of Corrections and sheriffs ensure access on a timely basis to private space in correctional facilities and jails for attorney-client meetings and for the review and exchange of case materials.

Minority recommendation: Direct the Department of Corrections and sheriffs to work to ensure access on a timely basis to private space in correctional facilities and jails for attorney-client meetings and for the review and exchange of case materials.

Recommendation #11 (divided)

Majority recommendation: Require that by 18 months after the effective date of legislation, the Department of Corrections and sheriffs ensure that incarcerated persons have private and secure space available for the storage and viewing of case materials, including audio visual materials.

Minority recommendation: Direct the County Corrections Professional Standards Committee to work with county jails to develop private and secure space for the storage and viewing of case materials, including audio visual materials for incarcerated persons. Additionally, direct the Department of Corrections to work to develop within all of their correctional facilities private and secure space for the storage and viewing of case materials, including audiovisual materials for incarcerated persons.

Recommendation #12

Direct the Maine Judicial Branch to report by January 1, 2024, to the joint standing committees having jurisdiction over criminal justice matters and judiciary matters on the availability of space in public areas of courthouses and in secure holding areas of courthouses for confidential attorney-client communications, including space for the review of written, video and audio

materials related to the criminal case. The report must include an assessment of each courthouse and, to the extent that space is inadequate for confidential attorney-client communications, a plan for the development of adequate space.

E. Recommendations related to remedies and consequences of breach

Although mutually exclusive, a majority of members voted in favor of the following two recommendations for potential remedies to address improper access to confidential attorney-client communication:

Recommendation #13²

Provide by law that, if a defense counsel or a defendant or a petitioner for post-conviction review can show actual or constructive notice to the State of an attorney's telephone number or address if there is a recording or interception of a communication, then the context and contents of that communication are categorically excluded from use or mention at trial and any person who accesses, monitors, records, copies, transmits or receives any copy of that communication is categorically disqualified from participating in the related investigation or trial. If counsel cannot show actual or constructive notice to the State, then the existing structure of laws and remedies applies.

Recommendation #14

Direct the joint standing committee having jurisdiction over judiciary matters to consider amending Title 15, section 712(2) and (3), which generally provide that investigate officers, Department of Corrections employees and jail employees are not violating state laws governing the interception of wire and oral communications if they intercept communications involving a person residing in a correctional facility or jail provided certain notice requirements are met, to clarify that communications between incarcerated person and their attorneys are nevertheless confidential.

Suggested draft legislation incorporating those recommendations supported by a majority of committee members, except recommendation #14, which does not require legislative language, has been included in Appendix A.

² Recommendation #13 and Recommendation #14 are presented separately rather than as majority or minority reports because some members voted in favor of both, but with an expressed preference for Recommendation #13. See the Recommendations section for vote tallies.

I. Introduction

Resolve 2021, chapter 182

The Committee to Ensure Constitutionally Adequate Contact with Counsel, referred to herein as the committee, was established by Resolve 2021, chapter 182. The resolve is included as Appendix C. The membership of the committee consisted of 16 members, including:

- Senator Anne Carney, chair;
- Representative Thom Harnett, chair;
- Senator Lisa Keim;
- Representative Erin Sheehan;
- Representative Patrick Corey;
- Commissioner Randall Liberty, Department of Corrections;
- Attorney General Aaron Frey;
- Commissioner Michael Sauschuck, Department of Public Safety;
- Justin Andrus, Executive Director of the Maine Commission on Indigent Legal Services;
- Sheriff Dale Lancaster, representing a statewide association of sheriffs;
- Amber Tucker, representing a statewide association of criminal defense lawyers;
- District Attorney Maeghan Maloney, representing a statewide association of prosecutors;
- The Honorable Eric Mehnert, representing a statewide association whose primary mission is the advancement of racial justice;
- Meagan Sway, representing a civil liberties organization whose primary mission includes the protection of civil liberties;
- Norman Kehling, representing a statewide prisoners' rights organization; and
- Andrea Mancuso, representing a statewide organization whose mission includes advocating for victims and survivors of domestic violence.

A list of members is also available as Appendix B.

The duties of the committee as established by Resolve 2021, chapter 182 include:

1. Review of the federal and state constitutional and statutory requirements concerning adequate communications with counsel for those involved in the criminal justice system;
2. Review of recent policies and practices that have resulted in reported violations of the requirements in the State;
3. Review of how other jurisdictions ensure confidential communications by telephone, video or electronic communication or in person between counsel and criminal defendants who are incarcerated or detained or in court facilities for court proceedings;

4. Review of how other jurisdictions ensure opportunities for document review by incarcerated persons without interception, monitoring, copying, redaction or other action or review of documents by anyone acting on behalf of a correctional facility, a jail or the State;
5. Review of remedies used by other jurisdictions when the constitutional and statutory requirements are not met, including, but not limited to, exclusion of evidence, disqualification to participate in prosecution, licensure discipline and expanded opportunities for post-conviction review; and
6. Development of recommendations to implement in Maine to ensure that residents of Department of Corrections correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities and criminal defendants in court facilities have constitutionally adequate contact with counsel.

The resolve directs the committee to submit to the joint standing committee on Judiciary by November 2, 2022, a report that includes a summary of the activities and recommendations of the committee, including suggested legislation, for presentation to the First Regular Session of the 131st Legislature. The resolve is attached as Appendix C.

Review Committee Resources

The committee held five meetings, summarized in Section II of this report. All meetings were held in hybrid format, with remote participation available through Zoom for committee members and persons invited to present information to the committee or who provided public comment. Members of the public and interested parties were also able to watch and listen to the meetings in person and electronically. The meetings were streamed live on the Legislature's audio streaming service and archived video was available for asynchronous viewing. Resources and meeting materials were provided in hardcopy to committee members at all meetings. The committee's website, maintained by the Office of Policy and Legal Analysis, includes all the meeting dates, meeting materials, and audio and video links: <https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee>. All written materials presented to or distributed to the committee were posted on the committee's webpage, according to the meeting date, at <https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee>.

II. Background

A. General Background

The Sixth Amendment to the United States Constitution reads:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense³

The right to counsel is also enshrined in the Maine Constitution. Article 1, Section 6 reads:

Section 6. Rights of persons accused. In all criminal prosecutions, the accused shall have a right to be heard by the accused and counsel to the accused, or either, at the election of the accused;

To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against the accused;

To have compulsory process for obtaining witnesses in favor of the accused;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. The accused shall not be compelled to furnish or give evidence against himself or herself, nor be deprived of life, liberty, property or privileges, but by judgment of that person's peers or the law of the land.⁴

The right of indigent individuals to have counsel provided to them is derived from the United States Constitution and case law, most famously, the United State Supreme Court case of *Gideon v. Wainwright*.⁵ In Maine, counsel for defendants in criminal cases is not provided through a state-run public defender's office, but rather by private defense attorneys, who agree to represent the indigent at rates established by the legislature. The Maine Commission on Indigent Legal Services, established in 2009, is responsible for managing the roster of attorneys who have agreed to take on indigent criminal defense cases, as well as juvenile defendants and children and parents involved in child protective cases.^{6 7}

³ U.S. Const. amend 6.

⁴ Me. Const. art. I, § 6.

⁵ *Gideon v. Wainwright*, 372 U.S. 335 (1963)

⁶ See 4 M.R.S.A. §1801 et. seq. for the statutory language setting out the charge of MCILS.

⁷ For a comprehensive assessment of Maine's system of indigent legal services, see *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services*. The Sixth Amendment Center (2019).

While the right to counsel is not the focus of this study, the right to counsel itself is closely connected to the right to *contact* with counsel. Clients hold the privilege of private conversations with their attorneys. The right to confidential communications between attorney and client is integral to an attorney's relationship to her client and her ability to provide effective legal representation. Indeed, the rules governing the conduct of attorneys require that attorneys maintain confidentiality, except in certain very specific circumstances.⁸

While this study report is not focused exclusively on attorney-client phone calls that originate from correctional facilities or jails, recent journalistic reporting has focused on instances in which such calls were recorded and overheard by law enforcement officers or others in Maine.⁹ The Maine Monitor, a news publication, reported that nearly 1,000 calls from inmates to attorneys were recorded in a number of Maine's county jails.¹⁰

Maine does have statutory law that governs wiretapping and eavesdropping. Title 15 of Maine Revised Statutes, Section 710, subsection 1 makes intentional or knowing interception or disclosure, attempted interception, and procurement of another to intercept a wire or oral communication a crime. Law enforcement officers, other employees of the Department of Corrections authorized to exercise law enforcement powers, officers and jail investigative officers are exempt from this prohibition.¹¹ However, section 712, which lays out the exceptions to the general rule that wiretapping is prohibited, does contain a general disclaimer that reads, "this subsection does not authorize any interference with the attorney-client privilege."¹² The statute does not provide further details regarding the interpretation of that language.

B. Recent Legislative History

Legislation before the 130th Maine Legislature

During the Second Regular Session of the 130th Maine Legislature, the Joint Standing Committee on Judiciary considered one bill, LD 1946, *An Act to Ensure Constitutionally Adequate Contact with Counsel*, sponsored by Representative Thom Harnett. A copy of LD 1946 as originally drafted can be found in Appendix D. The bill did the following:

1. Prohibited intercepting, recording, monitoring, disseminating or otherwise divulging any oral, written, telephone, video or electronic communication between clients and their counsel;
2. Required correctional facilities to maintain logs of telephone calls and communications between clients and their counsel and required periodic auditing of logs;
3. Required facilities to provide written notice to clients when the client's counsel contacts the facility and asks for the client to contact legal counsel;

⁸ See Maine Rules of Professional Conduct, Rule 1.6

⁹ See The Maine Monitor's multi-part investigation *Eavesdropping in Maine Jails*, reported by Samantha Hogan. Online at: <https://www.themainemonitor.org/eavesdropping-in-maine-jails/>

¹⁰ Samantha Hogan. The Maine Monitor. *Attorney Calls Recorded by Maine Jails (January 26, 2022)*. Online at: <https://www.themainemonitor.org/attorney-calls-recorded-by-maine-jails/>

¹¹ 15 M.R.S.A. §710

¹² 15 M.R.S.A. §712

4. Required correctional facilities to provide inmates with the opportunity to review documents with legal counsel;
5. Required periodic audits and requires the adoption of policies that are published publicly and submitted to the Maine Commission on Indigent Legal Services;
6. Established civil penalties, a private cause of action and post-conviction review in the event of violations of the law;
7. Prohibited use of illegally obtained information in court and prohibited participation in court by a person who has accessed or received a document recording or information in violation of the law;
8. Created a new Class C crime of unauthorized eavesdropping; and
9. Required the Maine Commission on Indigent Legal Services, the Department of Corrections and the county jails and other county correctional facilities to conduct a retrospective review of telephone calls and electronic communications between clients and their counsel.

The bill was subject to a public hearing by the Judiciary Committee on February 28, 2022, and discussed during work sessions on March 11 and March 17. At the March 17 work session, the Judiciary Committee considered amending language proposed by Rep. Harnett. The Committee voted in favor of the bill with that amendment. The amendment changed the bill from an Act to a resolve, which ultimately was passed as Resolve 2021, chapter 182, *Resolve, Establishing the Committee to Ensure Constitutionally Adequate Contact with Counsel*. This committee originates from that resolve.

Judiciary Committee public hearing on LD 1946

At the public hearing on LD 1946, the Judiciary Committee heard oral testimony and received written testimony in support of the bill from Representative Harnett, Meagan Sway representing the ACLU Maine, Justin Andrus representing the Maine Commission on Indigent Legal Services, Tina Nadeau and Walter McKee representing the Maine Association of Criminal Defense Lawyers, and Whitney Parrish representing the Permanent Commission on the Status of Racial, Indigenous and Maine Tribal Populations. District Attorney Andrew Robinson representing the Maine Prosecutors' Association and Sheriff Dale Lancaster representing the Maine Sheriffs' Association provided written testimony in opposition to the bill. Assistant Attorney General Laura Yustak representing the Criminal Law Advisory Commission and Commissioner Randall Liberty of the Department of Corrections provided written testimony neither for nor against the bill. Attorney Robert Ruffner testified neither for nor against the bill.

The following testimony, here in abbreviated form, was provided to the Judiciary Committee in support of the bill:

- *Both the Maine Constitution and the United States Constitution guarantee defendants charged with crimes or facing the loss of significant liberty interests with the right to counsel.*
- *The right to counsel is sacrosanct, as are the communications between defendants and their attorneys, regardless of whether those defendants are incarcerated. Access to*

effective assistance of counsel includes the right to have confidential conversations with one's attorney without the government overhearing what is said. If incarcerated defendants are aware that their calls with their attorneys might be recorded, it will chill those discussions, making it less likely that those incarcerated persons can have the full and complete conversations with their attorneys to which they are constitutionally entitled. It is the responsibility of state government to ensure that the right to effective assistance of counsel is protected.

- *According to a months-long investigation by the Maine Monitor, Maine jails have recorded some 967 calls from inmates to their attorneys at county jails in Aroostook, Androscoggin, Franklin and Kennebec County. Every one of these calls was made by an incarcerated person to an attorney's office. None of these calls implicated any form of circumventing the jail's telephone system in a way that might have reasonably rendered the calls subject to recording.*
- *Specifically, the bill addresses telephone, video and electronic forms of communication and person-to-person contact. The bill prohibits intercepting, recording, monitoring, disseminating or otherwise divulging any oral, written, telephone, video or electronic communication between clients and their counsel.*
- *The Maine Commission on Indigent Legal Services is aware of a case in which a jail had recorded privileged, substantive client-attorney communications, and provided those communications to the State in a child protective action. In that case, the State distributed those calls to all the parties to that action through discovery. Counsel, and through counsel the client, became aware of the issue only through that discovery. No one caught the issue before distribution. No one advised counsel of the issue before distribution.*

Additionally, one attorney testified that in reviewing the discovery for a client in a criminal case, he found that jail staff had not only recorded privileged calls but had identified 79 specific privileged calls and had burned those calls to a separate CD-ROM and then provided that disc to the prosecution.

The following testimony, here in abbreviated form, was provided to the Judiciary Committee in opposition to the bill:

- *The Maine Prosecutors Association recognizes that communication between a person charged with a crime and that person's attorney is privileged. Prosecutors do not want to possess attorney-client communications and the association has conveyed this position to all of Maine's jail administrators in a letter sent in July of 2020. To the extent that this proposed legislation is designed to honor this privileged communication, the association supports that goal.*
- *The enforcement mechanisms built into this bill are broad and could have a detrimental effect on the prosecution of criminal cases. They could prevent a prosecutor from participating in the prosecution of the case whether or not the person has reviewed the*

substance of the document, recording or information. The determination of whether a prosecutor should be precluded from participation in a case should be a matter for the court to determine.

- *The post-conviction relief provision in the bill would allow for a criminal conviction to be overturned without requiring a showing that the recording was substantively used by the State and had a substantive impact on the outcome of the defendant's case.*
- *The civil remedy and private cause of action provisions in the bill overlap with existing remedies of motions to suppress evidence and complaints to the Maine Board of Bar Overseers and call into play the Maine Rules of Evidence.*
- *The Maine Sheriffs' Association is committed to identifying problems in any jail-related system and working with legislators to find solutions that protect the rights of jail inmates, but in a way that does not jeopardize their fellow inmates or victims who deserve protection from additional harm.*

The following information, here in abbreviated form, was provided to the Judiciary Committee by persons taking a position neither for nor against the bill:

- *The Department of Corrections recognizes the importance of ensuring the constitutional protections associated with privileged communication between residents of MDOC facilities and their legal counsel.*
- *To protect communications beyond those recognized as privileged by applicable Bar Rules and Rules of Evidence, it would be appropriate to define those parameters. See, for example the Maine Rule of Evidence, Rule 502 and the Maine Rule of Professional Conduct, Rule 1.6.*
- *Maine statutes already govern interception of oral and wire communications. The proposed new Class C crime, "unauthorized eavesdropping," should be written so that it does not conflict with the definitions in Title 15, section 709 and the existing Class C crime of illegally intercepting wire or oral communications in section 710.*
- *The provisions of the bill regarding direct evidence, derivative evidence, and personnel apply even if the recording is not reviewed and is immediately disclosed to opposing counsel.*
- *The bill is broadly drafted and includes communications and contacts in courts, jails, detention, and correctional facilities, and includes video recording.*

III. Committee Process

The committee was initially authorized to meet four times. The committee sought and was granted permission to meet one additional time.

September 7th Meeting

The first meeting of the committee was held on September 7, 2022. Committee members, who attended in person and remotely via Zoom, introduced themselves. Sarah Branch attended for committee member Amber Tucker, representing the Maine Association of Criminal Defense Lawyers. Deputy Attorney General Lisa Marchese attended for committee member Attorney General Aaron Frey. District Attorney Kathryn Slattery attended for committee member District Attorney Maeghan Maloney, representing the Maine Prosecutors Association.

Staff from the Office of Policy and Legal Analysis provided an overview of the authorizing resolve, Resolve 2021, chapter 182, included as Appendix C. Staff discussed the committee's website and resource materials, including a 50-state survey prepared by staff on statutes, regulations and guidance regarding access to counsel in correctional facilities. This chart is included as Appendix E. Staff provided an overview of the authorizing resolve, the Maine Freedom of Access law¹³ and Maine's law on interception of wire and oral communications,¹⁴ Title 15, chapter 102, which allows certain investigative officers and employees of jails and correctional facilities to intercept, disclose or use that communication if:

- Either the sender or receiver of the communication resides in a Department of Corrections adult or juvenile correctional facility or jail; and
- Notice of the possibility of interception is provided in a manner sufficient to make the parties aware of the possibility of interception. Notice may be provided by means of:
 1. Providing the resident of the correctional facility or jail with a written notification statement;
 2. Posting written notification next to every telephone at the facility or jail that is subject to monitoring; and
 3. Informing the recipient of the call by playing a recorded warning statement before the recipient accepts the call.¹⁵

Staff also provided a number of relevant Department of Corrections policies, which are on the committee website at <https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee>.

A panel discussion regarding constitutionally adequate contact with counsel, particularly attorney-client confidentiality of telephone calls, included Justin Andrus, Executive Director of the Maine Commission on Indigent Legal Services, District Attorney Kathryn Slattery representing the Maine Prosecutors Association and Commissioner Randall Liberty of the Maine Department of Corrections.

Justin Andrus discussed breaches of attorney-client confidentiality. He noted that most recording of attorney-client conversations when the client is in custody is inadvertent. Recording may

¹³ 1 M.R.S.A. §401 et. seq.

¹⁴ 15 M.R.S.A §709 -713

¹⁵ 15 M.R.S.A §712

happen because of oversights or errors by the attorney or client in providing telephone numbers that should not be monitored or by the telephone service contractor or jail in noting and entering the directive not to monitor the phone number. Policies need to be adopted to standardize the blocking of attorney-client calls.

Mr. Andrus also emphasized that monitoring of attorney-client telephone conversations violates the client's constitutional rights. While it is difficult to show actual harm to a client's defense resulting from a violation, there is a broader chilling effect on protected communications. Mr. Andrus also remarked that there is concern over the ability of residents to exchange legal materials with counsel and the ability of residents to safely store legal documents.

Attorney-client conversations can also be illegally monitored or overheard by law enforcement court officers when consultations must be held in public spaces or with an officer present because the client is in custody or because of a determination that the client presents risks of escape, security or harm. Policies need to be adopted to prohibit listening in to attorney-client consultations.

Mr. Andrus stated that MCILS maintains a list of defense attorney telephone numbers that will enable Securus¹⁶, a corrections telephone service contractor, to receive attorney phone number information from MCILS instead of relying on individual attorneys and clients to provide that information. Mr. Andrus reported that MCILS has had difficulty getting information related to this topic from the jails.

Kathryn Slattery presented information from the point of view of the district attorneys. She emphasized that the district attorneys neither want illegal recordings to occur nor to hear illegally recorded calls. The district attorneys' offices have policies requiring them to stop listening to a recorded call from a jail or correctional facility as soon as they discover that the call is an attorney-client call. The policies require notification to prosecutors, defense attorneys and the court. However, the district attorneys do not have a uniform policy that applies statewide, nor are policies generally in writing. Ms. Slattery remarked that the increased use of cell phones has complicated the blocking of attorney-client calls from being monitored.

Deputy Attorney General Lisa Marchese, designee for Attorney General Aaron Frey, noted that attorneys in the Attorney General's Office know the procedures to follow should they come across a privileged call. The AG's Office has been in contact with MCILS to make sure members of the defense bar know to register phone numbers with Securus and with the jails. She noted that homicide investigators receive annual training.

Department of Corrections Commissioner Randall Liberty stated that the Department of Corrections recognizes the importance of confidential communications between attorney and client and provides 30 minutes per week of free telephone calls to residents of correctional facilities to speak with their attorneys if the residents have low cash balances in their savings accounts. Correctional facilities differ in their policies regarding the use of tablets for email and

¹⁶ Securus Technologies contracts with many of Maine's jails to provide secure phone services to residents. Some facilities use different contractors, including ViaPath Technologies.

texting and for video conferencing with attorneys. However, all state correctional facilities have separate rooms in which attorneys can meet with their clients.

Commissioner Liberty noted that residents of state correctional facilities are informed that outgoing telephone calls, except to attorneys, may be monitored. Residents are provided with forms on which to give telephone numbers for their attorneys so that the correctional facility can block the monitoring function through their telephone services contractor. DOC facilities have less turnover than jails, so the process of protecting attorney numbers is easier to manage. Staffing is an issue that can complicate video calls, which staff need to monitor.

The committee reviewed information requests for the second meeting and the schedule for the remaining meetings of the committee. After the meeting, members made the following information requests:

- Department of Public Safety
 1. *With regard to the confidentiality of attorney-client telephone conversations for persons who are in custody in a jail, municipal detention facility or correctional facility:*
 - a. *Please provide copies of any training materials, policies, procedures or guidance that are provided to members of the Maine State Police;*
 - b. *Please provide materials related to procedures to be followed by a member of the Maine State Police who comes into possession of attorney-client telephone conversations.*
- Maine Criminal Justice Academy
 1. *During the course of the meeting, the Committee discussed training of correctional officers, law enforcement officers and requested more information regarding the extent to which correctional officers and law enforcement officers are trained about how to ensure attorney-client confidentiality. This includes confidentiality during attorney calls, attorney visits, and of the handling of legal mail and documents. Does the MCJA have written training materials related to these topics? If so, could you please provide them to us?*
- Office of the Attorney General
 1. *The Committee requests copies of any training materials provided by the Office of the Attorney General to AAGs or Office of the Attorney General investigators related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.*
 2. *The Committee requests copies of any policies, procedures, or guidance materials related to the use and confidentiality of attorney communications with residents at*

DOC facilities or inmates at county or municipal facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations, including any materials related to procedures to be followed in the event an AAG or investigator comes into possession of confidential communications.

- Department of Corrections

- 1. The Committee requests copies of any correctional officer training materials provided by or known to the DOC related to confidentiality of attorney communications with residents at DOC facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.*
- 2. The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with residents at DOC facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations.*
- 3. The Committee requests copies of any written materials that are provided or available to residents regarding recording of telephone calls. If no such information is provided, it would be helpful to know that as well.*
- 4. The Committee requests copies of any forms provided to residents that are used by the resident to provide the telephone numbers of their attorneys for the purpose of ensuring confidentiality of attorney calls*
- 5. The Committee requests copies of any policies, procedures, or guidance, including materials related to the use of video, laptops, or electronic means by a resident to confidentially communicate with attorneys.*
- 6. The Committee requests copies of any policies, procedures, or guidance, including materials related to ensuring confidentiality of attorney visits with residents at DOC facilities*
- 7. The Committee requests copies of any policies, procedures, or guidance, including materials related to ensuring confidentiality (including storage policies) of legal materials held by residents at DOC facilities.*
- 8. The Committee would like copies of any policies regarding strip/ body searches of residents following visits by attorneys to residents of Long Creek Development Center.*
- 9. The Committee requests staffing data for DOC facilities, including, to the extent this information is available, the total positions at each facility and the current vacancy rate.*

10. *The Committee is interested in better understanding the degree to which the DOC provides guidance, technical assistance or oversight to DOC and to county and municipal facilities to help those facilities ensure that attorney client confidentiality is maintained.*

11. *The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with DOC residents who are present in courthouses.*

- **Maine Prosecutors' Association**

1. *The Committee requests copies of any training materials provided by or known to the Maine Prosecutors Association related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.*

2. *The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations, including any materials related to procedures to be followed in the event a DA or ADA or district attorney investigator comes into possession of confidential communications.*

- **Maine Commission on Indigent Legal Services**

1. *At its next meeting, the Committee would like to hear from several attorneys who regularly serve as Lawyer of the Day, ideally from different counties/courts. Would MCILS be able to help facilitate that request? (we will also reach out to the Judicial Branch)*

2. *The Committee is interested in hearing from the counsel for Securus, to learn how their technology works to screen out attorneys, and what the limitations and challenges of that technology are. Could you provide the name and contact information for us to reach out, or facilitate that introduction (whichever you think is a better approach)?*

3. *The Committee would like to see any policies and/or training materials MCILS has related to training panel attorneys on confidentiality of communications with residents of jails and correctional facilities, including confidentiality of phone conversations.*

- **Maine Sheriffs' Association**
 1. *The Committee requests copies of any training materials provided by or known to the Maine Sheriffs' Association related to confidentiality of attorney communications with inmates at county or municipal facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.*
 2. *The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with inmates at county or municipal facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations, including any materials related to procedures to be followed in the event a sheriff or officer comes into possession of confidential communications.*
 3. *The Committee requests copies of any written materials that are provided or available to inmates at county or municipal facilities regarding recording of telephone calls. If no such information is provided, it would be helpful to know that as well.*
 4. *The Committee requests copies of any forms provided to detainees or inmates that are used by the inmate to provide the telephone numbers of their attorneys for the purpose of ensuring confidentiality of attorney calls.*
 5. *The Committee requests copies of any policies, procedures, or guidance, including un-promulgated materials related to the use of video, laptops, or electronic means by an inmate to confidentially communicate with attorneys.*
 6. *The Committee requests copies of any policies, procedures, or guidance, including un-promulgated materials related to ensuring confidentiality of attorney visits with inmates at county or municipal facilities.*
 7. *The Committee requests copies of any policies, procedures, or guidance, including materials related to ensuring confidentiality (including storage policies) of legal materials held by inmates at county or municipal facilities.*
 8. *The Committee requests staffing data for county and municipal facilities, including, to the extent this information is available, the total positions at each facility and the current vacancy rate.*
 9. *The Committee is interested in better understanding the degree to which the MSA provides guidance, technical assistance or oversight to local and municipal facilities to help those facilities ensure that attorney client confidentiality is maintained.*
 10. *The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with inmates who are present in courthouses.*

- Maine Drug Enforcement Agency

11. The Committee is interested in copies of any training materials provided to MDEA staff related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.

September 21st Meeting

The second meeting of the committee was held on September 21, 2022. Committee members, who attended in person and remotely via Zoom, introduced themselves. Deputy Attorney General Lisa Marchese attended for Attorney General Aaron Frey, Maine Drug Enforcement Agency Director Roy McKinney and Paul Cavanaugh attended for Commissioner Sauschuck, and Jeremy Pratt attended for Amber Tucker, representing the Maine Association of Criminal Defense Lawyers.

Information regarding the operations of the Lawyer of the Day program, which provides representation for the first appearance and arraignment phases of criminal proceedings, was provided by the Maine Commission on Indigent Legal Services and the Maine Judicial Branch. The committee heard presentations from Justin Andrus, Executive Director of the Maine Commission on Indigent Legal Services and from the following attorneys who regularly serve as lawyers of the day:

- Joseph Belisle, who serves in Penobscot County;
- Dawn Corbett, who serves in Hancock, Washington and Penobscot Counties;
- Robert Ruffner, who serves in York, Cumberland, Kennebec and Somerset Counties; and
- Lisa Whittier, who serves in Kennebec and Waldo Counties.

Justin Andrus provided background information on the first appearance and arraignment processes, the Maine Bail Code¹⁷ and the Maine Rules of Unified Criminal Procedure, Rule 5.

With regard to the duties of the committee that pertain to the Lawyer of the Day program, Justin Andrus, Joseph Belisle, Dawn Corbett, Robert Ruffner and Lisa Whittier provided the following observations and suggestions:

- *MCILS does not have a general conduct rule for the Lawyer of the Day program because each court runs differently. Lawyers of the day are paid the \$80/ hour MCILS rate. There is a minimum reimbursement for a short day, but this is very unusual.*
- *Larger jurisdictions have two lawyers of the day on at a time, and occasionally three. In other jurisdictions only one lawyer of the day at a time will serve. Some jurisdictions have very few attorneys on the roster, so the system relies heavily on these attorneys' willingness to serve.*

¹⁷ 15 M.R.S.A, ch. 105-A

- *The courts and clerks control the number of criminal cases before the court each day. Often the number of criminal cases requiring Lawyer of the Day representation is too high for the lawyer or lawyers designated for the cases to provide representation beyond the basic determination of bail. Continuity of counsel can be very challenging.*
- *Courthouses and jails lack sufficient space for confidential attorney-client consultations, impairing the free flow of information between attorney and client and resulting in conversations that can be overheard by the general public, other defendants and court officers. Private consultation spaces are needed. In one courthouse the only private consultation space that is available is inside a holding cell. The solutions to these issues are challenging to determine because of infrastructure limitations. Ideally each courthouse would have a holding area, a consultation area and an appearance area. Easy access should be available between the consultation and appearance areas.*
- *For an in-custody defendant attending a first appearance or arraignment through a video appearance, headphones and a microphone should be provided for the defendant. It is best if the attorney is designated as a “host” to improve privacy for the defendant and to allow control of the conversation by the attorney.*
- *Early advance access by the attorney to electronic documents related to the defendant improves the quality of representation.*
- *When the court appearance is conducted by video, courts across the state are inconsistent in the presentation of the explanation of rights video that is provided pursuant to Rule 5(b).^{18 19}*
- *Attorneys report suspecting or knowing that telephone calls from their clients have been intercepted, recorded and made available to prosecutors. These experiences have a chilling effect on attorney-client communications, so much so that some attorneys decline to have substantive conversations with their clients by telephone, conducting such conversations only when meeting in-person with their clients.*

¹⁸ Rule 5(b) of the Maine Rules of Unified Criminal Procedure reads:

(b) Initial Statement of Rights by the Court. When a defendant arrested, either under a warrant issued upon an indictment, an information, or upon a complaint filed in the Unified Criminal Docket or without a warrant is brought before the court or a defendant who has been summonsed appears before the court in response to a summons, the court, in open court, shall, unless waived by the defendant's counsel, inform the defendant of:

- (1) the substance of the charges against the defendant;
- (2) the defendant's right to retain counsel, and to request the assignment of counsel and to be allowed a reasonable time and opportunity to consult counsel before entering a plea;
- (3) the right to remain silent and that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant;
- (4) the maximum possible sentence, and any applicable mandatory minimum sentence; and
- (5) the defendant's right to trial by jury.

The statement of rights required to be given by this Rule shall be stated live to the defendant in open court by the court, or stated by the court in a video recording viewed by the defendant before his or her first appearance.

¹⁹ The video shown prior to arraignment, “Understanding Your Rights and Responsibilities a Arraignment”, can be viewed online at <https://www.courts.maine.gov/help/criminal/index.html>.

- *Attorneys report difficulties in contacting the jails to get their telephone numbers on the list of numbers blocked from interception, monitoring and recording.*
- *Sheriffs report that the jails' contractors for outgoing telephone calls from residents have systems in place to block calls to residents' attorneys from interception, monitoring and recording. The sheriffs report that the systems should be easy for attorneys to access.*
- *When conducting remote appearances, there is a significant power differential between the remote lawyer of the day and the in-person prosecutor. Remote appearances can also feel less formal. It is hard to manage what a client is saying to the judge if you are not able to stand next to the client in person. Sometimes jails don't log in on time or at all for remote appearances.*
- *Penobscot is a good model courthouse, with two private meeting rooms. Other courthouses have no meeting areas at all. Penobscot also conducts remote appearances well. The case information is loaded onto a file share and available to the lawyer of the day in advance.*
- *Sometimes officers will not leave during attorney consultations with in custody defendants.*
- *It is important to have effective assistance of counsel during arraignment because that is when bail is established. Bail can mean the difference between going home and staying in jail, which can translate to lost wages or jobs and other compounded effects of incarceration.*
- *Currently all courts but Aroostook only do arraignments three days a week. Timing is driven by the US Constitution and case law.²⁰*
- *Each facility has a different process to get an attorney phone number blocked and that can be confusing. It is not always easy to figure out whom to speak with in order to ensure a number is indeed blocked. A universal registration process would be ideal, or at least a uniform registration policy that each jail follows.*
- *There should be a consequence for breach of attorney client confidentiality beyond filing of a motion to dismiss, which requires a showing of actual harm and which can amount to an unattainable standard.*

The committee next reviewed answers to questions sent by the committee to various parties following the first meeting, these answers are compiled as Appendix F.

Maine Judicial Branch

Amanda Doherty, Criminal Process and Specialty Dockets Manager, Maine Judicial Branch, spoke with the committee. She stated that private conference rooms in courthouses for use by

²⁰ See *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

attorneys and clients are very limited and that use may be restricted to maximum security defendants. The presence of COVID-19 in the community has restricted public access to courthouses and increased video court appearances, including for initial appearances and arraignments and statements of rights by the court under Rule 5 (a) and (b). For non-custody defendants' first appearances, the courthouses need space for attorney-client consultations to ensure the privacy of their communications. Most first appearances and arraignments for in-custody defendants are conducted by video electronically. First appearances and arraignments for in-custody defendants in which the defendants are in their cells using tablets provide more privacy than those conducted via the Zoom platform. Staffing is a major issue and jails struggle to maintain sufficient staff to transport inmates to and supervise them at courthouses for appearances.

Maine Sheriffs' Association

Somerset County Sheriff Dale Lancaster presented information to the committee on the perspectives of the sheriffs on attorney-client confidentiality of telephone calls. Sheriff Lancaster stated that the jails are committed to ensuring the confidentiality of attorney-client telephone calls. However, the jails need to be provided with attorney telephone numbers so that outgoing calls to attorneys can be blocked from the monitoring and recording that is done by the contractors who provide telephone services for outgoing calls by jail residents.

Sometimes new jail residents do not know their attorneys' phone numbers or are otherwise not well equipped to provide information to the jail. In those situations, the jail relies on the attorney to provide the attorney's phone number to the jail directly.

Jail procedures for ensuring that attorney-client telephone calls are not recorded are governed by Title 15, Maine Revised Statutes, section 712, subsection 3 and require:

1. Written notice to the jail resident regarding the possibility of interception and recording;
2. Posting of written notification next to every telephone at the jail that is subject to monitoring and informing the recipient of a telephone call from a jail resident of the possibility of interception and recording; and
3. Playing a recorded warning regarding the possibility of interception and recording before the recipient accepts the call.

Procedures in jails and practices by the contractors that provide telephone services for outgoing telephone calls by residents of the jails differ. However, all jails have policies on blocking the interception of outgoing calls from residents to their attorneys.

Information requested at the first meeting and committee discussion

In response to information requested during the first meeting, the committee heard presentations and held discussions with representatives from the Department of Corrections, Office of the Attorney General, Maine Drug Enforcement Agency, Maine Criminal Justice Academy, Maine Sheriffs' Association, Maine Prosecutors' Association, Maine State Police and Maine Commission on Indigent Legal Services.

The Director of the Maine Criminal Justice Academy (MCJA), Richard Desjardins stated that the Maine Criminal Justice Academy (MCJA) is overseen by the MCJA Board of Trustees, which per statute sets minimum training standards for corrections officers and which approves curricula for basic certification training and certifies all law enforcement and corrections officers in Maine. The board membership is governed by Title 25, section 2802. Currently there are no defense attorneys on the board, though there have been in the past.

Mr. Desjardins noted that current basic law enforcement and corrections training includes information regarding the constitutional protections of individuals as well as attorney-client privilege. The Basic Law Enforcement Training Program also includes instruction related to United States and Maine Constitutional protections, admissions and confessions, and United States Supreme Court and other court decisions. These sections are taught by attorneys from the Attorney General's Office. Details of facility operations are not part of corrections training, as they are facility specific. Selected MCJA trainings are included on the committee website at <https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee>.

Commissioner of Corrections Randall Liberty emphasized that the Maine Criminal Justice Academy includes a course titled "Corrections Law," which appears in PowerPoint form on the committee website. Staff also receive refresher trainings throughout their employment.

Commissioner Liberty noted that residents of MDOC facilities receive a number of documents that mention attorney client confidentiality, including facility specific handbooks (see Appendices N). Selected MDOC policies appear on the committee website. Relevant policies include:

1. Adult Facility Policy 10.1, Resident Property
2. Juvenile Facility Policy 14.1, Access to Legal Rights
3. Juvenile Facility Policy 16.1, Resident Mail
4. Juvenile Facility Policy 16.2, Access to Telephones
5. Juvenile Facility Policy 16.3, Visitation
6. Adult Facility Policy 21.2, Prisoner Mail
7. Adult Facility Policy 21.3, Prisoner Telephone System
8. Adult Facility Policy 21.4, Prisoner Visitation

Residents of adult facilities are given a form on which to indicate their attorney's numbers for protection from recording. This form, the *Resident Telephone System Legal Call Number List*, is attached as Appendix G. Residents of Long Creek, the state's juvenile facility, do not need to provide attorney phone numbers, as the facility is aware of who represents each juvenile.

Commissioner Liberty stated that the MDOC discourages use of text messages or video for attorney visits, as these are not confidential. Residents with access to text messaging via the Edovo tablet system are made aware there is no way to designate recipients of text messages as legal counsel, and therefore there should be no belief that text messages can remain confidential.

The MDOC reviews the operations of all jails as outlined in the Detention and Correctional Standards for Maine Counties and Municipalities.²¹ Standard J.20, which is mandatory, provides for unrestricted and confidential access and communications with the courts, confidential correspondence and phone communication with counsel, and the right to consult with the counsel under staff supervision if the inmate poses a risk of violence or escape.

In response to requests for information, the Maine Drug Enforcement Agency (MDEA) provided an Interoffice Memorandum (attached as Appendix H) to all MDEA staff dated September 24, 2020 from Director Roy McKinney entitled “Correctional Facility Inmate Calls Directive.” The directive applies to all MDEA personnel and prohibits direct access to a jail telephone system except for some DEA personnel who are deputy sheriffs and only in certain circumstances. It provides a procedure for obtaining approval for monitoring inmate phone calls but prohibits monitoring attorney-client calls and states that, if during the review of a recording an officer discovers a conversation between an inmate and their attorney, the officer must immediately stop the recording playback and notify their supervisor and commander by email, the correctional facility point-of-contact for MDEA inmate phone recordings, and the case prosecutor. The officer must also return the recording containing the privileged call to the jail’s point-of-contact and request another without the privileged call. Finally, the officer must complete a supplemental report detailing the event and compliance with the directive.

In response to information requests from the committee to the Department of Public Safety, the Maine State Police noted that that:

The Maine State Police provides a directive to all of its members that they may not to listen to phone calls between anyone in their custody and their attorneys. Should such a call be identified while the member is listening, the member is to immediately stop listening, document relevant information about the call and how long they listened and report the incident to their supervisor and appropriate prosecutorial office

Paul Cavanaugh, representing the Maine State Police, informed the committee that the policy is not written, that he does not know if the Maine State Police favored placing it in written form and that if a member of the Maine State Police violates the policy that law enforcement disciplinary action could be taken.

In response to information requests from the committee to the Office of the Attorney General (OAG), Deputy Attorney General Lisa Marchese responded that the OAG has no written training material or policies, procedures or written guidance relating to confidential communications with MDOC or county jail residents. Deputy AG Marchese also noted that the Attorney General’s Office has a practice in place if an assistant attorney general or a law enforcement officer comes into possession of privileged communications. This practice has been discussed with attorneys

²¹ Maine Department of Corrections. Inspections Division. *Detention and Correctional Standards for Maine Counties and Municipalities*, August 2020. Available online at <https://www1.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/MAINE%20STANDARDS%20FOR%20COUNTY%20AND%20MUNICIPAL%20DETENTION%20FACILITIES.pdf#:~:text=MAINE%20STANDARDS%20FOR%20COUNTY%20AND%20MUNICIPAL%20DETENTIO N%20FACILITIES,and%20storage%20of%20the%20individual%27%20s%20personal%20property.>

in the criminal division on numerous occasions and with the law enforcement agencies with whom the OAG works.

Deputy AG Marchese stated that the prosecution team, including law enforcement, does not want to possess or listen to any privileged communications and the office recognizes and respects that a person has a constitutional right to confidential communications with their attorney. An assistant attorney general or law enforcement officer who believes they have been inappropriately provided a privileged call must immediately stop listening to the recording. If a law enforcement officer, that officer notifies the assistant attorney general assigned to the case, who immediately notifies the Division Chief and the defense attorney. If an assistant attorney general comes into possession of a privileged phone call, that attorney stops listening and notifies the Division Chief and the defense attorney. At this point in the process, the OAG defers to the defense attorney as to how the recording should be handled. Different defense attorneys take different approaches. In most cases, the court is notified.

Although the OAG does not have written policies or procedures relating to privileged calls, in July of 2020, the OAG collaborated with the District Attorneys and sent a letter from the Maine Prosecutors Association to all sheriffs and jail administrators, with a copy to the Executive Director of MCLIS, reminding them of the importance of protecting privileged communications. The July 2020 letter is included as Appendix I. The letter reminds the sheriffs and jail administrators that visits, calls and emails between inmates and their attorneys are privileged and confidential and cannot be recorded or shared. It states that investigators and prosecutors are not entitled to and do not want any communications between an attorney and their client. The letter stresses that the jails obtain attorney contact information, including office and cell and any other phone numbers and email addresses. Because some jails provide tablets for inmates to communicate via written communications, the letter asks jails to notify inmates that those communications with family and friends are subject to review and disclosure and reminds jails that it is important that inmates acknowledge this in writing. The letter states that the defense bar has been made aware of the importance of keeping the jails current on contact information and that attorney-client emails should not be documented or shared with law enforcement or the State.

The Maine Prosecutors' Association, in response to inquiries regarding training materials and policies and procedures, referred the committee to the July 2020 letter described above. District Attorney Maeghan Maloney, for Prosecutorial District IV, provided a copy of the office policy regarding domestic violence and sexual assault investigators. This policy is available as Appendix J. The policy requires domestic violence investigators to monitor jail calls from defendants held in custody for domestic violence and sexual assault offenses. If a defense attorney is identified as a party on a call, the investigator must turn off the recording, write down what was heard, notify the prosecutor and turn over the written document to the prosecutor. In turn, the prosecutor must notify the defense attorney and give that person the written document. The prosecutor and defense attorney will then notify the Court.

District Attorney Maloney noted that there is no statewide training for district attorney staff and district attorneys on protecting the confidentiality of attorney-client communications, but that

there is nothing preventing prosecutors from establishing a uniform policy, and that she will address the issue at the next annual meeting of the Maine Prosecutors Association.

The committee began an initial discussion of possible recommendations from the committee and encouraging committee members to consider options for recommendations. Ideas that were mentioned included: standardized policies on ensuring confidentiality of attorney-client communications to be adopted by law enforcement agencies, jails, DOC correctional facilities; having jails and correctional facilities publicize the names and telephone numbers of attorneys whose calls with clients will not be monitored and recorded; designating one position on the Board of Trustees of the Maine Criminal Justice Academy for a defense attorney; having the Maine Commission on Indigent Legal Services periodically send its list of defense attorneys to the jails; enacting laws to strengthen the guarantee of confidential attorney-client communications and specifying sanctions for violations (one member suggested that sanctions apply only when the defense has shown that the attorney had applied to block monitoring and recording).

The meeting closed with a request that the next meeting include opportunities for current and former residents of jails and correctional facilities to provide written or oral comments to the committee on their experiences with the confidentiality of attorney-client communications while incarcerated. Requests for public comment were to be sent out to current and former residents of jails and correctional facilities and attorneys for incarcerated persons to provide written comments to the committee and to provide oral testimony in person or via Zoom.

The committee also reviewed information requests for the third meeting. After the meeting the following information requests were distributed:

- Maine Commission on Indigent Legal Services
 1. *What space was available in each courthouse for attorneys to meet with their clients.*
 2. *Does MCILS track caseload statistics? The Committee asked for caseload data for each court.*
 3. *Do you have access to lists of protected phone numbers from Securus and GTL or any idea how we might obtain these lists? Also, we were hoping you could confirm (or correct) our understanding of the process for an attorney to protect their number from surveillance. Our understanding is that an attorney wishing to add a number to the list of protected numbers needs to contact the jail in which their client is residing, speak to whomever that particular jail has designated as a point person, and provide their number. The point person in the jail works with the vendor to add the number to the list, and the number is then protected from surveillance regardless of the inmate. Is that an accurate description of the process? An attorney would need to contact each individual courthouse to make sure their numbers are on that courthouse's list, correct?*

4. *As far as you know, is there any way for an attorney to confirm that the attorney's number is protected, aside from calling the jail and asking*
- Judicial Branch
 2. *For each courthouse, what space is available for attorneys to meet privately with clients?*
 3. *Are current arraignment caseload statistics available for each court (walk in and in custody arraignments) and if so, can these statistics be shared with the committee?*
 4. *Can you describe the process each courthouse uses to determine whether appearances will be in person or remote?*
 - Sheriffs' Association
 1. *Do you have access to lists of protected phone numbers from Securus and GTL or any idea how we might obtain these lists? Also, we were hoping you could confirm (or correct) our understanding of the process for an attorney to protect the attorney's number from surveillance. Our understanding is that an attorney wishing to add a number to the list of protected numbers needs to contact the jail in which their client is residing, speak to whomever that particular jail has designated as a point person, and provide their number. The point person in the jail works with the vendor to add the number to the list, and the number is then protected from surveillance regardless of the inmate. Is that an accurate description of the process? An attorney would need to contact each individual courthouse to make sure their number is on that courthouse's list, correct?*
 2. *As far as you know, is there any way for an attorney to confirm that her number is protected, aside from calling the jail and asking?*

Prior to the October 5 meeting, the Sheriffs' Association posed the following questions to MCILS:

1. *What is State's annual budget for legal defense for indigent people?*
2. *What is the number of individuals that the legal defense fund has represented in the last fiscal year?*
3. *What percentage of indigent people vs. non-indigent people are obtaining defense legal services in the last fiscal year?*
4. *How many practicing defense attorneys are currently practicing in the State of Maine?*

5. *How many complaints have been lodged from defense lawyers referencing phone call conversations being erroneously captured from registered phone numbers while their client has been incarcerated?*
4. *How many criminal cases have been developed in the State of Maine from conversations between a defense attorney and client?*
5. *How many convictions have there been from a lawyer/ client incarcerated erroneously captured conversations?*
9. *How many crimes have been prevented from properly captured communication in Maine's eight prosecutorial districts?*

Members agreed that they would like to solicit public comment from individuals with lived experienced in the corrections system. Staff emailed the Judiciary Committee interested parties list, the Criminal Justice and Public Safety Committee interested parties list, and the committee's own interested parties list with invitations for public comment. A copy of the email sent to these groups can be found at Appendix K.

October 5th meeting

The third meeting of the committee was held on October 5, 2022. Committee members, who attended in person and remotely via Zoom, introduced themselves. Deputy Attorney General Lisa Marchese attended for Attorney General Aaron Frey, Associate Commissioner Scott Landry attended for Commissioner of Corrections Randall Liberty and District Attorney Kathryn Slattery attended for District Attorney Maeghan Maloney, representing the Maine Prosecutors Association.

Kevin Collins, who introduced himself as a former inmate at the Maine State Prison, attended the meeting and provided information in response to the committee's invitation for comments from the public on the confidentiality of attorney-client communications in jails, correctional facilities and courthouses. Mr. Collins stated that attorney-client conference rooms in courthouses often have listening devices built in, that in his criminal case limited access to discovery materials hampered him in his defense and that courts should be held accountable for the decisions of judges. He confirmed that some incarcerated persons have had problems with the telephone systems that were available to them and offered to provide additional information for the committee.

Attorney Robert Ruffner, who serves as a defense attorney and as a Lawyer of the Day, spoke with the committee and submitted testimony that is included as Appendix L. He stated that facilities for confidential attorney-client communications and review of documents vary greatly from jail to jail and courthouse to courthouse, that glass partitions used for some in-person consultations make confidential communication difficult and that headphones for clients improve the privacy of conversations. He suggested that instead of thinking about when conversations should not be recorded, the committee consider when conversations should be recorded. He stated that attorneys visiting clients in person instruct them not to discuss the details of their

cases or their lives since they can be overheard and acknowledged that the openness and usefulness of conversations is compromised in in-person conversations. He suggested that Title 15, chapter 102, which relate to the interception of wire and oral communications be amended to continue to allow monitoring and recording of confidential attorney-client communications but to require for use of those recordings outside of the jail or correctional facility or in criminal proceedings the following: (1) a showing of risk to safety or security to the jail or correctional facility or an immediate threat to the safety of a person; and (2) the grant of a warrant by a judicial officer.

Written public comments can be found attached as Appendix L.

Following public comment, the committee reviewed the answers to questions submitted to various parties at the end of the last meeting. The questions and answers to those questions are compiled in the document attached as Appendix M.

Amanda Doherty, Criminal Process and Specialty Dockets Manager, Maine Judicial Branch, provided information in response to requests from the second meeting. This information is included as Appendix N. She also provided information on the numbers of arraignments in each court per month, which ranged from 1 to 24, and per session, which ranged from 10 to 100. This information is included as Appendix O²².

Amanda Doherty also provided information from each court on the availability of conference rooms, alcoves or open spaces for attorney-client consultations, lawyer rooms used for conference space, jury rooms used for conference space and prisoner conference rooms. She noted that the ratio of conference rooms to courtrooms is less than 2 to 1 for older courthouse structures. Spaces for attorney-client consultations ranged from zero to 15 per courthouse, including one courthouse that supplemented its three conference rooms by providing access to a jury room in a court that averages 75 cases per arraignment session. This information is included as Appendix O.

Amanda Doherty also requested information from all the jails about space available for attorney-client consultations, in-person and video arraignments, and the history of video arraignments, including their experience during the times that the courts and jails have been following COVID protocols. Eight jails provided responses, which are shown in the following chart and included as Appendix O. The jails reported a range of spaces for attorney-client conferences. Ms. Doherty noted that the courts or the courts and jails jointly determine whether court appearances will be in person or by video, the pre- and post-COVID practices in their courts and jails, and the jails' preferences for in person or video proceedings. Ms. Doherty offered to follow up with the jails that had not responded and to bring additional information to the committee.

Somerset County Sheriff Dale Lancaster provided information in response to requests from the first and second meeting. This information is included as Appendix P. Sheriff Lancaster reported that all but two of the 15 jails distribute written policies, procedures or guidance related to confidentiality of attorney communications with inmates. Eleven provide or makes available to

²² This information was updated several times throughout the course of the committee's work. The final version is included as Appendix O.

inmates written materials regarding the recording of phone calls. Seven jails provide inmates with forms on which to indicate the telephone numbers of attorneys for the purpose of protecting attorney-client calls from monitoring and recording. Eight jails have policies, procedures or guidance related to the use of video, laptops or electronics for inmates to communicate confidentially with attorneys. Eight jails also have policies pertaining to storage of legal materials by inmates. Six have policies, procedures or guidance related to the confidentiality of attorney communications with inmates who are present in courthouses. All but one jail reported vacancies in correctional staffing, with some staff vacancy rates running to 60 and 65 percent.

Sheriff Lancaster agreed to obtain information about policies on attorney-client confidentiality and national jail accreditation standards through the American Correctional Association.²³ In response to a question from committee member Justin Andrus, Sheriff Lancaster agreed to obtain information on the protection of attorney telephone numbers that were distributed to the jails in May by the Maine Commission on Indigent Legal Services. See Appendix I for a copy of that letter.

The committee discussed with Sheriff Lancaster ways of obtaining defense attorney telephone numbers and learned from Associate Commissioner of Correction Scott Landry that department rules provide policies and procedures for protecting the confidentiality of attorney-client telephone conversations. The committee website at <https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee> includes Department of Corrections rules setting forth the procedures for adult residents of correctional facilities use of the facility telephone systems, monitoring telephone calls and privileged phone calls, including but not limited to telephone calls with attorneys.

The committee discussed the fact that attorney phone numbers registered at one jail will not transfer to another jail, even if an inmate is transferred to a different facility need to register their phone numbers with each facility separately.

The committee reviewed suggestions for recommendations from the committee that were offered at the second meeting and discussed additional suggestions. The suggested recommendations included:

1. Developing and adopting policies and procedures for all law enforcement agencies, district attorney offices, jails and correctional facilities that protect confidential communications between attorneys and their clients who are residents of jails and correctional facilities; policies to be followed if there is a breach of confidentiality; and methods by which jails and correctional facilities inform residents of their rights to confidential communications with their attorneys;

²³ The American Correctional Association publishes recommended standards for jails and other correctional facilities. More information regarding ACA standards is available on the American Correctional Association's website at https://www.aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx.

2. Adding to the curriculum of Maine Criminal Justice Academy for Basic Correctional Officer Training information on confidential attorney-client communications and the protection of those communications;
3. Requiring jails and correctional facilities to provide reasonably prompt access to private spaces for attorney-client consultations and review of documents;
4. Adding to the Board of Trustees of the Maine Criminal Justice Academy a seat designated for a criminal defense attorney;
5. Developing a system for registering telephone numbers and contact information of criminal defense attorneys so that telephone calls made by residents of jails and correctional facilities to their attorneys are protected from monitoring and recording;
and
6. Requiring jails and correctional facilities to adopt procedures to respond to attorney inquiries about the protection of resident calls to their attorneys.

The committee set aside for discussion at the fourth meeting the following suggestions for recommendations:

1. Directing the Judicial Branch to ensure that space is available for confidential attorney-client consultations in public areas and secure holding areas of courthouses;
and
2. Providing penalties for breach of attorney-client confidentiality through monitoring or recording of attorney-client telephone calls.

October 19th meeting

The fourth meeting of the committee was held on October 19th. Committee members who attended in person and remotely via Zoom introduced themselves. Deputy Attorney General Lisa Marchese attended for Attorney General Aaron Frey and Associate Commissioner Scott Landry attended for Commissioner of Corrections Randall Liberty. District Attorney Maeghan Maloney was joined by District Attorney Kathryn Slattery, who did not vote on recommendations.

Following introductions, the committee took additional public testimony. Defense attorney Verne Paradie spoke with the committee about his and his clients' experiences with unlawful recordings of attorney-client telephone calls. He stated that he did not blame the jails for his experience. He stated that the Office of the Attorney General and law enforcement officers with whom he was involved should have been more thorough in providing information to the defense attorney about the recordings during the discovery process by specifically identifying the date and time of the recorded telephone call and identifying precisely when during the call the law enforcement officer heard the attorney speaking. He noted that a motion to dismiss based on interception of attorney client calls requires a showing of prejudice, which is very difficult to do,

especially when it is not clear to the defense attorney what calls and what privileged information have been overheard.

Attorney John Tebbetts attended the meeting and provided information regarding unlawful recordings of attorney-client telephone calls. He stated that the fact that calls are recorded has a chilling effect on communications between attorneys and their clients, resulting in some clients refusing to speak with attorneys over the telephone and necessitating much more time-consuming in-person visits to the jail. John Tebbetts agreed with Verne Paradie that the defense attorney should be provided the date and time of a recorded telephone call. He suggested that there be a system for registering the telephone number of a defense attorney that requires only one registration and provides protection for all calls to that attorney in all jails and correctional facilities. He described a situation in which his client was moved to a jail in a different county. Attorney Tebbetts did not realize that he has to register his number at the new jail, having assumed that registration at one jail was sufficient. He agreed with Attorney Paradie that fault does not lie with the jails themselves. He suggested that there be a per se rule established that failure to keep records of recorded calls means that the call is assumed to have been overheard.

Bobby Nightingale, a defendant in a criminal case who is represented by Attorneys Verne Paradie and John Tebbetts, provided recorded testimony which was played for the committee by Norman Kehling. Bobby Nightingale stated that the jail where he was held recorded confidential attorney-client telephone calls that he made to his attorney. He stated that the Office of the Attorney General and the investigating detective did not, during discovery, provide information about the recordings that was sufficient for his attorney to fully understand what was heard. Mr. Nightingale supported a single system for attorney registration that would protect against unlawful recording in all state correctional facilities and jails. See Appendix Q for a transcription of Mr. Nightingale's testimony.

The committee then reviewed answers to questions posed at the third meeting. These questions and answers are compiled as Appendix Z. Amanda Doherty, Criminal Process and Specialty Dockets Manager, Maine Judicial Branch, provided updated information to the committee on private space for confidential attorney-client consultations in courthouses and jails. See Appendix O for the final version of a chart describing this information.²⁴

In a continuation of the discussion from October 4th pertaining to in-person and remote arraignments and first appearances, Amanda Doherty stated that judges in each region work with court clerks and the jails to decide whether court appearances for individuals held in custody will be conducted in-person or remotely. The factors considered by the regional judges include data on COVID-19 transmission in the counties, staffing and safety concerns and levels of personal comfort with in-person appearances. There is no standard policy on in-person as opposed to remote appearances.

Somerset County Sheriff Dale Lancaster provided information regarding when and how persons incarcerated in jails are informed of the process for protecting attorney-client telephone calls. Persons who are incarcerated are informed of the registration process during intake, during

²⁴ This chart was updated numerous times during the course of the committee's work. To avoid confusion, only the final version of the chart is reproduced in the Appendix O.

housing orientation and in the written handbook, which is given to all persons upon intake who are not immediately released.²⁵ Fourteen county jails contract with Securus for outgoing inmate telephone call services and the regional jail contracts with GTL, which has been acquired by ViaPath Technologies²⁶. ViaPath provides these services to Department of Corrections correctional facilities. Associate Commissioner Scott Landry relayed the concern of the department regarding a prior suggestion by a committee member to have all jails and State correctional facilities contract with a single telephone service provider. Because each county negotiates contracts separately and because there are contracts and systems already in place, such a move would be inadvisable.

The committee discussed possible recommendations from the list which was developed at the October 5th meeting. The committee voted on recommendations 1 through 5 (See Recommendations section of this report).

Committee members who were absent for all or some of the votes were given 48 hours to submit their votes to the committee staff. While the committee had intended for the fourth meeting to be the final meeting, it became clear that additional time would be required to work through the proposed recommendations. The committee requested permission to hold an additional meeting on November 1st. This request was approved by the Legislative Counsel.

November 1st Meeting

The fifth and final meeting of the committee was held on November 1, 2022. Committee members, who attended in person and via Zoom remotely, introduced themselves. Deputy Attorney General Lisa Marchese attended for Attorney General Aaron Frey, Associate Commissioner Scott Landry attended for Commissioner of Corrections Randall Liberty and District Attorney Kathryn Slattery attended for District Attorney Maeghan Maloney, representing the Maine Prosecutors Association.

Following introductions, the committee took up review of the remaining draft recommendations. The recommendations, can be found in the Recommendations section. Committee members who were absent for all or some of the votes were given 48 hours to submit their votes to the committee staff.

IV. Recommendations and Votes

Votes on recommendations were taken during the fourth and fifth meetings of the committee. The recommendations and vote tallies are included below.²⁷

²⁵ The Somerset County Jail Handbook – D Pod, General Population (January 2010) can be accessed online at: [County_Jail_Handbook.pdf \(somersetcounty-me.org\)](https://www.somersetcounty-me.org/County_Jail_Handbook.pdf)

²⁶ ViaPath Technologies provides correctional communications services. The company website can be found here: <https://www.viapath.com/about/>

²⁷ Committee recommendations have been renumbered and organized for the sake of clarity and readability. However the substance of the recommendations remains the same.

A. Recommendations related to the establishment of consistent standards

Recommendation #1

Direct the County Corrections Professional Standards Council to convene meetings of State, county and municipal law enforcement agencies, jails, the Maine Judicial Branch, the Department of Corrections, the Maine Sheriffs' Association, the Office of the Attorney General, the district attorney offices, the Maine Association of Criminal Defense Lawyers and the Maine Commission on Indigent Legal Services to develop a consistent set of policies and procedures to be implemented by all law enforcement agencies, district attorney offices, jails and correctional facilities that acknowledge that attorney-client communications are absolutely confidential and that clearly describe the following:

- A. The process for protecting and ensuring confidential attorney-client communications;*
- B. The policies to be followed in the event there is a breach of confidentiality; and*
- C. The methods by which attorneys and clients will identify confidential channels for communication and the methods by which incarcerated persons will be provided with information regarding their right to confidential attorney-client communications.*

[Recommendation #1 Vote - 14 in favor and 2 absent]

All members present agreed on the need for the numerous entities involved to continue open dialogue around the need to keep attorney-client communications confidential. After much discussion, it was suggested that the best entity to take on the task of convening these groups and agencies was the County Corrections Professional Standards Council, which was established in 2021 and is staffed by seven members appointed by the Commissioner of the Department of Corrections and charged with a number of tasks, including developing rules for reporting information to DOC related to standards, policies and procedures in jails.

Members agreed that the group convened by the County Corrections Professional Standards Council could develop consistent policies for protecting and ensuring attorney-client confidentiality, policies to be followed in the event of a breach of confidentiality and methods by which attorneys and clients can be informed about means of ensuring confidentiality. Members emphasized the need for consistency to avoid confusion around, for example, the process for registering an attorney phone number, which currently may vary quite a bit from facility to facility.

Recommendation #2

Require that all State, county and municipal law enforcement agencies, jails, the Department of Corrections, the Office of the Attorney General and district attorney offices adopt policies and procedures, as applicable to their respective offices, that ensure the absolute confidentiality of attorney-client communications.

[Recommendation #2 Vote - 13 in favor, 1 opposed and 2 absent]

Members present, with one exception, agreed on a recommendation that law enforcement entities, jails, DOC, the Office of the Attorney General and district attorneys' offices adopt policies to ensure the absolute confidentiality of attorney-client communications. During the course of the committee's meeting, members learned that while some of these entities do have written policies that clearly explain the protocols for protecting the confidentiality of attorney client communications, others had no such policies, or had policies that were not memorialized in writing or that were not otherwise articulated to staff. While the majority of members did support the adoption of clear policies and procedures, members understood that those policies and procedures would vary given the unique nature and duties of each of the authorities involved.

B. Recommendations related to training

Recommendation #3

Direct the Board of Trustees of the Maine Criminal Justice Academy to amend the curriculum of the Basic Law Enforcement training and Basic Correctional Officer training to include information related to confidential attorney-client communications and to the protection of those communications.

[Recommendation #3 Vote - 14 in favor and 2 absent]

All members present were in favor of directing the Board of Trustees of the Maine Criminal Justice Academy, which is responsible for the curriculum of the Maine Criminal Justice Academy, to amend the Basic Law Enforcement training and Basic Correctional Officer training to include information related to confidential attorney-client communications and to the protection of those communications. The Basic Law Enforcement training is an 18-week program run by Maine Criminal Justice Academy and that is required for all aspiring law enforcement officers. The Basic Correctional Officer training program is required for all corrections officers. Members expressed hope that including this information in required training would enhance the knowledge of attorney client protections among those professionals who most frequently interact with residents of correctional facilities and those in courtroom settings.

Recommendation #4

Any policy relating to protecting confidential communications between attorneys and clients adopted by the Office of the Attorney General's office must include training for any law enforcement officer who, as part of a criminal investigation, may inadvertently hear privileged communications. The training must clearly outline the process for protecting confidential attorney-client communications as well as the policies to be followed in the event there is a breach of confidentiality.

[Recommendation #4 Vote - 14 in favor and 2 absent]

The members present were in favor of language proposed by Lisa Marchese, committee member and Deputy Attorney General, regarding training of law enforcement officers on what steps to take in the event an officer overhears privileged information.

Recommendation #5

Amend Title 25, Section 2802 of the Maine Revised Statutes to require that the Board of Trustees of the Maine Criminal Justice Academy be increased from 18 to 19 by adding a seat that is designated for an attorney who represents defendants in criminal cases.

[Recommendation #5 vote: 8 in favor, 5 opposed, 1 abstain and 2 absent]

Eight members voted in favor of increasing the Board of Trustee of the Maine Criminal Justice Academy from 18 to 19 members and designating that additional seat for an attorney who represents defendants in criminal cases. These members expressed concerns that the defense bar was not represented on the Board, which is responsible for the curriculum of the Academy. Five members were opposed to this recommendation and expressed concern that the Board was already quite large and had only recently been expanded.

C. Recommendations related to registration of attorney phone numbers

Recommendation #6

Majority recommendation: Direct the Maine Commission on Indigent Legal Services or its successor agency to develop and maintain a registry of the telephone numbers and other contact information given to them by attorneys providing legal services to persons who are incarcerated. The Maine Commission on Indigent Legal Services must provide the registry information to sheriffs' offices and to the Department of Corrections weekly. The sheriffs' offices and the Department of Corrections are deemed to be on notice on the Monday following transmission of the information.

Designate the attorney names, phone numbers and contact information on the registry as confidential for purposes of the public records law.

Minority recommendation: Direct the Maine Commission on Indigent Legal Services to develop and maintain an additional registry of the telephone numbers and other contact information given to them by attorneys providing legal services to persons who are incarcerated. The Maine Commission on Indigent Legal Services must, on a weekly basis, provide the registry information to the county jails and to the Department of Corrections.

Designate the attorney names, phone numbers and contact information on the registry as confidential for purposes of the public records law.

[Recommendation #6 vote: 8 in favor of majority report and 5 in favor of minority report, 1 opposed to both and 2 absent]

This recommendation was much debated among members. Five members were in favor of directing MCILS to develop and maintain a registry of contact information of attorneys representing incarcerated people. MCILS would provide that information, which would be considered confidential under Maine's Freedom of Access Act, on a weekly basis to the jails and DOC. This registry would be considered a backup, or additional registry, the system maintained by jails and correctional facilities being the primary manner of registering an attorney's information.

During deliberations, a second option was introduced, which ultimately won the majority of votes. This recommendation was to direct MCILS to develop and maintain a registry of attorney contact information, which would be considered confidential under Maine's Freedom of Access Act, on a weekly basis to the jails and DOC. It also recommended that the sheriffs' offices and the Department of Corrections be deemed to be on notice that an attorney's information is considered protected on the Monday following transmission of the information.

Recommendation #7

Direct the Department of Corrections and jails to develop and maintain systems and processes for registering the names, telephone numbers and contact information for attorneys who provide legal services to persons who are incarcerated in order to protect the confidentiality of attorney-client communications

[Recommendation #7 vote: 14 in favor and 2 absent]

All members present agreed that the primacy responsibility for registering attorney phone numbers and contact information to protect the confidentiality of attorney-client communications should be with the DOC and jails.

Recommendation #8

Direct the Department of Corrections to adopt rules requiring correctional facilities to proactively confirm on a timely basis the registration of attorney telephone numbers and other contact information protected from monitoring for attorney-client confidentiality purposes and to provide confirmation of registration at the request of the attorney or an incarcerated person.

[Recommendation #8 vote: 12 in favor, 1 opposed and 3 absent]

Twelve members supported a recommendation requiring DOC to adopt rules to require that correctional facilities timely confirm that an attorney number and other contact information is protected from monitoring and to confirm that a number is protected from monitoring at the request of the attorney or an incarcerated person. Members were concerned that no clear feedback loop currently exists by which an attorney can be sure that her contact information is registered with a facility and protected from monitoring.

Recommendation #9

Direct the Department of Corrections to amend the standards for jails to require jails to proactively confirm on a timely basis the registration of attorney telephone numbers and other contact information protected from monitoring for attorney-client confidentiality purposes and to provide confirmation of registration at the request of the attorney or an incarcerated person.

[Recommendation #9 vote: 11 in favor, 2 opposed and 3 absent]

Eleven members voted in favor of a recommendation similar to recommendation 11, except that this recommendation applies to jails rather than state correctional facilities.

D. Recommendations related to physical facilities and space

Recommendation #10

Majority recommendation: Require that the Department of Corrections and sheriffs ensure access on a timely basis to private space in correctional facilities and jails for attorney-client meetings and for the review and exchange of case materials.

Minority recommendation: Direct the Department of Corrections and sheriffs to work to ensure access on a timely basis to private space in correctional facilities and jails for attorney-client meetings and for the review and exchange of case materials.

[Recommendation #10 vote: 11 in favor of majority report, 3 in favor of minority report and 2 absent]

Members put forth two competing recommendations regarding access to private space in jails and correctional facilities for attorney-client meetings and for the review and exchange of case materials. Eleven members were in favor of requiring that the DOC and sheriffs ensure access, while three members believed that this was too onerous a requirement and instead voted in favor of language directing that the DOC and sheriffs work to ensure access.

Recommendation #11

Majority recommendation: Require that by 18 months after the effective date of legislation, the Department of Corrections and sheriffs ensure that incarcerated persons have private and secure space available for the storage and viewing of case materials, including audio visual materials.

Minority recommendation: Direct the County Corrections Professional Standards Committee to work with jails to develop private and secure space for the storage and viewing of case materials, including audio visual materials for incarcerated persons. Additionally, direct the Department of Corrections to work to develop within all of their correctional facilities private and secure space for the storage and viewing of case materials, including audiovisual materials for incarcerated persons.

[Recommendation #11 vote: Vote – 8 in favor of majority report and 5 in favor of minority report, 1 abstain and 2 absent]

Members put forth two competing recommendations regarding access to private and secure space for the storage and viewing of case materials, including audio visual materials for incarcerated persons. Eight members voted in favor of a recommendation requiring DOC and the county sheriffs to, within 18 months of the effective date of legislation, ensure access to such space. Five members were in favor of directing the County Corrections Professional Standards Committee to work with jails to develop such space and directing the DOC to work to develop such space in state facilities. The group in favor of the second recommendation expressed concern over the timeline put forth in the first recommendation, as well as the inflexibility of the term “ensure.”

Recommendation #12

Direct the Maine Judicial Branch to report by January 1, 2024, to the joint standing committees having jurisdiction over criminal justice matters and judiciary matters on the availability of space in public areas of courthouses and in secure holding areas of courthouses for confidential attorney-client communications, including space for the review of written, video and audio materials related to the criminal case. The report must include an assessment of each courthouse and, to the extent that space is inadequate for confidential attorney-client communications, a plan for the development of adequate space.

[Recommendation #12 vote: 14 in favor and 2 absent]

Members present voted unanimously to direct the Judicial Branch to, by January 1, 2024, submit a report to the joint standing committees having jurisdiction over criminal justice matters and judiciary matters regarding the availability of space in courthouses for confidential communications. The committee had previously discussed language that would require that the Judicial Branch ensure such availability, However, some members expressed concern with the potential cost of such a requirement, and instead determined that an extensive study of existing space would be a preferable first step.

E. Recommendations related to remedies and consequences of breach

Recommendation #13

Provide by law that, if a defense counsel or a defendant or a petitioner for post-conviction review can show actual or constructive notice to the State of an attorney’s telephone number or address if there is a recording or interception of a communication, then the context and contents of that communication are categorically excluded from use or mention at trial and any person who accesses, monitors, records, copies, transmits or receives any copy of that communication is categorically disqualified from participating in the related investigation or trial. If counsel cannot show actual or constructive notice to the State, then the existing structure of laws applies.

[Recommendation #13 vote: 7 in favor, 6 opposed and 3 absent]

Members spent significant time discussing recommendation for how best to respond to breaches of confidentiality. Members considered the language in the original version of LD 1946, as well as alternative, more narrowly tailored options. Members considered but ultimately decided against recommending creation of a new crime for knowingly or intentionally intercepting or disclosing attorney client communications in a corrections setting.

Seven members voted in favor of recommending categorical exclusion from use or mention at a trial, the contents and context of any attorney client communication that is recorded or intercepted, if the defense attorney can show actual or constructive notice that the attorney's number was provided to the state. Similarly, any person who accesses, monitors, records, copies, transmits or receives any copy of that communication is categorically disqualified from participation in the investigation or trial. However, if counsel cannot show actual or constructive notice to the state then the existing structure of laws and remedies remains in place.

Recommendation #14

Direct the joint standing committee having jurisdiction over judiciary matters to consider amending Title 15, section 712(2) and (3), which generally provide that investigate officers, Department of Corrections employees and jail employees are not violating state laws governing the interception of wire and oral communications if they intercept communications involving a person residing in a correctional facility or jail provided certain notice requirements are met, to clarify that communications between incarcerated person and their attorneys are nevertheless confidential.

[Recommendation #14 vote: 8 in favor, 4 opposed, 1 abstain and 3 absent]²⁸

Eight members voted in favor of a recommendation that the joint standing committee having jurisdiction over judiciary matters consider development of an exclusionary rule for intercepted information, and consider strengthening the wiretapping statute to make clear that communications between incarcerated persons and their attorneys are protected.

Suggested draft legislation incorporating those recommendations that were supported by a majority of committee members, except recommendation #14, which does not require legislative language, has been included in Appendix A.

²⁸ Five of those members voting "yes" on recommendation #14 expressed a preference for Recommendation # 13, but would support recommendation #14 in the absence of recommendation #13.

APPENDIX A

Draft legislation

Draft Legislation - Committee to Ensure Constitutionally Adequate Contact with Counsel.

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

PART A

Sec. A-1. 4 MRS §1804, sub-§3, ¶P is enacted to read:

P. For the purpose of protecting the confidentiality of attorney-client communications, the commission or its successor agency shall develop and maintain a registry of names of the attorneys and their telephone numbers and other contact information provided to the commission by attorneys who provide legal services to persons who are incarcerated. The commission shall on a weekly basis provide the names of the attorneys and their telephone numbers and other contact information to all county sheriff's offices and Department of Corrections correctional facilities. The sheriffs' offices and the Department of Corrections are deemed to be on notice on the Monday following transmission of the information. For the purposes of the Freedom of Information Act the names of the attorneys and their telephone numbers and other contact information are confidential and are not public information as defined in Title 1, section 402, subsection 3.

Sec. A-2. 15 MRS §713, sub-§3 is enacted to read:

3. Intercepted attorney client communications. Where defense counsel or a defendant or a petitioner for post conviction review can show actual or constructive notice to the state of an attorney's telephone number or address if there is a recording or interception of a communication, the context and contents of that communication are categorically excluded from use or mention at trial and any person who accesses, monitors, records, copies, transmits or receives any copy of that communication is categorically disqualified from participation in the investigation or trial.

Sec. A-3. 25 MRSA §2802 is amended to read

§2802. Board of trustees

There is created a board of trustees for the academy consisting of ~~18~~19 members as follows: the Commissioner of Public Safety, ex officio, the Attorney General, ex officio, the Game Warden Colonel in the Department of Inland Fisheries and Wildlife, ex officio, the Commissioner of Corrections, ex officio, the Chief of the State Police, ex officio, and the following to be appointed by the Governor: a county sheriff, a chief of a municipal police department, 2 officers of municipal police departments who are not police chiefs, an educator who is not and has never been a sworn member of a law enforcement agency, a criminal prosecutor from one of the offices of the District Attorney, a representative of a federal law enforcement agency, 3 citizens each of whom is not and has never been a sworn member of a law enforcement agency, a municipal official who is not and has never been a sworn member of a law enforcement agency, one

nonsupervisory corrections officer representing a state or county correctional facility, one person who is an attorney who represents defendants in criminal cases and one person knowledgeable about public safety who has been recommended to the Governor by the Wabanaki tribal governments of the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Motahkmikuk, the Passamaquoddy Tribe at Sipayik and the Penobscot Nation. The member appointed by the Governor based on the recommendation of the Wabanaki tribal governments must be recommended by the tribal governments by a process determined by those governments that provides for the board membership to rotate among the tribal governments.

A designee of an ex officio member is a member of the board only during the term of office of the ex officio member who designated the designee. All of the other members of the board serve for a term of 3 years, except that the member appointed by the Governor based on the recommendation of the Wabanaki tribal governments serves for a term of 2 years. A trustee holds office for the term for which the trustee is appointed or until the trustee's successor has been appointed and qualified. Members of the board are entitled to compensation in accordance with [Title 5, chapter 379](#). Any vacancy on the board of trustees must be filled in the same manner as the original appointment, but for the unexpired term.

Sec. A-4. 25 MRS §2803-B, sub-§1-A is adopted to read:

1-A. Policies and procedures regarding confidential attorney-client communications. By January 1, 2024, all law enforcement agencies shall adopt policies and procedures, as applicable to the agencies, that ensure the absolute confidentiality of attorney-client communications. The policies and procedures must include processes that protect and ensure confidentiality and the policies to be followed in the event there is a breach of confidentiality. Any policy relating to protecting confidential attorney-client communications adopted by the Office of the Attorney General must include training for any law enforcement officer who, as part of a criminal investigation, inadvertently hears privileged communications.

Sec. A-5. 25 MRS §2804-C, sub-§2-G is enacted to read:

2-G. Training regarding confidential attorney-client communications. Beginning January 1, 2024, the board shall include in the basic law enforcement training program a block of instruction that acknowledges that attorney-client communications are absolutely confidential and that describes the processes that law enforcement agencies use for protecting and ensuring confidentiality and the policies that law enforcement agencies follow in the event there is a breach of confidentiality.

Sec. A-6. 25 MRS §2804-D is amended to read:

§2804-D. Basic corrections training

1. Required. As a condition to the continued employment of any person as a corrections officer, that person must successfully complete, within the first 12 months of employment, a basic training course as approved by the board. Thereafter, as a condition of continued employment as a corrections officer, the officer must satisfactorily maintain the basic certification. The board, under extenuating and emergency

circumstances in individual cases, may extend the 12-month period for not more than 180 days. The board, in individual cases, may waive basic training requirements when the facts indicate that an equivalent course has been successfully completed in another state or federal jurisdiction. A full-time correctional trade instructor must meet the training requirements established under this subsection for corrections officers. Beginning January 1, 2018, the basic training course must include 8 hours of training in how to identify, understand and respond to signs of mental illnesses and substance use disorder that is provided by a trainer who is certified by a nationally recognized organization that provides evidence-based mental health first aid training. Beginning January 1, 2024, the basic training course must include a block of instruction that acknowledges that attorney-client communications are absolutely confidential and that describes the processes that correctional facilities and jails use for protecting and ensuring confidentiality and the policies that correctional facilities and jails follow in the event there is a breach of confidentiality.

Sec. A-7. 34-A MRS §1208, sub-§8 is enacted to read:

8. Standards regarding confidential attorney-client communications. The commissioner shall establish standards regarding confidential attorney-client communications for all county and municipal jails, holding facilities and short-term detention areas that will require the jails, holding facilities and short-term detention areas, by January 1, 2024, to adopt policies and procedures, as applicable to the jails, holding facilities and short-term detention areas, that ensure the absolute confidentiality of attorney-client communications. The policies and procedures must include processes that protect and ensure confidentiality and the policies to be followed in the event there is a breach of confidentiality.

Sec. A-8. 34-A MRS §1208, sub-§9 is enacted to read:

8. Standards regarding access to private space for confidential attorney-client communications and review and exchange of case materials. The commissioner shall establish standards for all county and municipal jails, holding facilities and short-term detention areas that require those facilities, by January 1, 2024, to ensure access on a timely basis to private space in those facilities for attorney-client meetings and for review and exchange of case materials by the attorney and client.

Sec. A-9. 34-A MRS §1208, sub-§10 is enacted to read:

8. Private and secure space for storage and viewing of case materials. The commissioner shall adopt standards to ensure by 18 months after the effective date of this subsection that incarcerated persons in county jails have access to private and secure space for the storage and viewing of case materials, including audio visual materials.

Sec. A-10. 34-A MRS §1208, sub-§11 is enacted to read:

8. Attorney information registry to protect the confidentiality of attorney-client communications. The commissioner shall adopt standards for jails that require each jail to develop and maintain a registry of attorney information that registers the names, telephone numbers and contact information for attorneys who provide legal services to persons who are incarcerated in the jail in order to protect the confidentiality of attorney-client communications.

Sec. A-11. 34-A MRS §1208, sub-§12 is enacted to read:

8. Standards regarding confidential attorney-client communication information. The commissioner shall establish standards to protect confidential attorney-client communications that require county and municipal jails, holding facilities and short-term detention areas to proactively and by request confirm to attorneys who represent persons who are incarcerated on a timely basis the registration of the attorney's name and telephone numbers and other contact information that are registered for protection from monitoring and recording.

Sec. A-12. 34-A MRS §1402, sub-§14 is enacted to read:

14. Standards regarding confidential attorney-client communications. The commissioner shall adopt policies and procedures regarding confidential attorney-client communications for department correctional facilities that will by January 1, 2024, ensure the absolute confidentiality of attorney-client communications. The policies and procedures must include processes that protect and ensure confidentiality and the policies to be followed in the event there is a breach of confidentiality.

Sec. A-13. 34-A MRS §1402, sub-§15 is enacted to read:

14. Policies and procedures regarding access to private space for confidential attorney-client communications and for review and exchange of case materials. The commissioner shall adopt policies and procedures that require department correctional facilities, by January 1, 2024, to ensure access on a timely basis to private space in those facilities for attorney-client meetings and for review and exchange of case materials by the attorney and client.

Sec. A-14. 34-A MRS §1402, sub-§16 is enacted to read:

14. Private and secure space for storage and viewing of case materials. The commissioner shall adopt policies and procedures to ensure by 18 months after the effective date of this subsection that incarcerated persons in department facilities have access to private and secure space for the storage and viewing of case materials, including audio visual materials.

Sec. A-15. 34-A MRS §1402, sub-§17 is enacted to read:

14. Attorney information registry to protect the confidentiality of attorney-client communications. The commissioner shall develop and maintain a registry of attorney information for correctional facilities that registers the names, telephone numbers and contact information for attorneys who provide legal services to persons who are incarcerated in correctional facilities in order to protect the confidentiality of attorney-client communications.

Sec. A-16. 34-A MRS §1402, sub-§18 is enacted to read:

14. Standards regarding confidential attorney-client communication information. The commissioner shall adopt policies and procedures regarding confidential attorney-client communications for department correctional facilities that require Department of Corrections correctional facilities to proactively and by request confirm to attorneys who represent persons who are incarcerated on a timely basis the registration of the telephone numbers and other contact information of the attorney that are registered for protection from monitoring and recording.

PART B

Sec. B-1. Report on courthouse space. The Maine Judicial Branch shall report by January 1, 2024, to the Joint Standing Committee on Criminal Justice and Public Safety and the Joint Standing Committee on Judiciary on the availability of space in public areas of courthouses and in secure holding areas of courthouses for confidential attorney-client communications, including the review of written, video and audio materials related to the criminal case. The report must include an assessment of each courthouse and, to the extent that space is inadequate for confidential attorney-client communications, a plan for the development of adequate space.

Sec. B-2. Development of policies and procedures. The County Corrections Professional Standards Council, established pursuant to Title 5, section 12004-G, subsection 6-D, shall convene meetings of State, county and municipal law enforcement agencies, jails, the Maine Judicial Branch, the Department of Corrections, the Maine Sheriffs Association, the Office of the Attorney General, the district attorney offices, the Maine Association of Criminal Defense Lawyers and the Maine Commission on Indigent Legal Services to develop a consistent set of policies and procedures to be implemented by all law enforcement agencies, district attorney offices, jails, holding facilities, short-term detention areas, and correctional facilities, as applicable to the agencies, offices, and facilities, that acknowledge that attorney-client communications are absolutely confidential and that clearly describe the following:

1. The process for protecting and ensuring confidential attorney-client communications;
2. The policies to be followed in the event there is a breach of confidentiality; and

3. The methods by which attorneys and clients will identify confidential channels for communication and the methods by which incarcerated persons will be provided with information regarding their right to confidential attorney-client communications.

DRAFT

APPENDIX B

Membership list, Committee To Ensure Constitutionally Adequate Contact with Counsel

Membership, Committee to Ensure Constitutionally Adequate Contact with Counsel

Name	Role
Senator Anne Carney, chair	Senator
Senator Lisa Keim	Senator
Representative Thom Harnett, chair	Representative
Representative Erin Sheehan	Representative
Representative Patrick Corey	Representative
Commissioner Liberty (contact also Anna Black)	Commissioner of Corrections or designee
Attorney General Frey	AG or designee
Commissioner Sauschuck	Commissioner of Public Safety or designee
Justin Andrus	Executive Director of the Maine Commission on Indigent Legal Services or designee
Sheriff Dale Lancaster (contact also Mary-Anne LaMarre)	President of a statewide association of sheriffs or designee
Amber Tucker	President of a statewide association of criminal defense lawyers or designee
Maeghan Maloney	President of a statewide association of prosecutors or designee
Hon. Eric Mehnert	Representative of a civil rights organization whose primary mission includes the advancement of racial justice (Senate appt)
Megan Sway, ACLU	Representative of a civil liberties organization whose primary mission is the protection of civil liberties (House appt)
Norman Kehling, Helping Incarcerated Individuals Transition	Representative of a statewide prisoners' rights organization (Senate appt)
Andrea Mancuso, Maine Coalition to End Domestic Violence	Representative of a statewide organization whose mission includes advocating for victims and survivors of domestic violence (House appt)

APPENDIX C

Resolve 2021, c. 182, *Establishing the Committee to Ensure Constitutionally Adequate Contact with Counsel*

STATE OF MAINE

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

—
H.P. 1451 - L.D. 1946

**Resolve, Establishing the Committee To Ensure Constitutionally Adequate
Contact with Counsel**

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

Whereas, this resolve establishes the Committee To Ensure Constitutionally Adequate Contact with Counsel to conduct a review to ensure that residents of Department of Corrections correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities and criminal defendants in court facilities have constitutionally adequate contact with counsel; and

Whereas, the review must be initiated before the 90-day period expires in order that the review may be completed and a report submitted in time for submission to the next legislative session; 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. Committee established. Resolved: That the Committee To Ensure Constitutionally Adequate Contact with Counsel, referred to in this resolve as "the constitutional communications committee," is established.

Sec. 2. Committee membership. Resolved: That, notwithstanding Joint Rule 353, the constitutional communications committee consists of 16 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;
2. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature;
3. The Commissioner of Corrections or the commissioner's designee;

4. The Attorney General or the Attorney General's designee;
5. The Commissioner of Public Safety or the commissioner's designee;
6. The Executive Director of the Maine Commission on Indigent Legal Services or the executive director's designee;
7. The president of a statewide association of sheriffs or the president's designee;
8. The president of a statewide association of criminal defense lawyers or the president's designee;
9. The president of a statewide association of prosecutors or the president's designee;
10. A representative of a civil rights organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate;
11. A representative of a civil liberties organization whose primary mission is the protection of civil liberties, appointed by the Speaker of the House;
12. A representative of a statewide prisoners' rights organization, appointed by the President of the Senate; and
13. A representative of a statewide organization whose mission includes advocating for victims and survivors of domestic violence, appointed by the Speaker of the House.

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the constitutional communications committee.

Sec. 4. Appointments; convening of committee. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the constitutional communications committee. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the constitutional communications committee to meet and conduct its business.

Sec. 5. Duties. Resolved: That the constitutional communications committee shall:

1. Review the federal and state constitutional and statutory requirements concerning adequate communications with counsel for those involved in the criminal justice system;
2. Review recent policies and practices that have resulted in reported violations of the requirements in the State;
3. Review how other jurisdictions ensure confidential communications by telephone, video or electronic communication or in person between counsel and criminal defendants that are incarcerated or detained or in court facilities for court proceedings;
4. Review how other jurisdictions ensure opportunities for document review by incarcerated persons without interception, monitoring, copying, redaction or other action or review of documents by anyone acting on behalf of a correctional facility, a jail or the State;

5. Review remedies used by other jurisdictions when the constitutional and statutory requirements are not met, including, but not limited to, exclusion of evidence, disqualification to participate in prosecution, licensure discipline and expanded opportunities for post-conviction review; and

6. Develop recommendations to implement in this State to ensure that residents of Department of Corrections correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities and criminal defendants in court facilities have constitutionally adequate contact with counsel.

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the constitutional communications committee, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session.

Sec. 7. Report. Resolved: That, no later than November 2, 2022, the constitutional communications committee shall submit a report that includes a summary of its activities and recommendations, including suggested legislation, to the Joint Standing Committee on Judiciary for presentation to the First Regular Session of the 131st Legislature.

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

APPENDIX D

***LD 1946, An Act to Ensure Constitutionally Adequate
Contact with Counsel***



130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1946

H.P. 1451

House of Representatives, January 26, 2022

An Act To Ensure Constitutionally Adequate Contact with Counsel

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HARNETT of Gardiner.
Cosponsored by Senator CARNEY of Cumberland and
Representatives: DODGE of Belfast, GROHOSKI of Ellsworth, LOOKNER of Portland,
MADIGAN of Waterville, MORIARTY of Cumberland, PEBWORTH of Blue Hill,
PLUECKER of Warren, TALBOT ROSS of Portland.

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

2 **PART A**

3 **Sec. A-1. 34-A MRSA §3015** is enacted to read:

4 **§3015. Confidential communications**

5 A chief administrative officer shall make available to a resident and the resident's
6 counsel a means to engage in confidential communications as required by section 3031,
7 subsection 11 and in accordance with this section.

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

10 A. "Commission" means the Maine Commission on Indigent Legal Services
11 established by Title 5, section 12004-G, subsection 25-A.

12 B. "Facility" means a correctional facility or a detention facility.

13 C. "Resident" means a person who resides in a facility.

14 **2. Access.** A facility shall provide a means to engage in confidential communications
15 between a resident and the resident's counsel in person in space within the facility or by
16 telephone, video or other electronic means without charge to the resident or the resident's
17 counsel.

18 **3. Prohibited conduct.** A facility may not intercept, record, monitor, disseminate or
19 otherwise divulge any oral, written, telephone, video or electronic communication between
20 a resident and the resident's counsel. The provisions of this subsection apply to any
21 employee of a facility and to any agent, employee, contractor or vendor of communication
22 services that provides services to a facility or works with the facility in any capacity. A
23 violation of this subsection by an agent, employee, contractor or vendor of communication
24 services that provides services to a facility or works with the facility in any capacity is
25 deemed a violation by the facility.

26 **4. Logs.** A facility and any contractor or vendor that provides communication services
27 subject to this section shall create and maintain for a minimum of 7 years logs of all
28 confidential communications to or from the facility to which a resident is a party, including
29 but not limited to the date and time of the telephone call or video or electronic
30 communication, the telephone number or electronic address involved, the duration of the
31 telephone call or video or electronic communication and the name of the resident. All logs
32 of communications related to a resident and the resident's counsel must be released upon
33 request within 30 days to the resident or the resident's authorized representative or counsel
34 requesting the logs and to the commission.

35 **5. Audit.** Every 90 days, a facility shall audit its logs of telephone, video and
36 electronic communications to or from telephone numbers and electronic addresses listed as
37 belonging to counsel for a resident and shall, upon completion of the audit, provide that
38 audit to the commission. If an audit concludes that a recording of a telephone call or video
39 or electronic communication exists or that information was obtained or gathered in
40 violation of this section, the chief administrative officer shall inform counsel, the resident
41 and the commission within 3 business days.

1 **6. Policy.** A chief administrative officer shall adopt policies providing access to
2 communications as required by this section and forbidding conduct prohibited by this
3 section, shall review and update the policies annually and shall publish the policies on the
4 facility's publicly accessible website and provide copies to the commission.

5 **Sec. A-2. 34-A MRSA §3031, sub-§9,** as amended by PL 2021, c. 263, §4, is
6 further amended to read:

7 **9. Menstrual products.** Comprehensive access to menstrual products, including, but
8 not limited to, sanitary pads and tampons, provided and available at all times and without
9 inconvenience or charge to a person who menstruates who resides in a correctional or
10 detention facility; ~~and~~

11 **Sec. A-3. 34-A MRSA §3031, sub-§10,** as enacted by PL 2021, c. 263, §5, is
12 amended to read:

13 **10. Gender affirmation.** Have the person's consistently held gender identity
14 respected and acknowledged, irrespective of anatomy or physique. Housing placements
15 and search practices must be consistent with the person's consistently held gender identity
16 except when such placement or search would present significant management or security
17 problems to the correctional or detention facility or threaten the health and safety of the
18 person. A person must have access to commissary items, clothing, personal property,
19 programming and educational materials that are consistent with the person's consistently
20 held gender identity. Correctional or detention facility staff shall address a person in a
21 manner that is consistent with the person's consistently held gender identity; and

22 **Sec. A-4. 34-A MRSA §3031, sub-§11** is enacted to read:

23 **11. Confidential communications.** A means to engage in confidential
24 communications as follows:

25 A. Confidential communications with counsel by telephone, video or electronic
26 communication at a minimum twice a day and at all other necessary times by means
27 that ensure that the communications are confidential to the person and the person's
28 counsel and cannot be monitored, recorded or overheard by any other person;

29 B. Written notice that the person's counsel has contacted the facility to request that the
30 person call or contact the person's counsel. The facility shall keep a written record of
31 the contact by the person's counsel and the notice to the person from the facility.
32 Failure of the facility to maintain a copy of the notice to the person is prima facie
33 evidence that notice was not provided; and

34 C. An opportunity to receive from and review with counsel all documents sent to the
35 person by counsel, including but not limited to letters, pleadings and discovery in any
36 format or form, and to send documents to counsel without interception, monitoring,
37 copying, redaction or other action or review by the facility or anyone acting on behalf
38 of the facility or the State.

39 **Sec. A-5. Communications policy.** Within 90 days of the effective date of this
40 Act, the chief administrative officer of each Department of Corrections correctional facility
41 or detention facility shall adopt a policy providing each resident of the correctional facility
42 or detention facility a means to engage in confidential communications as required by the
43 Maine Revised Statutes, Title 34-A, section 3015 and section 3031, subsection 11 and shall

1 publish the policy on the facility's publicly accessible website and provide a copy to the
2 Maine Commission on Indigent Legal Services established in Title 5, section 12004-G,
3 subsection 25-A.

4 **PART B**

5 **Sec. B-1. 30-A MRSA §1566** is enacted to read:

6 **§1566. Confidential communications**

7 A person who is incarcerated in a jail has a right to a means to engage in confidential
8 communications with the person's counsel as required by section 1663 and in accordance
9 with this section.

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

12 A. "Commission" means the Maine Commission on Indigent Legal Services
13 established by Title 5, section 12004-G, subsection 25-A.

14 B. "Jail" means a jail or other county correctional facility or a regional correctional
15 facility operated pursuant to this chapter.

16 C. "Person" means a person who is incarcerated in a jail.

17 **2. Access.** A jail shall provide a means to engage in confidential communications
18 between a person and the person's counsel in person in space within the jail or by telephone,
19 video or electronic communication without charge to the person or that person's counsel.

20 **3. Prohibited conduct.** A jail may not intercept, record, monitor, disseminate or
21 otherwise divulge an oral, written, telephone, video or electronic communication between
22 a person and the person's counsel. The provisions of this subsection also apply to any
23 agent, employee, contractor or vendor of communication services that provides services to
24 a jail or works with a jail in any capacity. A violation of this subsection by an agent,
25 employee, contractor or vendor of communication services that provides services to a jail
26 or works with a jail in any capacity is deemed a violation by the jail.

27 **4. Logs.** A jail and any contractor or vendor that provides communication services
28 subject to this section shall create and maintain for a minimum of 7 years logs of all
29 confidential communications to or from the jail to which a person incarcerated in the jail is
30 a party, including but not limited to the date and time of the telephone call or video or
31 electronic communication, the telephone number or electronic address involved, the
32 duration of the telephone call or video or electronic communication and the name of the
33 person. All logs of confidential communications related to a person and the person's
34 counsel must be released upon request within 30 days to the person or that person's
35 authorized representative or counsel requesting the logs and to the commission.

36 **5. Audit.** Every 90 days, a jail shall audit its logs of telephone, video and electronic
37 communications to or from telephone numbers and electronic addresses listed as belonging
38 to counsel for a person and shall, upon completion of the audit, provide that audit to the
39 commission. If an audit concludes that a recording of a telephone call or video or electronic
40 communication exists or that information was obtained or gathered in violation of this
41 section, the administrator of the jail shall inform counsel, the person and the commission
42 within 3 business days.

1 **6. Policy.** The administrator of a jail shall adopt a policy providing a means to engage
2 in confidential communications as required by this section, shall review and update the
3 policy annually and shall publish the policy on a publicly accessible website and provide a
4 copy to the commission.

5 **Sec. B-2. 30-A MRSA §1663** is enacted to read:

6 **§1663. Confidential communications**

7 The administrator of a jail as defined in section 1566, subsection 1, paragraph B shall
8 provide the following means to engage in confidential communications for a person who
9 is incarcerated in the jail:

10 **1. Access.** Confidential communications with counsel by telephone, video or
11 electronic communication at a minimum twice a day and at all other necessary times by
12 means that ensure that the communications are confidential to the person and the person's
13 counsel and cannot be monitored, recorded or overheard by any other person;

14 **2. Written notice of request.** Written notice that the person's counsel has contacted
15 the jail to request that the person call or contact the person's counsel. The jail shall keep a
16 written record of the contact by the person's counsel and the notice to the person from the
17 jail. Failure of the jail to maintain a copy of the notice to the person is prima facie evidence
18 that notice was not provided; and

19 **3. Document review.** An opportunity to receive from and review with counsel all
20 documents sent to the person by counsel, including but not limited to letters, pleadings and
21 discovery in any format or form, and to send documents to counsel without interception,
22 monitoring, copying, redaction or other action or review by the jail or anyone acting on
23 behalf of the jail or the State.

24 **Sec. B-3. Communications policy.** Within 90 days of the effective date of this
25 Act, the administrator of each county jail or other county correctional facility shall adopt a
26 policy providing access to communications as required by the Maine Revised Statutes, Title
27 30-A, sections 1566 and 1663 and shall publish the policy on a publicly accessible website
28 and provide a copy to the Maine Commission on Indigent Legal Services established in
29 Title 5, section 12004-G, subsection 25-A.

30 **PART C**

31 **Sec. C-1. 15 MRSA §458** is enacted to read:

32 **§458. Confidential communications between client and counsel**

33 The following provisions apply with regard to confidential communications between a
34 person summonsed or arrested for, charged with, indicted for or convicted of a crime and
35 the counsel for that person that are protected pursuant to Title 30-A, section 1566 and Title
36 34-A, section 3015.

37 **1. Opportunity for confidential communications.** A person summonsed or arrested
38 for, charged with, indicted for or convicted of a crime has a right to an opportunity for
39 confidential communications with the person's counsel in person and by telephone, video
40 or electronic communication in preparation for a court appearance, before and during
41 arraignment and while appearing in court, including confidential communications that are
42 not overheard or monitored by another person.

1 **2. Prohibited use of documents and information in court.** With respect to a
2 document or information of any kind and in any format or form that was obtained in
3 violation of Title 30-A, section 1566, subsection 3 or Title 34-A, section 3015, subsection
4 3, all information and materials derived from the document or information are inadmissible
5 in any court proceeding. The doctrines of inevitable discovery and exigency do not apply
6 to evidence that is inadmissible in court pursuant to this subsection. A claim of
7 inadvertence, negligence, recklessness or mistake does not render admissible a document
8 or information that is inadmissible under this subsection.

9 **3. Prohibited participation in court.** Except as provided in this subsection, a person
10 who has accessed or received any document, recording or information of any type in
11 violation of Title 30-A, section 1566 or Title 34-A, section 3015, whether or not the person
12 has reviewed the substance of the document, recording or information, may not participate
13 in any investigation, prosecution, mental health or child protective proceeding or any other
14 matter before a court in this State, including through formal or informal communications.
15 A person is not prohibited from participation under this subsection if the person has the
16 exclusive ability to provide relevant factual information and a judicial officer other than
17 the presiding officer has reviewed the facts regarding the participation of the person and
18 has issued findings and a ruling on the scope and exclusivity of the testimony that the
19 person may provide.

20 **4. Additional post-conviction review.** In addition to any other post-conviction
21 remedy provided to a person convicted of a crime in this State pursuant to chapter 305-A,
22 a person whose confidential communications with counsel have been intercepted in
23 violation of Title 30-A, section 1566 or Title 34-A, section 3015 or in any other way by the
24 State, a prosecutor or a law enforcement agency may file a petition for post-conviction
25 review up to 2 years from the date that the person is notified by the person's counsel of the
26 interception of the communication.

27 **5. Civil remedies.** A person who, without permission from all parties to a
28 conversation or oral communication, knowingly eavesdrops on, records or transmits the
29 conversation or oral communication or any portion thereof between a person who is in the
30 physical custody of a law enforcement officer or other public officer and the person's
31 counsel or between a person who is on the property of a law enforcement agency or other
32 public agency and the person's counsel is subject to a civil action in Superior Court and a
33 civil penalty of not more than \$10,000 per occurrence, payable to the Maine Commission
34 on Indigent Legal Services, established in Title 5, section 12004-G, subsection 25-A, to be
35 applied by the commission to noncounsel costs associated with promoting effective
36 representation of indigent clients.

37 **6. Private cause of action.** A person who is aggrieved by the action of another
38 individual who, without permission from all parties to a conversation or oral
39 communication, knowingly eavesdrops on, records or transmits the conversation or oral
40 communication or any portion thereof between a person who is in the physical custody of
41 a law enforcement officer or other public officer and the person's counsel or between a
42 person who is on the property of a law enforcement agency or other public agency and that
43 person's counsel has a private cause of action against that individual in Superior Court for
44 which the aggrieved person may be awarded by the court actual damages, restitution,
45 attorney's fees and costs and such other equitable relief as the court determines to be
46 necessary and proper.

1 **Sec. C-2. Policy statement.** Within 90 days of the effective date of this Act, the
2 district attorneys for each prosecutorial district and the Attorney General shall adopt and
3 post to their publicly accessible websites and shall provide to the Maine Commission on
4 Indigent Legal Services established in the Maine Revised Statutes, Title 5, section
5 12004-G, subsection 25-A policies that provide assurance of compliance with Title 15,
6 section 458, subsection 1; Title 30-A, section 1566, subsections 2 and 3; and Title 34-A,
7 section 3015, subsections 2 and 3.

8 **PART D**

9 **Sec. D-1. 17-A MRSA §761** is enacted to read:

10 **§761. Unauthorized eavesdropping**

11 1. A person is guilty of unauthorized eavesdropping if that person, without permission
12 from all parties to a conversation or oral communication, knowingly eavesdrops on, records
13 or transmits the conversation or oral communication or any portion thereof between a
14 person who is in the physical custody of a law enforcement officer or other public officer
15 and the person's counsel or between a person who is on the property of a law enforcement
16 agency or other public agency and the person's counsel.

17 2. Unauthorized eavesdropping is a Class C crime.

18 **PART E**

19 **Sec. E-1. Retrospective review and audit.** The Maine Commission on Indigent
20 Legal Services established in the Maine Revised Statutes, Title 5, section 12004-G,
21 subsection 25-A, the Department of Corrections and the county jails and other county
22 correctional facilities shall engage in a process of retrospective review and audit. Within
23 90 days of the effective date of this Act, the commission shall identify and compile a list
24 of telephone numbers and electronic addresses of attorneys to which incarcerated persons
25 have placed telephone calls or sent electronic communications in the previous 6 years and
26 shall notify each correctional facility or detention facility and each jail or county
27 correctional facility. Within 180 days of the effective date of this Act, each correctional
28 facility and detention facility and each county jail or other county correctional facility shall
29 audit its records of telephone calls and electronic communications to determine whether
30 any telephone calls or electronic communications on the list provided by the commission
31 may have been recorded and, with regard to any telephone call or electronic communication
32 that may have been recorded, shall provide to the commission sufficient detail on each
33 telephone call or electronic communication to allow the commission to identify the attorney
34 telephone number or electronic address involved in the telephone call or electronic
35 communication, the affected client and the date, time and duration of the telephone call or
36 electronic communication. After receipt of the detail of the telephone call or electronic
37 communication required by this section, the commission shall inform each listed attorney,
38 who shall inform each affected client.

39 **SUMMARY**

40 This bill ensures constitutionally adequate contact with counsel for residents of
41 Department of Corrections correctional and detention facilities, for persons who are
42 incarcerated in county jails and other county correctional facilities and for clients and their
43 counsel in court facilities. The bill addresses telephone, video and electronic forms of

1 communication and person-to-person contact. The bill prohibits intercepting, recording,
2 monitoring, disseminating or otherwise divulging any oral, written, telephone, video or
3 electronic communication between clients and their counsel. The bill requires facilities to
4 maintain logs of telephone calls and communications between clients and their counsel and
5 requires periodic auditing of logs. The bill requires a facility to provide written notice to a
6 client when the client's counsel contacts the facility and asks for the client to contact
7 counsel. The bill requires a facility to provide an opportunity to review documents with
8 counsel. The bill requires periodic audits and requires the adoption of policies that are
9 published publicly and submitted to the Maine Commission on Indigent Legal Services.
10 For violations of the law, the bill establishes civil penalties, a private cause of action and
11 post-conviction review in addition to review provided pursuant to the Maine Revised
12 Statutes, Title 15, chapter 305-A. The bill prohibits use of illegally obtained information
13 in court and prohibits participation in court by a person who has accessed or received a
14 document, recording or information in violation of the law. The bill creates a new Class C
15 crime of unauthorized eavesdropping. The bill requires the Maine Commission on Indigent
16 Legal Services, the Department of Corrections and the county jails and other county
17 correctional facilities to conduct a retrospective review of telephone calls and electronic
18 communications between clients and their counsel, who are required to provide notice to
19 their clients affected by prohibited recordings.

APPENDIX E

**50 State Chart - Statutes, Regulations and Guidance regarding
access to counsel in correctional facilities, prepared by the Office
of Policy and Legal Analysis**

50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

Alabama	Phone	Visitation	Mail
<p><i>Regulations/ Guidance</i></p> <p>* The state of Alabama maintains oversight of prisons, community corrections and county jails. County jails must adhere to the Criminal Detention Facility Standards</p>	<p>Alabama Dept. of Correction Administrative Regulations Number 431 Inmate Telephone System V(G.) All telephone calls, except those involving attorney-client privileges, are subject to being recorded and investigated where necessary to maintain institutional security</p> <p>Arkansas Criminal Detention Facility Standards (jails) SECTION 10-1008 A telephone shall be made available for inmate usage to notify family and legal counsel at time of incarceration. The Chief Executive shall establish policy for other telephone usage.</p>	<p>Alabama Dept. of Correction Administrative Regulations Number 303 Visitation V(C)(2)(h). Unless specifically approved by the Warden, or his/her designee, all meetings between attorneys and an inmate shall be one-on-one. The Warden, or his/her designee, shall make every reasonable effort to provide a room where an attorney can meet confidentially with an inmate. A meeting place shall be provided in which others cannot reasonably overhear the discussion between an inmate and attorney.</p> <p>Arkansas Criminal Detention Facility Standards (jails) SECTION 16-1027 VISITATION AND CONSULTATION AREA The area for visitation by the public shall be outside the security perimeter, visiting area for the inmate shall be inside the security perimeter. The visiting area shall be acoustically treated to reduce noise. These areas may also be used as private consultation rooms for law enforcement officers, attorneys, clergy, etc. Optional contact visitation spaces may be provided.</p>	<p>Alabama Dept. of Correction Administrative Regulations: Number 448 Inmate Mail Legal Mail: 1. Outgoing: a. Inmates shall be provided two (2) free stamps per week for legal mail only. i. The names of inmates receiving the free stamps shall be maintained in a log. ii. The log shall reflect the name of the inmate, the recipient’s name and address, and the date. Each Warden shall designate a box for “Legal Mail.” 2. Incoming: a. A log shall be maintained by mail staff members that lists each piece of legal mail received, the date inspected, delivered, sender’s name and recipient’s signature. b. The inmate shall sign for all “Legal Mail” prior to receipt. c. All “Legal Mail” shall be opened and inspected for contraband in the presence of the inmate. d. Improperly addressed “Legal Mail” (to include, but not limited to, incorrect or missing bed / housing assignment and / or AIS number) shall be forwarded to the Warden / designee for verification and delivery, if appropriate.</p> <p>Arkansas Criminal Detention Facility Standards (jails) SECTION 10-1005 WRITTEN POLICY REQUIRED FOR INSPECTION OF MAIL The Chief Executive shall establish a written policy for inspection of incoming mail and packages, in order to intercept cash, checks, money orders and other contraband items. Items seized shall be properly receipted and copy of same furnished to the inmate. The policy should include a provision that states that mail will not be held for more than 24 hours, excluding holidays and weekends.</p>

50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

			<p>SECTION 10-1006 WRITTEN POLICY REQUIRED FOR OUTGOING INMATE CORRESPONDENCE The Chief Executive shall establish a written policy to provide for an inmate to send sealed letters to courts, officials of the confining authority, counsel, government officials, administrators of grievance organizations and parole or probation authorities. Letters to and from such cited persons or agencies may be opened for contraband inspection but only in the presence of the inmate.</p>
<p>Alaska <i>Statutes</i></p>	<p>Phone Title 33. Probation, Prisons, Pardons, and Prisoners § 33.30.231. Telephone access and monitoring inside correctional institutions: (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to preserve the security and orderly administration of the correctional facility and to protect the public, the commissioner shall monitor or record the telephone conversations of prisoners. The commissioner shall post a warning by each telephone informing prisoners that calls may be monitored or recorded. The monitoring or recording may be conducted on all calls or selectively or in some other limited manner as determined by the commissioner to be appropriate. A recording of a telephone call made under this subsection shall be kept confidential, and access to the recording and its contents is limited to persons who are acting within the scope of their official duties and whose access to specific recordings has been authorized by the facility superintendent. A telephone call between an attorney and a prisoner or between the office of the ombudsman and a prisoner may not be monitored or recorded except when authorized by a court.</p>	<p>Visitation</p>	<p>Mail</p>
<p><i>Regulations/Guidance</i></p>	<p>22 AAC 05.530 Prisoner phone calls</p>	<p>22 AAC 05.545 Access to Attorneys.</p>	

50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p>Alaska has a “unified” prison and jail system. The Department of Corrections regulations apply to all facilities.</p>	<p>(b) In order to preserve the security and orderly administration of the correctional facility and to protect the public, facility staff members may monitor or record prisoner telephone calls and conversations on visitor intercommunication phones as long as a sign placed near the prisoner’s extension advises the prisoner that the conversation is subject to monitoring or recording. A prisoner’s call to an attorney may not be monitored unless authorized by a court.</p>	<p>(a) Upon proof of identity, an attorney entitled to practice in the State of Alaska, whether generally or by permission of the court, may visit a prisoner regarding legal matters at any reasonable time during normal business hours, and at other times with the approval of the superintendent. (b) An attorney, as described in (a) of this section, may visit a prisoner at any time of day or night within 24 hours after the prisoner’s initial admission to the facility or upon the filing of new criminal charges, subject to 22 AAC 05.010. (c) An agent employed by an attorney described in (a) of this section has the same right to access to prisoners as the attorney, unless the superintendent has reason to believe that the agent poses a threat to a security interest of the facility. The superintendent may require the attorney to specify in writing the identity of the agent and the identity of the prisoner to be interviewed. (d) Upon a prisoner’s request, writing materials must be furnished, as well as access to the services of a person authorized to administer oaths and take acknowledgments.</p>	
<p>Arizona <i>Regulations/Guidance</i> * While these rules apply to state run prisons, the extent to which they also apply to county run jails is unclear.</p>	<p>Phone 902 – Inmate Legal Access to the Courts. 14.6 Legal phone calls shall not be monitored or recorded. 14.7 Staff members shall not listen to the conversation, but shall maintain visual contact of the inmate when the inmate is in an area where security or information may be compromised.</p>	<p>Visitation 902 – Inmate Legal Access to the Courts. 15.1 Attorney/Agent of an Attorney Visits 15.1.1 Attorney or agent visits shall be held in a location within the institution designated by the Warden, Deputy Warden or Administrator of the institution. 15.1.2 Attorneys or their agents shall contact the Warden, Deputy Warden or Administrator at least 48 hours in advance of the requested visit and provide their name and date of birth. Attorneys shall also provide their Bar number.</p>	<p>Mail 902 – Inmate Legal Access to the Courts. 11.1 Inmates shall identify outgoing legal mail by writing "LEGAL MAIL" on the lower left-hand corner of the envelope. (See the Glossary of Terms for guidance on what constitutes “legal mail.”) 11.2 Inmates must address the mail and include the name of the attorney, court or judge. Staff members who process the mail shall return the mail to the inmate if he/she requests mail to be sent as legal mail and it is not to an attorney, judge, or court.</p>

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		<p>15.1.3 Contact or non-contact visits by attorneys or their agents shall be allowed (consistent with the safe, secure and orderly operation of the institution) only when they are approved in advance by the Warden, Deputy Warden or Administrator.</p> <p>15.1.4 In an emergency, the Warden, Deputy Warden or Administrator may waive the advance notice requirement.</p> <p>15.1.4.1 In such cases, the attorney or agent shall provide, at the time of the visit, written justification for the emergency.</p> <p>15.1.4.2 When a justified emergency exists, space for the visit shall be provided, consistent with the safe, secure and orderly operation of the institution.</p> <p>15.1.5 Attorneys and agents shall be advised the inmate shall be questioned to determine if the inmate wishes to meet with the requesting attorney or agent.</p> <p>15.1.6 If the inmate agrees to meet with the attorney or agent, the visit shall be approved and scheduled.</p> <p>15.1.7 If the inmate does not agree to meet with the attorney or agent, the attorney or agent shall be contacted within the same 48 hour period of the initial request and informed the visit has been denied. The appropriate staff member shall ensure a Visitation Waiver, Form 911-2, is completed in accordance with Department Order #911, Inmate Visitation.</p>	<p>11.3 In inmate-initiated lawsuits, mail sent to a judge, court or ADCRR defendant prior to an Assistant Attorney General being assigned shall not be considered legal mail.</p> <p>11.3.1 If an inmate disagrees with this decision, he/she may request to have the Paralegal review by submitting a Paralegal Assistance Request form to determine whether it may be approved as Qualified Legal Claim service. The Paralegal may contact the Legal Access Monitor for direction.</p> <p>11.4 Outgoing mail not labeled as legal mail shall be processed as regular mail.</p> <p>11.5 All legal mail, outgoing or incoming, shall be logged in accordance with Department Order #914, Inmate Mail.</p> <p>11.6 Staff members who process incoming or outgoing inmate mail shall:</p> <p>11.6.1 Generally identify all legal mail and record it on a log by indicating the inmate's name and the sender's name.</p> <p>11.6.2 Inspect such mail for contraband as outlined in this section, stamp the envelope "LEGAL MAIL, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY" using a commercial stamp, and log it before it is placed in the envelope and sealed by the inmate. {5-ACI-7D-06}</p> <p>11.6.2.1 All incoming legal mail shall be opened in the presence of the inmate and checked for contraband items, but staff members may not read, skim, scan, or review the written contents of any incoming legal mail, but should remain vigilant in searching for suspicious features that can be identified without reading the words on a page. Examples include, but not limited to, maps of prison complexes, shift change documents, and the like.</p> <p>11.6.2.1.1 Staff members may seize the mail if it does not qualify as legal mail, following consultation with, and approval from, the Deputy Warden or designee. The</p>
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		<p>Deputy Warden or designee may contact the Legal Access Monitor for direction.</p> <p>11.6.2.1.2 Seized mail requires that an Inmate Property/Contraband/Disposition Tracking form be completed in accordance with Department Order #909, Inmate Property.</p> <p>11.6.2.1.3 Staff members who deliver incoming legal mail shall have the inmate sign and date the log, acknowledging delivery.</p> <p>11.6.2.2 Compact discs sent in from attorneys shall be considered legal materials and are to be stored in the inmate’s designated box(es) for legal materials upon receipt.</p> <p>11.6.2.2.1 In order to view the compact disc, inmates must submit an Inmate Letter to the unit Deputy Warden to request to view the compact disc.</p> <p>11.6.2.2.2 Staff members shall be present upon initial review of the compact disc by the inmate. Staff members may not read, skim, scan, or review the written contents of any incoming legal mail, but should remain vigilant in searching for suspicious features that can be identified without reading the words on a page. Examples include, but are not limited to, maps of prison complexes, shift change documents, and the like. The inmate will then have an opportunity to conduct any legal work needed with the compact disc.</p> <p>11.6.2.2.3 If contraband is found on the compact disc during the reviewing process, designated security staff shall terminate the session and seize the compact disc.</p> <p>11.6.2.2.4 Seized compact discs require the completion of an Inmate Property/Contraband/Disposition Tracking form in accordance with Department Order #909, Inmate Property.</p> <p>11.6.2.3 All outgoing legal mail shall be brought to the mail room by the inmate. Designated staff shall visually inspect mail for contraband items and log it before it’s placed in the</p>
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

		<p>envelope and sealed in the presence of the inmate. Staff may not read, skim, scan, or review the written contents of any outgoing legal mail but should remain vigilant in searching for suspicious features that can be identified without reading the words on a page. Examples include, but not limited to, maps of prison complexes, shift change documents, and the like.</p> <p>11.6.2.3.1 If an inmate is ineligible to bring outgoing legal mail to the mail room, staff shall visually inspect, but not read, skim, scan, or review the written contents, and seal the mail in front of the inmate's cell.</p> <p>11.6.2.3.2 Staff may seize the mail if they determine it contains contraband items, following consultation with, and approval from the Deputy Warden or designee.</p> <p>11.6.2.3.3 The Deputy Warden or designee may contact the Legal Access Monitor for direction. Seized mail requires that an Inmate Property/Contraband/Disposition Tracking form be completed in accordance with Department Order #909, Inmate Property.</p> <p>11.6.3 Send legal mail as first class mail regardless of the inmate's ability to pay the required postage</p> <p>11.6.4 Submit names of inmates claiming to have inadequate funds for postage to the Business Office, indicating postage due from the inmate. The Business Office shall either debit the inmate ITA or place a hold on the inmate's ITA if there are insufficient funds to pay the postage.</p> <p>11.7 Designated staff shall not rely solely on the words "LEGAL MAIL" having been stamped on the envelope. Designated staff shall verify via online resources or contact the law firm or legal organization in a good faith effort to determine the name of the addressee responsible for the mail and that the addressee is a licensed attorney. Once verified, staff shall stamp "LEGAL MAIL" on the envelope.</p>
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

		<p>11.7.1 If there is any serious doubt as to whether the contents of the envelope contain legal mail, designated staff shall contact the Legal Access Monitor for direction.</p> <p>11.8 Staff members suspecting abuse of the legal mail designation shall advise the Warden or Deputy Warden who shall take appropriate action following consultation with the Department’s General Counsel or designee. An inmate who intentionally sends personal mail to a private address and falsely claims it is legal mail shall be subject to disciplinary action in accordance with Department Order #803, Inmate Disciplinary Procedure.</p> <p>11.9 When applicable, staff members shall take the following steps to locate inmates to whom legal mail is addressed and to forward such mail to the inmate.</p> <p>11.9.1 Use the Arizona Correctional Information System (ACIS) and inmate records to locate any addressee of legal correspondence who is not located at the institution which received the correspondence, and to locate any inmate who has received legal mail which does not have an ADCRR Number as part of the address.</p> <p>11.9.1.1 Staff members shall have inmates verify they are the person to whom the legal mail is addressed utilizing the inmate’s identification card.</p> <p>11.9.2 Staff members shall forward any legal mail to any inmate addressee who is under commitment to or supervised by the Department.</p> <p>11.9.2.1 Staff members should continue to exercise their discretion and take all reasonable and necessary steps to provide those inmates being held offsite (i.e., not in an ADCRR prison complex or facility) with reasonable access to their lawyers and the courts under the circumstances of their off-site custody.</p> <p>11.9.2.2 Responsible personnel should continue to be guided by the underlying premise of the Department’s legal</p>
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p>Arkansas <i>Regulations/Guidance</i></p> <p>* It appears that Arkansas Board of Corrections rules apply to both prisons and DOC jails.</p>	<p>Phone Administrative Regulations Board of Corrections and Administrative Rules Board of Corrections ADC AR 867 / ACC AR 7.29 Use of Telephone (V)(B). Telephone contact with offenders' attorneys may be approved upon presentation of evidence the call is necessary.</p>	<p>Visitation Administrative Regulations Board of Corrections and Administrative Rules Board of Corrections AR 0865 Visitation (VI)(C)(3). An attorney visiting area shall be provided to ensure privileged communications between offenders and their attorneys; however, the area used for these visits is subject to general staff supervision.</p>	<p>access policy that inmates should “communicate legal matter through the mail whenever possible.” 11.9.2.2.1 Inmates, offenders and parolees receiving forwarded legal correspondence shall notify the sender of their new address</p> <p>Mail</p>
<p>California <i>Statutes</i></p>	<p>Phone California Penal Code § 5058.7 (a) The department shall approve an attorney’s request to have a confidential call with the inmate that they represent. The approved confidential call shall be at least 30 minutes once per month, per inmate, per case, unless the inmate or attorney requests less time. (b) For purposes of this section, “confidential call” means a telephone call between an inmate and their attorney that both the inmate and attorney intend to be private</p>	<p>Visitation</p>	<p>Mail</p>
<p><i>Regulations/Guidance</i></p> <p>* It appears that the California Department of Corrections and Rehabilitation’s Operations Manuals apply to both prisons and jails.</p>	<p>Department of Corrections and Rehabilitation Adults Institutions, Programs and Parole Operations Manual 12070.14 Privacy of Authorized Calls. Authorized personal phone calls by an employee shall not be monitored or recorded. The wiretapping or monitoring of authorized/unauthorized personal calls, confidential or not, by CDCR employees over</p>	<p>Department of Corrections and Rehabilitation Adults Institutions, Programs and Parole Operations Manual 54020.32 Attorney Visitations and Consultation. Inmates have a right to access the courts and the judicial system. It is the policy of the CDCR to facilitate both correspondence and personal consultation for this purpose. An attorney visit is a</p>	<p>Department of Corrections and Rehabilitation Adults Institutions, Programs and Parole Operations Manual 54010.12.1 Persons with Whom Inmates May Correspond Confidentially. Persons and employees of persons with whom inmates may correspond confidentially, and receive correspondence confidentially from, include:</p>

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	<p>CDCR or State telephone systems is prohibited except as authorized by an order of a court having jurisdiction over the institution, facility, or office, and obtained under Penal Code (PC) Section 629.50 et seq., or as authorized under PC 633. These exceptions apply only to the investigation of cases involving criminal conduct by employees and/or inmates. In all cases where CDCR investigators request court orders under PC 629.50 et seq., or through local law enforcement involvement under PC 633, the Deputy Director, Law Enforcement and Investigations Unit will first be notified.</p> <p>Wiretapping or monitoring of employee telephone calls in cases involving administrative violations is prohibited.</p> <p>52060.8 Confidential Telephone Calls. Wardens may delegate authority to specific staff members to authorize confidential telephone calls between an inmate and the inmate’s attorney, or any other person when designated staff determines that confidentiality is warranted. Approval and clearance for a confidential phone call between an inmate and their attorney shall be conducted according to Section 3282 of the Title 15. The CDCR Form 106-A shall be used to document clearance. The information in the CDCR Form 106-A shall be updated regularly, but no less frequently than annually. Authorized confidential calls shall not be monitored or recorded. However, inmates will be under constant visual observation during the confidential phone call. Confidential calls shall not be placed on designated inmate telephones</p>	<p>private consultation between an inmate and his/her attorney or representative. Conversations between an inmate and an attorney or attorney representative shall not be listened to or monitored with the exception of visual observation by staff as required for the safety and security of the institution/facility. Attorneys or attorney representatives shall not be permitted to attend or participate in any conference or committee meeting of staff and the inmate concerned, except as may be authorized by law or regulation.</p> <p>54020.32.4 Location of Attorney Visits. Attorney visits shall be conducted in institution/facility visiting rooms. Inmates shall be granted contact or non-contact visits, according to their visiting status at the time of the attorney visit.</p> <ul style="list-style-type: none"> • When a compelling need exists, the institution head or designee may grant an inmate on non-contact visiting status a contact attorney visit. Such visits shall occur in private visiting accommodations specified by the institution facility in accordance with this Section. • If an attorney or attorney representative does not desire private accommodations, the attorney or attorney representative may visit the inmate on any regularly scheduled visiting day and shall be provided the same accommodations as a regular visit, with the exception that, notwithstanding the limitations of DOM 54020.15, legal documents may be exchanged in accordance with CCR Section 3178(o) 	<ul style="list-style-type: none"> • Any attorney at law, on active status or in good standing, listed with a state bar association
Colorado	Phone	Visitation	Mail
<i>Regulations/Guidance</i>	850-12 Telephone Regulations for Offenders.		

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<p>* While these rules apply to state run prisons, the extent to which they also apply to county run jails is unclear.</p>	<p>M. Legal Calls:</p> <ol style="list-style-type: none"> 1. DOC will ensure and facilitate access to counsel and assist offenders in making confidential contacts with attorneys and their authorized representatives; such contact includes, but is not limited to, telephone communications. 2. All authorized representatives will provide a copy to the CIPS office of their supervising attorney’s current Supreme Court attorney registration card, or the equivalent form of identification issued by the state in which they are admitted to practice law, along with a notarized letter signed by the supervising attorney on the attorney’s letterhead. The letter will specifically state that the agent is representing the attorney. 3. If the offender fails to adhere to the procedures contained in this section, the call is not considered a properly placed legal call and may be recorded and/or monitored by employees. Notice of the potential for monitoring will be posted on or near offender telephones. 4. If an offender wishes to make an unmonitored or unrecorded legal call, the offender must provide the attorney registration number for the legal counsel on AR Form 850-12A, Colorado Inmate Phone System Offender Phone List along with the business address and telephone number of the attorney. 5. Once the request has been received in the CIPS office, the attorney registration number, address, and phone number will be verified. Positive acceptance is not required on verified attorney calls placed by debit to allow offenders who reach an automated attendant to input an extension number. Positive acceptance is required on verified attorney 	
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	<p>calls placed collect as the called party must agree to pay for the call before it is connected.</p> <p>6. A business telephone number for attorneys will be given the status of unmonitored or unrecorded. Attorney cellular and/or home numbers CAN be entered as unmonitored or unrecorded numbers if the CIPS office has verified the phone numbers belong to an attorney. If the number cannot be verified, they will be entered as recorded phone numbers. Exceptions may be made by CIPS supervisor or designee.</p> <p>7. Offenders or attorneys who are notified of an imminent, previously unknown, court deadline within the next ten days or less may be allowed to communicate with one another by telephone on an emergency basis.</p> <p>a. Offenders may be allowed to place an emergent call, collect or debit, or to receive an emergent call from their attorney of record. The attorney of record will contact the facility litigation coordinator to facilitate the call.</p> <p>b. Upon notification of the emergent situation, the offender will contact their case manager, who will contact the facility litigation coordinator, to facilitate an emergency call.</p> <p>c. The facility litigation coordinator will require the attorney and/or offender to provide verifiable documentation of the emergency.</p> <p>8. It will be the responsibility of both the attorney and offender to ensure that the offender has requested that the attorney be placed on the offender’s CIPS list to make unmonitored legal calls. Attorneys may contact their clients in writing or in person to inform them that verbal communications may be necessary and that it is the offender’s responsibility to make the request. The</p>		
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p>Connecticut <i>Regulations/Guidance</i></p> <p>* Connecticut has a “unified” prison and jail system. The Department of Corrections regulations apply to all facilities.</p>	<p>attorney should send correspondence to the offender immediately upon agreeing to provide representation so that necessary time is afforded DOC employees to process the request.</p>	<p>attorney should send correspondence to the offender immediately upon agreeing to provide representation so that necessary time is afforded DOC employees to process the request.</p>	
	<p>Phone Connecticut Administrative Directive 10.7 Inmate Communications 5(F). Privileged Telephone Calls. An inmate shall be provided a reasonable accommodation to make non-recorded telephone calls to any person enumerated in Section 3(H) of this Directive on telephones without the recording and/or listening provided for in Section 5(D) of this Directive, and provided the person enumerated in Section 3(H) called agrees to accept the call. Inmates shall be allowed two privileged calls a month in addition to calls initiated by the inmate’s attorney. Calls answered by a busy signal shall not be counted. Calls answered by a person or machine, capable of taking a message, shall be counted as a contact. An inmate’s request for a call to an attorney shall be honored either by the close of the first business day following the day on which the request was received or on the day specified by the inmate, whichever shall occur later. Requests by attorneys, to include paralegals and law students working under an attorney’s supervision, for privileged calls to inmates shall be honored by the close of the first business day following the day on which the request was received from the attorney or at the time specified by the attorney, whichever shall occur later. Requests by attorneys shall be honored without limitations as to number or frequency. Privileged calls shall be placed by staff who shall verify the party’s identity prior to placing the inmate</p>	<p>Visitation Connecticut Administrative Directive 10.6 Inmate Visits. c. Privileged Visits Provisions and Standards. General Provisions. 1. Privileged visits shall be reasonably accommodated. When any questionable circumstance arises regarding accommodation of a privileged visitor, the shift supervisor, in consultation with the duty officer, shall personally investigate the situation using face to-face contact and shall obtain any additional information necessary, to try to accommodate the visit. If a privileged visit is not accommodated, the shift supervisor or higher authority shall complete CN 6601, Incident Report, in accordance with Administrative Directive 6.6, Reporting of Incidents, detailing all actions taken and the reason(s) the visit was not accommodated or was denied. The incident shall be reported as a Class 3 incident. Privileged visitors shall present valid identification containing a photograph and certification of status prior to being allowed to visit as detailed in this section. Privileged visitors shall not be required to submit to the standard security screening but must successfully pass through the metal detector. 2. A privileged visitor may not visit that same inmate in a social capacity. Likewise, a social visitor may not have a privileged visit with the inmate</p>	<p>Mail</p>

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	<p>on the line, he staff member shall then move out of listening range of the inmate's conversation. The employee placing the call may maintain visual observation of the inmate. Privileged calls shall normally be limited to 10 minutes duration. In the absence of exigent circumstances, this limitation may be increased at the oral or written request of the attorney. A log shall be kept for privileged telephonic communications in accordance with Administrative Directive 6.2, Facility Post Orders and Logs, denoting the following:</p> <ol style="list-style-type: none"> 1. Inmate name and number; 2. Date and name of person making request; 3. Date and time of call; 4. Authorizing authority; 5. Staff placing call; 6. Number called; 7. Person contacted; 8. Duration of call; 9. Inmate signature (at completion of call); and, 10. Date and time call completed. When an inmate's call is terminated due to exigent circumstances, an incident report shall be completed in accordance with Administrative Directive 6.6, Reporting of Incidents. A copy of the report shall be forwarded to the appropriate District Administrator for review. 	<p>unless he or she is first removed from the social visitor list.</p>	
<p>Delaware <i>Statutes</i></p>	<p>Phone <u>Title 11, §1431.</u> 1. Telephone messages received or overheard by police as evidence. ---In any prosecution for a gambling offense, evidence that a police officer, when making an arrest for a gambling offense, received or overheard telephone messages intended for the accused or an associate of the accused which tend to prove that gambling activity was being</p>	<p>Visitation</p>	<p>Mail</p>

50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p><i>Regulations/ Guidance</i></p> <p>* Delaware has a “unified” prison and jail system. The Department of Corrections regulations apply to all facilities.</p>	<p>conducted is admissible. The gathering and disclosure of such evidence, including the contents of the telephone messages received or overheard, does not violate any law of this State.</p> <p>Policy of State of Delaware Dept. of Correction. Policy Number 3.7 – Telephone Access</p> <p>V(I). All Offender calls may be monitored and recorded for security purposes with the following exceptions:</p> <ol style="list-style-type: none"> 1. Legal calls 		<p>Policy of State of Delaware Dept. of Correction. Policy Number 4.0 – Offender Mail</p> <p>D. Legal/ Privileged Mail</p> <ol style="list-style-type: none"> 2. Outgoing legal/privileged mail will be recorded and shall not be opened for inspection or any other purpose or otherwise impeded in its transmission if it: <ol style="list-style-type: none"> a. Is addressed to a person eligible to receive legal/privileged mail under this policy; b. Included the offender’s name and return address on the outside of the envelope; c. Has been marked by the institution to indicate to the addressee that: <ol style="list-style-type: none"> 1. The letter was sent by an inmate in a State Prison 2. The State is not responsible for debts incurred, or for the contents of the letter d. Successfully passes a fluoroscope examination for contraband. 4. Incoming legal/privileged mail will be recorded and may be required to successful pass a fluoroscope examination for contraband but shall not be opened or scanned except in the presence of the addressee offender, unless waived in writing, for the sole purpose of ascertaining that its contents are free of contraband
<p>Florida</p> <p><i>Statutes</i></p>	<p>Safe operation and security of correctional institutions and facilities.—It is the intent of the Legislature that the Department of Corrections shall be responsible for the safe operation and security of the correctional institutions and facilities. The safe operation and security of the state’s correctional</p>	<p>Visitation</p>	<p>Mail</p>

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<p><i>Regulations/ Guidance</i></p> <p>* While prisons are state run, Florida jails are administered by counties and required to follow the Florida Model Jail Standards</p>	<p>institutions and facilities are critical to ensure public safety and the safety of department employees and offenders, and to contain violent and chronic offenders until offenders are otherwise released from the department’s custody pursuant to law. The Secretary of Corrections shall, at a minimum:</p> <p>(10) Direct appropriate department staff to adopt and enforce minimum safety and security standards and policies that include, but are not limited to:</p> <p>(a) Random monitoring of outgoing telephone calls by inmates.</p>		
<p>33-602.205 Inmate Telephone Use.</p> <p>(3) Calls to attorneys.</p> <p>(a) Inmates shall be allowed to make private telephone calls to attorneys upon presentation to the warden or his designee of evidence that the call is necessary. Such evidence shall be a letter from the attorney requesting the return call or a court order containing a deadline the inmate cannot meet if he must communicate by letter with the attorney. The letter shall be on attorney letterhead, signed by the attorney requesting the telephone call, and include the bar association number of the attorney. Alternatively, an attorney shall be permitted to request prior arrangements be made with the warden or warden’s designee to have an inmate receive a private telephone call from the attorney on an unmonitored telephone by submitting a signed copy of form DC6-20001 and a copy of the attorney’s bar admission card along with the request letter, email with attached required documents, or FAX. Form DC6-20001 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street,</p>			

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	<p>Tallahassee, Florida 32399-2500. http://www.flrules.org/Gateway/reference.asp?No=Ref-14204. The effective date of this form is 05/22. Unmonitored calls shall be limited to those which are necessary and cannot reasonably be accomplished through other available means of communication. Except as authorized by warrant or order of court, telephone calls to attorneys made pursuant to this section shall not be monitored or electronically recorded. These calls will be placed on telephones designated for this purpose and shall be collect calls; there shall be at least one telephone at each institution that is not connected to the monitoring system for these calls. (b) If an inmate places a call to their attorney's telephone number outside of the parameters above, it will be collect, subject to monitoring and recording, and limited to 30 minutes, in accordance with subsection (2) of this rule. If the inmate and the attorney want to have non-monitored conversations, the procedures in paragraph (3)(a) must be followed.</p>		
<p>Georgia <i>Regulations/ Guidance</i></p> <p>* It appears that the policies pertaining to state run prisons in Georgia do not also apply to county run jails. Jail policies appear to be county specific.</p>	<p>Phone Offender Access to Telephones (Policy Number 227.01) IV(H)(2). Call Monitoring Procedures 2. The offender telephone system automatically records all offender calls unless a number has been blocked for recording purposes. Calls placed to the offender's Attorney and to the Indigent Defense Council will be entitled to attorney-client confidentiality and will not be recorded or monitored if the offender designated the number as being that of their Attorney on the Call Allow list. The recording feature must be blocked on all calls to</p>	<p>Visitation Visitation of Offenders (Policy Number 227.05) IV(Z). Attorneys 1. For the purpose of visitation, the term attorney includes an offender's attorney of record or any other attorney licensed to practice in State or United States Courts, Court of Appeals, or the Supreme Courts with whom the offender has or is attempting to establish an attorney-client relationship. 2. Attorney's requesting visits shall be required to submit the Attorney Visitation Request form, Attachment 6, along with a copy of their State Bar</p>	<p>Mail</p>

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	<p>this number so these calls are NOT recorded. When monitoring calls, it is the responsibility of the person monitoring to ensure they are not monitoring an attorney call. It is the responsibility of the Warden/Superintendent, or their designee to ensure they are not monitoring calls protected by attorney-client privilege</p>	<p>Card and a copy of an acceptable photograph identification card.</p> <ul style="list-style-type: none"> a. Attorneys shall be permitted to visit their clients at the facility during prescribed visiting periods with prior approval. b. In addition, reasonable flexibility shall be exercised in permitting attorneys, by prior appointment, to visit with their clients during normal business hours. c. Offenders shall be instructed to advise their attorneys that appointments are required to visit except in bona fide emergencies. d. Appointments must be made through the Warden's or Superintendent's Office twenty-four (24) hours in advance. e. Surveillance and general supervision during the visit shall be maintained by correctional staff. The correctional staff member shall be positioned so as to permit the attorney and client to converse privately (uncensored) and maintain the privileged nature of their relationship. f. No special provisions shall be made for attorneys during normal visiting hours <p>3. By prior arrangements with the Warden or Superintendent or their designee, the offender may be visited by a paralegal, investigator, law assistant or other person employed by the attorney to represent the offender. This visit will be supervised in the same manner as described above.</p> <ul style="list-style-type: none"> a. Before allowing such a visit, the Warden or Superintendent or their designee shall require the attorney to contact the Warden or Superintendent or their designee and identify the person desired to be sent in the attorney's stead. b. At each visit the Warden or Superintendent, or their designee, shall require the presentation of 	
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<p>Hawaii <i>Regulations/ Guidance</i></p> <p>* Hawaii has a “unified” prison and jail system. The Department of Corrections regulations apply to all facilities.</p>	<p>Phone Corrections Administration Policy and Procedures. Inmate Legal Activities 5(11)(d) Telephone calls 1. It is the department’s goal to provide telephone access that is effectively regulated and handled in a manner which does not compromise legitimate penological interests. All telephone calls, with the exception of legal calls, are subject to monitoring and recording. In accordance with PSD, P&P, COR.15.03, attorneys of record including landlines and cell phones, shall be identified as a legal call on PSD 8733, personal Allowed Numbers.</p>	<p>a letter, dated no later than one (1) week prior to presentation, signed by the attorney, and identifying the holder and the offender to be visited. This letter should be placed in the offender’s institutional file. c. The Warden or Superintendent or their designee may refuse permission for these visits for cause. Cause may include misrepresentation made by the attorney, paralegal, investigator, law assistant or other persons employed by the attorney concerning the visits, as well as, the existence of facts, which give the Warden or Superintendent or their designee reason to believe the visit would pose a threat to facility security.</p> <p>Visitation Corrections Administration Policy and Procedures. Inmate Legal Activities 5(11)(b) Attorney Visits 1. Attorneys shall be advised by the facility to give prior notice of their intent to visit the inmate outside of regular visiting hours. Attorneys shall be encouraged to visit their clients during the normal visiting hours set by the facility. Each facility shall establish contingency plans for necessary attorney visits during the evenings or weekends where there is an emergency situation with the inmate’s case. Attorneys shall be required to furnish their active bar number for identification purposes whenever visiting or making appointments for visits outside of regular visiting hours. 2. Attorneys and all their belongings and equipment are subject to search for contraband upon entry to the facility. Attorneys must show documentation they are attorneys prior to their admission into the facility.</p>	<p>Mail Corrections Administration Policy and Procedures. Inmate Legal Activities 5(11)(c) Correspondence 1. Incoming and outgoing correspondence between an inmate and an attorney shall be treated as privileged mail in accordance with PSD, P&P, COR.15.02, Correspondence</p>
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p>Idaho <i>Regulations/ Guidance</i></p> <p>* While prisons are state run, Idaho jails are administered by counties and required to follow the Idaho Jail Standards Manual</p>	<p>Phone</p> <p>Idaho Dept of Correction, Standard Operating Procedure. Telephones and Electronic Communication Systems: Resident. 503.02.01.001</p> <p>8. Attorney Telephone Calls</p> <p>Telephone calls between a resident and an attorney, placed to the attorney's business telephone number as listed with the Idaho State Bar, are not monitored or recorded. Voice messages left by an attorney using the resident phone system for an resident are not privileged, are recorded, and can be monitored.</p> <p>The contract administrator or RCMS vendor must obtain, from the Idaho Bar, the business telephone numbers of all Idaho attorneys and provide the numbers to the RCMS vendor. The RCMS vendor must program the RCMS so that calls made to Idaho attorney telephone numbers cannot be monitored or recorded. Attorneys may request to have their business telephone number added to the nonmonitored list. Requests must be sent to the contract administrator on the attorney's official letterhead. The contract administrator must use the appropriate state bar website to confirm the attorney is active and in good standing with the bar, and verify the name, address, and telephone number of the attorney. If the telephone number is verified, the contract administrator provides the name and contact information to the SIU chief investigator or designee and the prison division's chief for review prior to adding it to the RCMS. Once approved by</p>	<p>3. All inmate and attorney visits shall be in an areas where the attorney client privilege can be honored, but that staff may keep visual contact with the inmate without monitoring the conversation,</p> <p>Visitation</p> <p>Idaho Dept of Correction, Standard Operating Procedure. Attorney and Professional Individual Access to Inmates. 604.02.01.002.</p> <p>2. Attorney and Attorney Agent Access</p> <p>The IDOC allows meetings between inmates and attorneys or their agents, or both, to work on a legal claim or proceeding.</p> <p>Attorneys or their agents may have social visits with inmates pursuant to standard visiting procedures (see Visiting, SOP 604.02.01.001).</p> <p>To the extent possible--based on staffing and facility design--facility heads must identify an area that allows the inmate and the attorney, or the attorney's agent, the opportunity to conduct legal business where staff members are able to observe the meetings but cannot overhear or record the conversation.</p>	<p>Mail</p> <p>Idaho Dept of Correction, Standard Operating Procedure. Mail Handling in Correctional Facilities. 402.02.01.001</p> <p>16. Incoming Confidential Mail</p> <p>Incoming confidential mail must be delivered to the unit sealed. A unit staff member will open and inspect the envelope in the presence of the inmate but will not read it. However, incoming confidential mail may be scanned to ensure that it does not violate the provision of this SOP. If contraband or materials are found that violate the provisions of this SOP, the mail will be withheld and immediately forwarded to the facility head or designee.</p>
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	<p>the SIU chief investigator and prison division’s chief, the contract administrator adds the number and notifies the attorney in writing when the programming is complete. An attorney can request to add a secondary number to the non-monitored list. The request must be made using the attorney’s letterhead, signed by the attorney representing the resident, and sent to the contract administrator. Proof of ownership by means of a billing statement for the number must be provided. Personal information can be redacted from the billing statement, but name, date, account number, and telephone number must be visible. If the number is a second office and the contract administrator can independently verify that is the attorney’s place of business, the billing statement is not required. The contract administrator forwards the request to the SIU chief investigator and the division of prisons chief. The division of prisons chief approves or denies the request and notifies the contract administrator who must take appropriate action, notifying the requesting attorney in writing of the decision and actions taken.</p> <p>Unintended Recording of a Resident/Attorney Telephone Call If a resident-attorney telephone call (to the attorney’s business number) is inadvertently recorded, the staff member must not listen to the call or immediately stop listening when the staff learns that the call is to an attorney and must not share any of the conversation with other staff, except as noted in the next subsection. The staff member must immediately notify his manager or facility head or designees. The manager or facility head or designees must verify that it is an attorney’s authorized business number and if verified, ensure</p>		
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p>Illinois <i>Regulations/ Guidance</i></p> <p>* While prisons are state run, Idaho jails are administered by counties and required to follow the Illinois County Jail Standards. Municipal jails are administered by municipalities and required to follow the Municipal Jail and Lockup Standards. The Jail and Detention Standards Unit of the Illinois Department of Corrections, monitors jails to ensure compliance with the County and Municipal Standards</p>	<p>the number is programmed as a non-monitored number in the RCMS. Once verified that it was an attorney business number, any recorded call to that number must be deleted from the RCMS. If the attorney telephone call was to a number that was not an authorized business number, the facility head or designee must notify the attorney of the following: • That the telephone number is not on the non-monitored list • That the attorney’s business number recorded with the Idaho Bar is on the nonmonitored list he process if the attorney wants to request adding an additional number to the nonmonitored list</p>	<p>Visitation Illinois Joint Committee on Administrative Rules, TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT CHAPTER I: DEPARTMENT OF CORRECTIONS CORRECTIONS SUBCHAPTER e: OPERATIONS PART 525 RIGHTS AND PRIVILEGES Section 525.40 Attorney Visitation – Adult Division a) Licensed attorneys and any investigators, law students, or paralegals working under their supervision may visit an offender during regularly scheduled visiting hours unless permission has been granted by the Chief Administrative Officer to visit during other hours. c) Attorneys or those working under their supervision are requested to notify the Chief Administrative Officer of the designated time and date of the visit at least two days in advance of the visit in order to make special visiting room arrangements</p>	<p>Mail Illinois Joint Committee on Administrative Rules, TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT CHAPTER I: DEPARTMENT OF CORRECTIONS SUBCHAPTER e: OPERATIONS PART 525 RIGHTS AND PRIVILEGES Section 525.140 Incoming Mail a) Incoming privileged mail must be clearly marked as "privileged" and be clearly marked with the name, title, and address of the sender. b) Incoming privileged mail may be opened in the presence of the offender to whom it is addressed to inspect for contraband, to verify the identity of the sender, and to determine that nothing other than legal or official matter is enclosed. c) Incoming privileged mail may contain communications only from the privileged correspondent whose name and address appear on the envelope. If non-privileged material or correspondence from a third party is found to be enclosed, such material shall be treated as non-privileged mail.</p>
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

Indiana	Phone	Visitation	Mail
<p><i>Regulations/ Guidance</i></p> <p>* While the Department of Corrections Manual of Policies and Procedures appear to apply only to state run facilities, the Indiana Department of Correction includes a County Jail Services Division that conducts inspections to ensure best practices consistent with the Indiana Jail Standards (210 IAC 3-1), American Correctional Association (ACA) and the National Institute of Corrections (NIC)</p>	<p>Indiana Department of Corrections. Manual of Policies and Procedures. Telephone Privileges. Number 02-01-105</p> <p>VII. TELEPHONE CALLS TO LEGAL REPRESENTATIVES</p> <p>Offenders shall be permitted to make telephone calls to attorneys in accordance with Policy 00-01-102, “Offender Access to the Courts” and these procedures. Offenders shall be provided the opportunity to make calls to the legal representatives without offender calling system monitoring. Offender telephone calls to legal representatives shall not be considered one of the offender’s regular telephone calls. An offender’s legal representative may either call or write the Facility Head to request that his/her offender client be allowed to make an unmonitored telephone call. It shall be the responsibility of the offender to advise staff when a telephone call to a legal representative is being made. Failure to so advise staff may result in the offender’s telephone call being monitored. Offender telephone calls to legal representatives shall typically be made using the offender calling system; however, facilities may approve direct dial calls under certain circumstances (e.g. when the legal representatives telephone system cuts off the offender’s call when it is transferred). The facility shall establish operational procedures for placing direct dial calls to legal representatives including designating staff to oversee these calls. The facility shall not apply any frequency limitations, within reason, on offender telephone calls to legal representatives when the offender can demonstrate that communication by correspondence, visitation or regular telephone use</p>	<p>Indiana Department of Corrections. Manual of Policies and Procedures. Offender Visitation. Number 02-01-102</p> <p>VIII. PERSONS EXEMPTED FROM THE VISITATION SCHEDULE</p> <p>Staff must verify the qualifications of exempted visitors and may request background information and official assignment documentation from the potential visitor for this purpose. Whenever possible, exempted visitors should schedule. their visits at least 24 hours in advance so that the facilities can ensure that suitable accommodations are available. Attorneys, government officials, or persons from other agencies/organizations providing an approved service for the facility or the offender (e.g., Mental Health professionals, Indiana Vocational Rehabilitation counselors, etc.) may be approved for visitation on a case by case basis. Such visits shall not be considered as part of the offender’s regular visitation schedule and these visitors need not be on the visitation list (as determined in the operational procedures required by Procedure VI). If the attorney or government official is not on the authorized visiting list, approval from the Superintendent or designee is required. Where space is available and the security of the facility and safety of the people involved will not be impaired, a special area may be set aside for attorney-client visits. If space is available, arrangements also may be made to allow clergy to have a separate space, outside of the regular visiting room/area, to meet with the offender. The area shall be observable by staff; however, staff shall not listen to the conversations.</p>	<p>Indiana Department of Corrections. Manual of Policies and Procedures. Offender Correspondence. Number 02-01-103</p> <p>VII. LEGAL MAIL</p> <p>Offenders shall be allowed unrestricted access to legal representatives and courts through the mail. Only that mail to or from an offender which is clearly identified as legal mail shall be treated as such. It is the responsibility of the sender to indicate that the correspondence is legal mail. Mail from a court, an attorney, or legal organization (such as LSO, ACLU, ICLU, etc.) shall be treated as legal mail. Also, mail identified as a Tort Claim sent to the Commissioner shall be treated as legal mail.</p> <p>Offenders who are foreign nationals shall be permitted to correspond with the embassy or consulate of their home nation. This mail shall be considered legal correspondence and shall be subject to the same requirements as other correspondence designated as legal mail. Staff shall not interfere with a foreign national offender attempting to correspond with their embassy or consulate. If the item is legal mail or privileged correspondence, the facilities shall adhere to the following procedure:</p> <p>A. Staff shall inspect the incoming Legal Mail or Privileged Correspondence by making a visual inspection of the outside of the mail. If anything appears unusual or suspicious, staff shall confiscate the item in accordance with this policy and administrative procedure and submit the envelope to the Office of Investigations and Intelligence for further investigation.</p> <p>B. If the incoming mail passes visual inspection, staff shall confirm the address on the envelope. The address must be an actual physical location and staff shall make contact with the attorney’s office or government office listed on the envelope. If contact cannot be made within a reasonable amount of time (twenty-four [24] hours), Mail</p>

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	<p>is inadequate. Each facility shall develop operational procedures to provide for unmonitored telephone conversations with legal representatives. These operational procedures shall ensure that offenders are provided with necessary information to request and place these telephone calls. Should an offender fail to follow these procedures for making an unmonitored telephone call to an attorney, the call may be monitored.</p>		<p>Room staff shall inform the offender of the delay in correspondence.</p> <p>C. If, after reasonable efforts, contact and address location cannot be confirmed with the attorney or attorney’s office or someone from the listed government office, the incoming mail shall be properly confiscated and documented, and submitted to the Office of Investigations and Intelligence for further investigation.</p> <p>D. If contact and confirmation with the attorney or attorney’s office or government office is made, and the contents verified, the incoming mail may be released to the offender.</p> <p>E. Legal mail or privileged correspondence shall not be opened by the Mail Room staff. If there are concerns regarding contents of the mail, the correspondence shall be immediately properly confiscated and submitted to the Office of Investigations and Intelligence.</p> <p>F. Staff shall inspect any legal mail or privileged correspondence returned to the facility from the Post Office. If a visual inspection of the mail does not indicate anything unusual or suspicious (e.g., when the returned item is noted on facility logs of outgoing mail), the mail shall be treated as incoming Legal mail or privileged correspondence and opened in the presence of the offender only to check for contraband/prohibited property. If no contraband/prohibited property is found, it shall be given to the offender. G. In the event that suspicion is raised that the returned legal mail or privileged correspondence is tainted with a foreign substance or contains contraband/prohibited property, it shall be treated in the same manner as non-legal mail or privileged or non-privileged correspondence which raised similar suspicion.</p>
<p>Iowa <i>Regulations/ Guidance</i></p>	<p>Phone</p>	<p>Visitation Iowa Administrative Rules - Corrections Dept 201.20.3(10)(b). Attorneys. Attorneys must complete an initial visitor application form to visit an</p>	<p>Mail Iowa Administrative Rules - Corrections Dept 201.50.19(1) Prisoner Mail.</p>

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<p>* While these rules apply to state run prisons, the extent to which they also apply to county run jails is unclear.</p>		<p>incarcerated individual; however, this initial application shall apply to multiple visiting lists. After initial approval is established, attorneys must contact the central visiting authority at 319 385 9511 to be added to the visiting lists of additional incarcerated individuals. Background checks are not required and attorneys shall not be counted as a friend on an incarcerated individual's visiting list as set forth in 20.3(3)"b). Attorneys shall present proof of identity upon entrance to the institution, the incarcerated individual must express a desire to visit with an attorney before the attorney will be admitted, Attorney visits shall be during normal visiting hours unless a special visit has been requested by the incarcerated individual and approved by the warden or designee prior to the visit.</p>	<p>d. Privileges communication if so marked may only to opened in the presence of the prisoner and then only to detect the presence of contraband; it may not be read except by the prisoner. Privileged correspondence is defined as incoming and outgoing mail to or from (1) an attorney.</p>
<p>Kansas <i>Regulations/ Guidance</i></p> <p>* While these policies apply to state run prisons, the extent to which they also apply to county run jails is unclear.</p>	<p>Phone Kansas Dept of Corrections. Internal management Policy and Procedure: Inmate Telephone Service. Section Number 10-111. An Inmate Telephone Service [ITS] shall be available at all facilities for inmates to place collect or prepaid telephone calls. (ACO 2-CO-5D-01, ACI 3-4439) Inmates who wish to make use of the ITS shall be required to prepare and update a list of up to twenty (20) persons, including attorneys, with whom they wish to have telephone contact. Except where otherwise provided by this IMPP, the facility may monitor and record any non-attorney calls placed by any inmate on the ITS. D. Inmate telephone calls, except for attorney calls, may be subject to monitoring and recording.</p>	<p>Visitation</p>	<p>Mail</p>

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Kentucky	Phone	Visitation	Mail
<p><i>Regulations/Guidance</i></p> <p>* Kentucky’s Department of Corrections policies apply to state run prisons, while jails are subject to the Jail Standards for Full-service Facilities</p>	<p>Kentucky Dept of Corrections Policies and Procedures. Chapter 16. Communication, Mail and Visiting. 16.3. Inmate Access to Telephones. (prisons)</p> <p>II.(D) Staff shall not listen to a call from an inmate to his attorney</p> <p>501 KAR 3:140.Prisoner rights. (jails)</p> <p>Section 3.Telephone.</p> <p>(1)A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner’s choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.</p> <p>(2)The jailer, jail administrator, or jail personnel shall maintain a log of telephone calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time, and party contacted.</p> <p>(3)Any prisoner admitted to a facility for a temporary stay of forty-eight (48) hours or less before proceeding or returning to another destination shall be considered in transit and therefore not entitled to a phone call.</p> <p>(4)Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.</p> <p>(5)A minimum of five (5) minutes shall be allotted for each phone call.</p> <p>(6)If calls are monitored, the prisoner shall be notified.</p>	<p>501 KAR 3:140.Prisoner rights. (jails)</p> <p>(4)The jailer, jail administrator, or jail personnel shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative.</p> <p>(a)To the extent available in the jail and reasonable for use by an attorney, "confidential access" shall include a meeting with counsel in a private room in the jail. The room may be used for purposes other than attorney-client visits, but shall meet the conditions established in this paragraph:</p> <ol style="list-style-type: none"> 1.Jail employees and other prisoners shall not enter the room during the attorney-client meeting, unless an emergency or the security of the jail requires. 2.The room should be located so that conversations in ordinary tones with the door closed cannot be overheard by others outside the room. 3.If the room is located so that jail personnel could not hear a call for aid from the room with the door closed, then the room shall contain some other means to summon aid. 4.The room shall contain a desk or table and seating for an attorney, an assistant, and a prisoner. 5.The room shall have a means to access electricity suitable for plugging in a laptop or portable television, if the jail allows these items to be brought into the jail by an attorney, for the purpose of viewing discovery or other litigation materials. The jail may provide a laptop, portable television, or other means for viewing discovery. 6.The attorney shall be permitted access to a telephone, unless an emergency or the security of the jail requires otherwise. The jail may provide a phone in the meeting room or in another location within the jail. 	<p>Kentucky Dept of Corrections Policies and Procedures. Chapter 16. Communication, Mail and Visiting. 16.2 Inmate Correspondence. (prisons)</p> <p>II. C. Privileged Mail</p> <ol style="list-style-type: none"> 1. Incoming privileged mail shall be opened in the presence of the inmate and inspected for contraband. 2. The identity of the sender shall be evident on the face of the envelope or mailing container. Incoming privileged mail shall not be read if the sender is adequately identified on the envelope and the purpose of the mail is not an issue in determining whether it should be considered privileged mail. In the absence of adequate identification or a question about the purpose, staff may open and inspect the mail to ascertain whether it is, in fact, privileged mail. 3. If an inmate has placed adequate postage on the item, outgoing privileged mail shall be sealed by the inmate and not inspected by staff so long as the inmate has clearly indicated an addressee that meets the definition of privileged mail. 4. If an inmate seeks to send mail after signing a written money authorization for payment from his inmate account that allows payment when funds are received, the outgoing privileged mail shall be presented to staff in an unsealed envelope in the manner determined by the institution. The institution shall not require the inmate to leave unsealed outgoing privileged mail for later review. In the presence of the inmate, staff shall scan or read only those sections of the mail that are necessary to determine if it meets the definition of privileged mail. Privileged mail shall not be removed from the inmate’s presence before being sealed. 5. If it is determined that the outgoing mail does not comply with the privileged mail policy, the inmate shall receive an appropriate disciplinary charge and the mail shall be rejected. 6. Incoming privileged mail shall be recorded as to the date and time of delivery to the inmate.

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<p>Louisiana <i>Statutes</i> <i>Regulations/Guidance</i></p> <p>* The first listed regulations apply to state run prisons, while the later regulations apply to parish and city run jails.</p>	<p>(7)Telephone privileges may be suspended for a designated period of time if telephone rules are violated.</p>	<p>Visitation</p> <p>LA Administrative Code Title 22. § 317. Attorney Visits D. General 1. Offenders may refuse to see any attorney; such refusal shall be in writing and filed in the offender's master record. 2. A log shall be maintained of all visits by attorneys, paralegals, legal assistants, law clerks and investigators. 3. Visits may be visually observed, but conversations between offenders and counsel shall not, under any circumstance, be monitored.</p>	<p>The inmate may be required to sign for receiving privileged mail</p> <p>501 KAR 3:140.Prisoner rights. (jails) Section 2. Mail. (1)The jailer or jail administrator shall have written policy and procedure for receiving and sending mail that: (a)Protects prisoners' personal rights; and (b)Provides for security practices consistent with the operation of the jail. (2)A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer or jail administrator may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer or jail administrator discretion to grant the privilege. (3)Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.</p> <p>Mail</p> <p>LA Administrative Code Title 22. § 313. Offender Mail and Publications F. 8. Identification of Privileged Correspondence. It is the responsibility and duty of institutional staff to verify the legitimacy of the official listed on the envelope. For purposes of this regulation, "identifiable" means that the official or legal capacity of the addressee is listed on the envelope and is verifiable. If not, then the letter is to be treated as general correspondence and an appropriate inquiry made into the offender's intent in addressing the envelope as privileged mail. 9. All outgoing privileged correspondence shall include:</p>
	<p>Phone</p> <p>LA Administrative Code Title 22. § 315. Telephone Use and Policy on Monitoring of Calls D(2)(c) Dormitory Housing Legal Calls. The warden shall establish a schedule for legal calls. Offenders are generally able to place legal calls during the lunch period "non-working hours," or after the afternoon count (when "normal office hours" are in effect for attorneys.) The warden shall establish an alternate procedure if this is not adequate D(3)(c) Cellblock Housing Legal Calls. The warden shall establish a procedure for placing legal</p>		

	<p>calls on a reasonable basis during "normal office hours." Each housing unit shall maintain a legal telephone log for the purpose of monitoring the number of legal calls made by offenders on a weekly basis. All legal calls are to be logged with the attorney's full name, bar number, telephone number called, date, time and whether completed.</p> <p>D(4)(b) Incoming Calls. Legal Calls. Offenders may be given notice that their attorney has requested contact. Complete verification is required prior to processing. If minimum or medium custody, the offender may call from the dormitory during lunch or after work. If maximum custody, the offender may be allowed to call during "normal office hours" at a time which does not interfere with the orderly operation of the unit.</p> <p>D(6)(a)(iii). Monitoring. Telephone calls to the offender's designated attorney(s) will not be routinely monitored. Any telephone calls placed on offender telephones to attorneys shall be recorded but not monitored unless the warden determines a security need exists. Prior to examination of the content of the conversation with the attorney, the party requesting examination must put in writing the factors supporting the good cause and submit to the warden for approval. Only after approval has been received, shall the conversation be examined. Only investigators approved by the chief of operations shall be allowed to monitor the calls.</p> <p>MINIMUM JAIL STANDARDS §3107. Telephone</p> <p>A. Inmates shall have reasonable access to telephones on a regular schedule.</p> <p>B. Inmates shall be permitted to complete two local telephone calls at institution expense</p>	<p>4. Visits between death row offenders and attorneys, paralegals, legal assistants, law clerks and investigators may be non-contact at the warden's discretion.</p> <p>5. Attorneys, paralegals, legal assistants, law clerks and investigators are subject to searches according to established procedures, as are all other visitors.</p> <p>MINIMUM JAIL STANDARDS §3103. Visiting</p> <p>A. Inmates shall have maximum freedom and duration for visiting consistent with the security and management needs of the institution.</p> <p>B. Each inmate shall be permitted a minimum of one personal visiting period per week.</p> <p>C. Visitors shall be notified by posted signs that they and their possessions are subject to search at any time within the security perimeter of the institution.</p> <p>D. Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search, or for any violation of posted institutional rules.</p> <p>E. Inmate visits shall be conducted under visual surveillance of security staff, but conversations with visitors shall not be monitored.</p> <p>F. Space shall be provided for all activities required by the visiting program.</p>	<p>a. a complete legible name and address of the party the correspondence is being sent to;</p> <p>b. the offender's name, DOC number, housing unit, and the address of the institution on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing privileged correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution;</p> <p>c. outgoing privileged correspondence may be posted sealed, and will not be opened and inspected without express authorization from the warden or deputy warden as specified in Paragraph F.11 of this Section.</p> <p>10. Incoming Privileged Correspondence</p> <p>a. All incoming privileged correspondence must contain the return address of the sender and the name and DOC number of the offender and the name and mailing address of the facility. All incoming privileged correspondence shall be opened in the presence of the offender to whom it is addressed and inspected for the presence of cash, checks, money orders and contraband and to verify as unobtrusively as possible, that the correspondence does not contain material that is not entitled to the privilege. When the material is inspected and it is found to be bound or secured in any manner that would prevent the thorough inspection of the document, the offender shall have the option of allowing staff to take the document apart for adequate inspection or returning the material to the sender to require that the material be returned in a loose manner to allow for proper inspection. Additionally, offenders receiving legal material in the form of a compact disc shall have the option of paying for copies to be made by the facility or returning the disc to the sender in order to require that the material be converted to paper copies. Payment for paper copies of legal material from a compact disc shall be in accordance with established</p>
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	<p>immediately after arrest, or two collect long distance calls if they are not local residents. C. Inmates shall have maximum freedom and duration of telephone privileges consistent with the security and management needs of the institution. D. Inmate telephone calls shall be confidential and shall not be monitored</p>		<p>policy and procedures. b. Incoming privileged mail may be opened and inspected outside the offender’s presence in the circumstances outlined in Paragraph F.11 of this Section. MINIMUM JAIL STANDARDS §3105. Mail G. Outgoing letters to courts, recognized attorneys at law, governmental agencies and elected officials shall not be opened or read unless for security reasons, and will be submitted sealed by the inmate with the title or position of the addressee clearly marked on the envelope. H. Incoming letters from courts, recognized attorneys at law, governmental agencies and elected officials may be opened for inspection, but only in the presence of the inmate recipient and without being read for content.</p>
<p>Maine <i>Statutes</i></p>	<p>Phone 15 MRSA §712 2. Investigative officers. It is not a violation of this chapter for an investigative officer, or for another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; or while engaged in any activity that is related to the administration of juvenile justice if: A. Either the sender or receiver of that communication is a person residing in an adult or</p>	<p>Visitation</p>	<p>Mail</p>

	<p>juvenile correctional facility administered by the Department of Corrections; and [PL 2009, c. 93, §1 (AMD).]</p> <p>B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:</p> <ol style="list-style-type: none"> (1) Providing the resident with a written notification statement; (2) Posting written notification next to every telephone at the facility that is subject to monitoring; and (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. <p>C. This subsection does not authorize any interference with the attorney-client privilege.</p> <p>3. Jail investigative officer. It is not a violation of this chapter for a jail investigative officer, as defined in this chapter, or for a jail employee acting at the direction of a jail investigative officer to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act if:</p> <p>A. Either the sender or the receiver of that communication is a person residing in an adult section of the jail; and [PL 2011, c. 507, §5 (AMD).]</p>		
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<p><i>Regulations/Guidance</i></p> <p>* Maine’s Department of Corrections policies apply to state run prisons, while jails are subject to the Detention and Correctional Standards for Maine Counties and Municipalities</p>	<p>B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:</p> <p>(1) Providing the resident with a written notification statement;</p> <p>(2) Posting written notification next to every telephone at the jail that is subject to monitoring; and</p> <p>(3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call.</p> <p>This subsection does not authorize any interference with the attorney-client privilege.</p>	<p>State of Maine Dept of Corrections, Policy Number 21.3: Prisoner Telephone System</p> <p>State of Maine Dept of Corrections, Policy Number 16.2(JF): Access to Telephones (juvenile)</p> <p>Jail and County Standards: Microsoft Word - Adopted Rule DETENTION AND CORRECTIONAL STANDARDS FOR MAINE COUNTIES AND MUNICIPALITIES.docx</p> <p>SEE ATTACHED</p>	<p>State of Maine Dept of Corrections, Policy Number 21.4: Prisoner Visitation</p> <p>State of Maine Dept of Corrections, Policy Number 16.3: Visitation (juvenile)</p> <p>SEE ATTACHED</p> <p>Jail and County Standards: Microsoft Word - Adopted Rule DETENTION AND CORRECTIONAL STANDARDS FOR MAINE COUNTIES AND MUNICIPALITIES.docx</p>	<p>State of Maine Dept of Corrections, Policy Number 21.2: Prisoner Mail</p> <p>State of Maine Dept of Corrections, Policy Number 16.1: Communication, Mail and Visitation (juvenile)</p> <p>SEE ATTACHED</p> <p>Jail and County Standards: Microsoft Word - Adopted Rule DETENTION AND CORRECTIONAL STANDARDS FOR MAINE COUNTIES AND MUNICIPALITIES.docx</p>
<p>Maryland</p>	<p>Phone</p>	<p>Visitation</p>	<p>Mail</p>	

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<p><i>Regulations/Guidance</i></p> <p>* Maryland’s Department of Public Safety and Correctional Services order apply to state run facilities. The Adult Detention Center Standards Manual applies to adult detention centers. The Adult Correctional Institution Standards Manual applies to adult correctional institutions.</p>	<p>Maryland Dept of Public Safety and Correctional Services, Executive Directive OPS.200.0002: Inmate Telephone System</p> <p>J(3) A recording block shall be established to prevent the Department from recording and monitoring an inmate telephone call to the inmate’s attorney, made related to PREA, and to a hot line specified to offer caller anonymity.</p> <p>(a) An attorney’s home telephone may not be called unless the attorney’s office of record and residence are the same.</p> <p>(b) An attorney’s telephone number is subject to verification, including the existence of a valid attorney-client relationship</p>	<p>Maryland Dept of Public Safety and Correctional Services, Dept Directive OPS.195.0003: Inmate Visits</p> <p>10. Legal Visits. A. The Department shall provide reasonable opportunities and accommodations for an inmate to obtain or consult in confidence with the inmate’s attorney of record.</p> <p>Adult Detention Center Standards Manual</p> <p>.05 INMATE RIGHTS</p> <p>C. Legal Matters</p> <p>...</p> <p>Compliance Explanation</p> <p>...</p> <p>The constitutional right to legal counsel of choice must be protected. Attorneys of record must be permitted to consult with inmates in a private and confidential setting. Attorneys should be allowed unlimited visits including the opportunity for communication during other than normal visiting hours upon request and on the basis of special circumstances. Attorney visits should not count against the approved number of visits. Only those restrictions necessary to maintain facility order and security should be imposed.</p> <p>Adult Correctional Institution Standards Manual</p> <p>.05 INMATE RIGHTS</p> <p>C. Legal Matters</p> <p>...</p> <p>Compliance Explanation</p> <p>...</p> <p>The constitutional right to legal counsel of choice must be protected. Attorneys of record must be permitted to consult with inmates in a private and confidential setting. Attorneys should be allowed</p>	<p>Maryland Dept of Public Safety and Correctional Services, Dept Directive OPS.250.0001: Mail Room Procedures</p> <p>.05(C) Incoming Inmate Mail</p> <p>(2) Mail room staff receiving what is known to be or what may be legal mail for an inmate shall:</p> <p>(a) only open and inspect the known to be or what may be legal mail in the presence of the inmate to whom the legal mail is addressed.</p> <p>(b) if other than mail room staff deliver known to be or what may be legal mail to an inmate, instruct the non mail room staff to only open and inspect the known to be or what may be legal mail in the presence of the inmate to whom the legal mail is addressed</p> <p>Adult Detention Center Standards Manual</p> <p>.05 INMATE RIGHTS</p> <p>C. Legal Matters</p> <p>...</p> <p>Compliance Explanation</p> <p>...</p> <p>Inmates must be permitted to send sealed letters to: attorneys of record; the courts; officials of the confining authority; state and local chief executive officers; administrators of grievance systems; and, members of the paroling authority. All mail from these special classes of persons are to be opened only to inspect for contraband, and then only in the presence of the inmate.</p> <p>Adult Correctional Institution Standards Manual</p> <p>.05 INMATE RIGHTS</p> <p>C. Legal Matters</p> <p>...</p> <p>Compliance Explanation</p> <p>...</p> <p>Inmates must be permitted to send sealed letters to: attorneys of record; the courts; officials of the confining</p>
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		<p>unlimited visits including the opportunity for communication during other than normal visiting hours upon request and on the basis of special circumstances. Attorney visits should not count against the approved number of visits. Only those restrictions necessary to maintain facility order and security should be imposed.</p>	<p>authority; state and local chief executive officers; administrators of grievance systems; and, members of the paroling authority. All mail from these special classes of persons are to be opened only to inspect for contraband, and then only in the presence of the inmate.</p>
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Massachusetts	Phone	Visitation	Mail
<p><i>Regulations/Guidance</i></p> <p>* While these directives apply to state run prisons, the extent to which they also apply to county run houses of correction is unclear.</p>	<p>103 CMR 482.00: Telephone Use and Access 482.07: Inmate Telephone Use for Court, Attorney Contact, Consular Officer/Diplomat Contact, and Pre-approved Ordained Clergymen Contact, and Licensed Psychologist, Social Worker, and/or Mental Health and Human Service Professionals Contact. (1) Telephone calls to pre-authorized attorney, consular officer/diplomat numbers, or the Global Access numbers, shall not be suspended or curtailed except in accordance with 103 CMR 482.06(4) or 482.08. Telephone calls to pre-authorized attorney numbers, consular officer/ diplomat numbers, or the Global Access numbers, shall not be subject to telephone monitoring or recording</p>	<p>103 CMR 483.00. Visiting Procedures 483.06: Institution Visiting Rules and Procedures (1) Each Superintendent shall develop written institution visiting rules and procedures which, although tailored to the particular institution, and/or to specific populations within that institution, are consistent with 103 CMR 483.00. At a minimum, institution rules shall specify the following aspects of visiting at the institution: ... (f) Designation of an area where inmates have access to counsel and confidential contact with attorneys and/or legal professionals</p> <p>See also 103 CMR 486.00: Attorney Access at Massachusetts Correctional Institutions</p>	<p>103 CMR 481.00: Inmate Mail 481.10: Privileged Mail (3) Attorneys shall be allowed to provide self-addressed, meter- stamped envelopes to their inmate clients. The envelope should be addressed to the law firm or to the individual attorney, contain only a meter-stamp (not a postage stamp) and may not be altered in any way. Should an inmate alter or attempt to utilize the meter-stamped envelope to send mail to anyone other than the original addressee, a disciplinary report shall be issued. (4) In order to prevent fraudulent privileged mail from entering DOC facilities, the DOC may implement an Attorney Verification System (AVS). (a) Any attorney wishing to send privileged correspondence must attempt to participate in the AVS. (b) Forms/applications to participate in the AVS must be completed in their entirety, including the attorney’s name, address, telephone number, and one email address as well as their Board of Bar Overseers identification number. (c) Mail from an attorney that does not attempt to comply with the AVS requirements will be treated as non-privileged mail. (d) Incoming privileged mail may not be opened by a Department employee except in the presence of the addressee inmate and for the purpose of receiving and receipting of any funds enclosed for the inmate and/or ascertaining that its contents are free of contraband. Legal mail which complies with the AVS is presumed to have no contraband. Notwithstanding the use of an AVS, the Department retains and reserves the right to employ in its discretion internal procedures including, but not limited to, the use of K-9 Units, fluoroscopes, and field testing, to ensure that the mail is legitimate privileged correspondence, and does not include contraband, and to conduct further investigation as warranted. (e) If the</p>

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<p>Michigan <i>Regulations/Guidance</i></p> <p>* The Michigan DOC Policy Directives apply only to state run prisons and not to county run jails</p>	<p>Phone</p> <p>Michigan Dept. of Corrections Policy Directive 05.03.130: Prisoner Telephone Use</p> <p>EE. Staff shall verify the business telephone number of an attorney licensed in the State of Michigan by using the most recent directory issue of the Michigan Bar Journal or through the State Bar of Michigan website. Staff shall contact the Litigation Manager in OLA to verify the telephone number of an attorney who is not licensed in the State of Michigan. Staff shall verify the business number of the Legislative Ombudsman, DRM, an Embassy, a Consulate, or a legitimate legal service organization using the most recent directory issue of the Michigan Bar Journal or through other reasonable means. If the telephone number is listed in the Michigan Bar Journal or is verified through the State Bar of Michigan website, it shall be presumed to be the business telephone number. Upon verification, staff shall document the attorney’s State Bar of Michigan Member Number (“P” Number) on the Telephone Agreement and Number List form (CAJ-370). Prisoner calls to their attorney shall be made via the prisoner telephone system unless otherwise coordinated by a court or for urgent situations as determined by the Warden.</p>	<p>Visitation</p> <p>Michigan Dept. of Corrections Policy Directive 05.03.140: Prisoner Visiting</p> <p>R. At multi-level facilities accommodations shall be made for attorneys to visit their clients at any custody level during the facility’s scheduled visiting hours (e.g., if an attorney’s client is Level IV and the attorney arrives during the visiting hours scheduled for Level II prisoners, accommodation shall be made for the visit to take place, rather than require the attorney to return during the hours scheduled for Level IV prisoners).</p> <p>HH. Except at RGC, prisoners who are housed in a security Level V facility or housing unit, temporary segregation, punitive segregation (detention), or are classified to administrative segregation shall be limited to non-contact visits, except that a contact visit shall be allowed with an attorney upon request of the attorney subject to Paragraphs P and JJ.</p>	<p>Department is not able to verify the privileged correspondence through the AVS, the Department shall initiate personal contact with the sending attorney listed on the return address. If the Department does not receive confirmation of the mailing from the sending attorney within ten business days then the privileged correspondence will be processed as non-privileged Correspondence.</p> <p>Mail</p> <p>Michigan Dept. of Corrections Policy Directive 05.03.118: Prisoner Mail</p> <p>FF. A prisoner may have his/her incoming legal mail receive special handling by submitting a completed Mail Requiring Special Handling form (CSJ-246) to the institution’s mailroom supervisor or designee. Only mail received directly from an attorney or a law firm, a legitimate legal service organization, the Department of Attorney General, a prosecuting attorney’s office, a court, a clerk of the court, a Friend of the Court office, or the Office of the Legislative Corrections Ombudsman is considered legal mail, and only if the mail is clearly identified on the face of the envelope as being from one of the above. It is not sufficient for the envelope to be simply marked “legal mail.”</p> <p>GG. Each prisoner received at a reception facility shall be asked if s/he wants his/her legal mail to receive special handling. If the prisoner does not request special handling at that time, s/he shall be told that s/he may submit a request to the institutional mailroom supervisor or designee at any time during his/her incarceration by completing a Mail Requiring Special Handling form (CSJ-246).</p>
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Minnesota	Phone	Visitation	Mail
<p><i>Statutes</i></p>	<p><u>481.10 CONSULTATION WITH PERSONS RESTRAINED.</u></p> <p>Subd. 2. Telephone access in local correctional facilities.</p> <p>Except as provided in subdivision 3 and except in cases where imminent danger of escape or injury exists, all officers or persons having in their custody a person restrained of liberty whether or not the person restrained has been charged, tried, or convicted, shall provide private telephone access to any attorney retained by or on behalf of the person restrained, or whom the restrained person may desire to consult at no charge to the attorney or to the person restrained. Reasonable telephone access under this subdivision shall be provided following the request of the person restrained and before other proceedings shall be had regarding the alleged offense causing custody.</p> <p>Subd. 3. Telephone access in state correctional facilities.</p> <p>Except in cases where imminent danger of escape or injury exists, all officers or persons having in their custody a person restrained of liberty while serving an executed sentence in a state correctional facility, shall provide private telephone access to any attorney retained by or on behalf of the person restrained, or whom the restrained person may desire to consult at no charge to the attorney or to the person restrained. Telephone access under this subdivision shall be provided following the request of the person restrained and in accordance with</p>	<p><u>481.10 CONSULTATION WITH PERSONS RESTRAINED.</u></p> <p>Subdivision 1. Consultation. All officers or persons having in their custody a person restrained of liberty, except in cases where imminent danger of escape or injury exists, shall admit any attorney retained by or on behalf of the person restrained, or whom the restrained person may desire to consult, to a private interview at the place of custody. Such custodians, upon request of the person restrained, as soon as practicable, and before other proceedings shall be had, shall notify the attorney of the request for a consultation with the attorney.</p>	

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<p><i>Regulations/Guidance</i></p> <p>* Minnesota has separate administrative rules for state run prisons and county run jails. The state inspects jails to ensure compliance with rules.</p>	<p>policies adopted by the institution that meet constitutional requirements.</p> <p>Subd. 4. Criminal penalty.</p> <p>(a) Except as provided in paragraph (b), whoever violates subdivision 1 or 2 is guilty of a misdemeanor and shall also forfeit \$100 to the person aggrieved, to be recovered in a civil action.</p> <p>(b) The penalties described in paragraph (a) do not apply to officers or persons having in their custody persons restrained of liberty while serving an executed sentence in a state correctional facility.</p>	<p>MN Department of Corrections Policy Number 302.210 – Offender Telephone Use (prisons)</p> <p>B.4. Legal calls</p> <p>Attorneys must communicate with clients through legal mail. However, when legal deadlines require expedited communication, staff may provide access to legal counsel by telephone. If necessary, an in-person visit may be arranged.</p> <p>a) Attorney calls are limited to current active cases.</p> <p>b) Attorneys must contact the designated facility staff to schedule a call at a mutually agreeable date and time. Telephones for approved attorney calls are not subject to any monitoring activity and the facility does not charge offenders for approved attorney calls.</p> <p>c) Attorney calls are limited to 30 minutes in length.</p> <p>d) Calls to/from the clerk of court or law enforcement are not considered legal calls.</p>	<p>MN Department of Corrections Policy Number 302.020 – Mail (prisons)</p> <p>L. Special/legal mail</p> <p>1. Incoming and outgoing mail meeting the definition of special or legal mail is opened and inspected only in the presence of the offender. Staff must refer to the Special Mail List (attached) to determine whether an item is special mail.</p> <p>2. When delivering sealed special/legal mail to an offender, staff must (in the offender's presence):</p> <p>a) Open the envelope, remove the contents, search the contents for physical contraband, and skim the contents to ensure that it is legal/official in nature; and</p> <p>b) If the item passes inspection, staff must deliver the envelope and contents to the offender.</p> <p>c) The offender must sign acknowledging receipt of legal mail.</p> <p>3. An incoming or outgoing item purporting to be special/legal mail that fails to meet the policy requirements for designation as special/legal mail, or is otherwise</p>
		<p>2911.3200 INMATE VISITATION. (jails)</p> <p>The facility administrator or designee shall develop and implement an inmate visiting policy. The policy shall be in writing and include:</p> <p>A. attorney/client interviews allowed in a manner consistent with Minnesota Statutes, section 481.10;</p> <p>B. a schedule of visiting hours that includes the days and times for visits that includes visits during the normal business day, and evenings or weekends;</p> <p>C. establishment of a uniform number of permissible visits and the number of visitors permitted per visit;</p> <p>D. that an adult inmate be permitted an initial visit with a member or members of the inmate's immediate family at the next regularly scheduled visiting period;</p> <p>E. that all facilities schedule a minimum of eight visiting hours per week:</p> <p>(1) a minimum of three separate and distinct visiting days per week; and</p> <p>(2) 20 minutes' duration minimum for each visit unless the number of persons attempting to visit</p>	

	<p><u>2911.3400 TELEPHONE ACCESS</u> (jails) A facility shall have a written policy and procedure that provides for inmate access to a telephone. Attorney/client telephone consultation shall be allowed in a manner consistent with Minnesota Statutes, section 481.10.</p> <p>Newly admitted inmates shall be permitted a local or collect long-distance telephone call to a family member or significant other during the admission process.</p> <p>Inmates shall be allowed telephone access to maintain contact with family members or significant others. Nonlegal calls may be made at the expense of the inmate. The minimum time allowed per call shall be ten minutes except where there are substantial reasons to justify limitations. Nonlegal telephone conversations may be monitored and recorded.</p> <p>Reasons for denial of telephone access shall be documented</p>	<p>exceeds the facility's ability to meet this requirement, or the inmate's behavior dictates a need to terminate a visit earlier; F. allowed visits for identified members of an inmate's immediate family; G. when a visit to an inmate is denied for reasonable grounds on the belief that the visit might endanger the security of the facility, the action and reasons for denial shall be documented; H. that visitors register, giving names, addresses, and relationship to inmate; I. that any area used for inmate visiting may be subject to audio monitoring, recording, or both. The facility shall use signs and the inmate handbook to inform the inmate about audio monitoring and recording. Professional visits shall not be audio recorded, unless a court order has been issued; J. that policies for parents, guardians, and attorneys visiting juveniles are unrestrictive as administratively possible and the initial visit of a juvenile by parents, guardians, and attorneys be permitted at any time; K. picture identification of visitors be required for identification purposes; L. that juvenile children be allowed to visit parents, regardless of age, as deemed appropriate by the parent or guardian accompanying the child and when a dispute over children visiting occurs between the inmate and the parent or legal guardian, the inmate be referred to the court for resolution; and M. facility policy and procedures setting forth criteria for authorized friend visiting</p>	<p>questionable, is opened in the offender's presence by a supervisor. a) If the contents meet the definition of special/legal mail, the supervisor must instruct the offender on the policy requirements regarding how special/legal mail is to be addressed. b) If the contents do not meet the definition of special/legal mail, the supervisor must return the envelope and its contents to the mailroom. c) The mailroom returns opened non-special/legal mail to the sender at the offender's expense with a Notice of Non-Delivery. 4. If the item contains contraband, staff must write an incident report and enter the envelope and contents into evidence. 5. Mailroom staff in adult facilities must log all incoming and outgoing legal mail in the offender mail computer application</p> <p><u>2911.3300 CORRESPONDENCE</u>. (jails) Subpart 1. Policy and procedure. A facility shall have a written policy and procedure that governs inmate correspondence. Policies are available to all staff and inmates and are reviewed annually, and updated as needed. Subp. 2. Volume of mail. The volume of written mail to or from an inmate shall not be restricted. The amount of mail stored in an inmate's cell may be limited by facility administration. Subp. 3. Inspection and censorship. A facility must have a written policy and procedure that requires that: A. inmate letters, both incoming and outgoing, may be opened and inspected for contraband; B. inmates are notified in writing when incoming or outgoing letters are rejected; and C. letters shall not be read or censored if they are between an inmate and an elected official, officials of the DOC, attorneys, or other officers of the court, but inspection of</p>
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50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p>Mississippi <i>Regulations/Guidance</i></p> <p>* (Mississippi Department of Corrections policies and procedures must be requested in writing) https://www.mdcc.ms.gov/Admin-Finance/Documents/PublicAccessPolicies.pdf</p>			<p>incoming mail from the specified class of persons noted may be opened only to inspect for contraband and only in the presence of the inmate. Subp. 4. Money. Cash, cashiers checks, or money orders received from incoming mail shall be processed according to facility policy. Subp. 5. Postage allowance for indigent inmates. Indigent inmates shall receive a postage allowance sufficient to maintain communications with the persons listed in subpart 3, item C. Written policy, procedure, and practice must provide that an indigent inmate is provided with a system enabling the inmate to send a minimum of two letters or postcards per week to individuals not listed in subpart 3, item C. Subp. 6. Material detrimental to security. A facility shall have a written policy that restricts inmate access to materials and information that is considered detrimental to the security and orderly function of the facility.</p>
<p>Missouri <i>Regulations/Guidance</i></p> <p>* Jails in Missouri must follow the Missouri Core Jail Standards</p>	<p>Missouri Core Jail Standards 5.4: Telephone Detainees are provided with access to telephones.</p>	<p>Visitation</p>	<p>Mail</p>
			<p>Missouri Core Jail Standards 6.5.3: Mail or Correspondence of Detainees "Legal mail" is entitled to more protection. Jail officials must not interfere with a detainees' reasonable correspondence with an attorney. Generally, mail to or from a detainee's attorney, and identified as such, should not be opened for inspection for contraband</p>

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					except in the presence of the detainee. Legal mail must not be delayed any longer than is necessary for handling and sorting. Censorship of legal mail may violate a detainee's right to freedom of petition.
Montana	Phone	Visitation	Mail		
<i>Regulations/Guidance</i>					
* (webpage at https://cor.mt.gov/Policy contains links to policies, but links not functional)					
Nebraska	Phone	Visitation	Mail		
<i>Statutes</i>	47-101.01. Telephone services for inmates; use of funds. (2) Under a prepaid system, funds may be deposited into an inmate account in order to pay for telephone calls. The provider of the inmate telephone services, as an additional means of payment, shall permit the recipient of inmate collect telephone calls to establish an account with that provider in order to deposit funds for advance payment of those collect telephone calls. The provider of the inmate telephone services shall also allow inmates to communicate on the telephone, or by videoconferencing, with an attorney or attorneys without charge and without monitoring or recording by the county jail or law enforcement.				
<i>Regulations/Guidance</i>	Department of Corrections Policy 205.03: Inmate Calling System. V. RECORDING/MONITORING/BRANDING A. All inmate telephone calls utilizing the ICS and not eligible for confidential status shall be electronically recorded and may be monitored by authorized NDCS team members. At the discretion of the Director, telephone recording and monitoring may be suspended.	Title 81. Jail Standards Board Ch. 9. Standards for Jail Facilities – Mail, Visiting and Telephone Service 003 Visiting Services. All jail facilities shall make provisions for inmate visitation in accordance with the following requirements: 003.01B Attorneys or their legal assistants shall be allowed to visit their clients at any reasonable time for any reasonable length of time. However, in the	Department of Corrections Policy 205.01: Inmate Mail. E. Privileged Mail (ACI-3D-02, ACI-7D-06, ACRS-6A-01) 1. Inmates may send and receive sealed letters to and from the following entities: ... h. Active Licensed Attorneys Mail from these individuals will be treated as confidential and opened and inspected only in the presence of the inmate, unless waived in writing. The warden of the		
* Nebraska's Department of Corrections policies and regulations apply to state facilities, while jails must adhere to the Jail Standards .					

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	<p>Attorney/client calls and calls to individuals with confidential call status are eligible for confidential status and are not recorded by ICS equipment or monitored by team members</p> <p>Title 81. Jail Standards Board Ch. 9. Standards for Jail Facilities – Mail, Visiting and Telephone Service 004 Telephone Services. All jail facilities shall make provisions for inmate telephone services in accordance with the following requirements: 004.03 Telephone calls to or from legal counsel shall be of reasonable lengths of time and shall not be monitored.</p>	<p>event of an emergency, then attorneys or their legal assistants shall be allowed to visit their clients at any time. The facility administrator may establish reasonable procedures to require identification of any person who presents himself or herself to be an attorney or an attorney's authorized representative representing an inmate detained in the facility. Unless otherwise indicated by the inmate or the visitor, all attorney-client visits shall be contact visits.</p> <p>003.01C Contact visits between inmates and their attorneys or the attorneys' legal assistants, clergy, physicians, probation/parole officers, mental health and addiction therapists shall be in a private area or room so as to allow for confidential communication among up to four (4) people with adequate writing space. No physical barriers such as wire mesh, glazed barriers, or other physical obstructions shall be placed between inmates and any of the above specified visitors during contact visits. Such visits shall not be monitored, except that facility employees may visually observe the visitation through glazed observation panels or by means of closed circuit television as necessary to maintain appropriate levels of security.</p>	<p>facility from which such mail originates may choose to stamp any such outgoing mail disclaiming any administrative responsibility for the nature or contents of such mail.</p> <p>Title 81. Jail Standards Board Ch. 9. Standards for Jail Facilities – Mail, Visiting and Telephone Service 002 Mail Services. All jail facilities shall make provisions for the handling of incoming and outgoing inmate correspondence in accordance with the following requirements: 002.03 Inmates shall be allowed to send sealed confidential mail to a specified class of persons or organizations to include, at a minimum, their legal counsel, courts, elected officials, members of the confining authority, the State Ombudsman, and the Board. 002.03A Confidential mail received from this specified class of persons or organizations may be opened only in the presence of the inmate. Delivery of confidential mail shall be documented. 002.03B Confidential mail may be inspected for contraband, cash, checks, or money orders but shall not be read. 002.03C The facility administrator may choose to attach a letter to any outgoing confidential correspondence, disclaiming any responsibility for the nature of the contents of such correspondence.</p>
<p>Nevada <i>Statutes</i></p>	<p>Phone NRS Sec. 209.419. Except as otherwise provided in NRS 239.0115, a communication made by an offender is confidential if it is made to: ...</p>	<p>Visitation</p>	<p>Mail</p>

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<p><i>Regulations/Guidance</i></p> <p>* Nevada Department of Corrections administrative regulations apply to state run correctional facilities, while jails must adhere to regulations specific to county and city jails.</p>	<p>(d) An attorney who has been admitted to practice law in any state or is employed by a recognized agency providing legal assistance.</p> <p>Nevada Dept of Corrections AR 718: Inmate Personal Telephone Use (prisons) 718.01</p> <p>2. Telephone calls, except approved calls between an inmate and his attorney/legal representative, must be monitored and/or recorded</p> <p>...</p> <p>6. Legal telephone numbers may be registered by the inmate through the inmate telephone system</p>	<p>Nevada Dept of Corrections AR 722: Inmate Legal Access (prisons) 722.06. Attorneys</p> <p>1. Attorney, and their legal representatives retained by the inmate or his family shall be permitted visits;</p> <p>A. Department staff should assist inmates in making confidential contact with attorneys and legal representatives</p> <p>B. Attorneys or legal representatives shall be required to furnish proper identification for visits be presenting evidence that they are members of a state bar.</p> <p>...</p> <p>10. Visits between an attorney and client are confidential.</p> <p>A. An attorney may make recordings during their visits.</p> <p>B. All recording devices must be provided by the attorney and approved in advance by the Warden or designee</p> <p>C. No recording devices will be left with the inmate.</p> <p>D. Recordable CDs are not an acceptable medium for inmate recordings.</p> <p>E. The institution should provide an areas which meets the security needs of the institution, where the attorney and client may confer in private.</p>	<p>Nevada Dept of Corrections AR 722: Inmate Legal Access (prisons) 722.08 Outgoing Legal Mail and Correspondence</p> <p>5. All legal mail is privileged correspondence.</p> <p>...</p> <p>7. The legal mail must be addressed to an attorney or legal representative.</p> <p>A. The word “confidential” must be include don the face of the envelope or the mail will be processed as general correspondence.</p> <p>722.09 Incoming Legal Mail</p> <p>5. Incoming correspondence will be treated as legal mail only if the envelope clearly identifies an attorney, legal representative, or other privileged correspondent in the return address.</p> <p>...</p> <p>8. Incoming legal/ privileged mail will be opened, scanned and inspected for contraband in the presence of the inmate recipient, unless the inmate waives this process in writing.</p>
<p>New Hampshire</p> <p>Regulations/Guidance</p> <p>* New Hampshire’s Department of Corrections administrative regulation’s</p>	<p>Phone</p>	<p>Visitation</p> <p>Cor 305.10 Official Business Visits</p> <p>(a) Space shall be set aside for attorney visits that shall provide privacy when attorney-client confidentially is required.</p>	<p>Mail</p> <p>Cor 314.12 Legal Mail</p> <p>Cor 314.12 Legal Mail.</p> <p>(a) Correspondence between a resident and his or her attorney(s) shall be opened in the presence of the resident to</p>

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<p>apply to its state facilities. Jails are managed by individual counties.</p>		<p>(b) All attorneys visiting a resident shall be subject to the visitor approval process pursuant to Cor 305.11, Cor 305.12, Cor 305.13, and Cor 305.14. (c) The following shall apply to all attorney visits: (1) Attorney visits shall occur during normal business hours; (2) Attorney visits shall be coordinated through the warden’s office at the facility where the client resides; (3) If an attorney visit is requested outside of a NHDOC resident’s normal visiting time, and the attorney can articulate why he or she cannot wait until the resident’s regularly scheduled visit, the warden or designee shall approve an exception and allow a visit, which shall be considered a “special visit;” (4) An attorney visit shall be made for the purpose of conducting legal business and not for the purpose of social visitation; (5) All attorneys shall be subject to the same rules as regular visitors except as noted within Cor 305.20(h); (6) Attorneys shall not be required to be on the resident’s approved visitors list; (7) An attorney wishing to visit his or her client at a NHDOC facility shall be required to complete and submit all applicable forms pursuant to Cor 305.13 and Cor 305.14 to be registered as a NHDOC business visitor; (8) No attorney visits shall be authorized prior to an attorney completing all requisite paperwork, having a background check completed, and being granted access to NHDOC facilities by the approving authority;</p>	<p>ensure the authenticity of the correspondence and to check for contraband. (b) The phrase “Legal Mail” shall be written on the address side of the envelope in order to assure confidential handling in either in-bound or out-bound legal mail. (c) Incoming legal mail found in violation of this rule shall be forwarded to the investigations bureau for appropriate action with the person(s) or firm(s) involved. (d) Legal mail shall not be bound. No legal correspondence shall be accepted with any type of binding attached to the pages of the documents. The NHDOC shall not consider a single staple to be “bound.” Staff shall remove the staple and forward the mail to the resident.</p>
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New Jersey	Phone	Visitation	Mail
<p><i>Regulations/Guidance</i></p> <p>* State run correctional facilities are subject to Department of Corrections regulations. Separate DOC regulations apply to municipal and county facilities. Additionally, the Department of Corrections conducts annual inspections of county run correctional facilities and municipal detention facilities.</p>	<p>N.J.A.C. 10A:18-8.6 Legal Telephone Calls (state facilities)</p> <p>(a) The Administrator of the correctional facility shall establish written rules and regulations by which legal telephone calls may be made by:</p> <ol style="list-style-type: none"> 1. Inmates; 2. Inmate paralegals; and 3. Professional staff. <p>(b) Legal telephone calls may be made to the following individuals or agencies for assistance in legal research and/or preparation of legal documents:</p> <ol style="list-style-type: none"> 1. Office of the Public Defender; 2. Regional Legal Services; 3. Court Clerks; 4. Attorneys; and 5. The Corrections Ombudsperson. <p>N.J.A.C. 10A:31-15.5 Legal telephone calls (county facilities)</p> <p>Telephone access to attorneys, courts, probation officers, and parole officers shall be provided for all inmates who so request.</p>	<p>(9) An attorney shall not switch from being an attorney to an active visitor on a resident's approved visitors list; and</p> <p>(10) Attorney visits shall not count toward the authorized allotment of visits a resident is entitled.</p> <p>N.J.A.C. 10A:18-6.7 Attorneys and court related personnel visits (state facilities)</p> <p>(a) Attorneys licensed in any jurisdiction and representatives of attorneys shall be permitted contact visits during regular business hours when sufficient space and staff are available.</p> <p>(b) At the request of the attorneys referenced in (a) above, representatives of attorneys may be granted contact visits. Such representatives shall include, but not be limited to, the following:</p> <ol style="list-style-type: none"> 1. Investigators; 2. Investigative aides; 3. Expert witnesses; 4. Paralegals; and 5. Law students. <p>(c) A written notice or a telephone request from an attorney shall be required a minimum of 24 hours in advance of an intended visit. The purpose of the advance notice is to ensure the availability of:</p> <ol style="list-style-type: none"> 1. Space; 2. Staff; and 3. The inmate. <p>(d) The advance written notice or telephone request from an attorney shall include the following information:</p> <ol style="list-style-type: none"> 1. Name of the attorney or representative; 2. Name of the inmate to be interviewed; 	<p>N.J.A.C. 10A:18-3.2 Identification of outgoing legal correspondence (state facilities)</p> <p>(a) All outgoing legal correspondence shall be clearly marked with the inmate's name and number on the envelope.</p> <p>(b) An inmate who is sending legal correspondence out of the correctional facility shall be responsible for clearly marking "legal mail" on the front and back of the envelope.</p> <p>(c) The absence of the "legal mail" designation shall not mean that the correspondence may be treated as non-legal correspondence if the address on the envelope clearly indicates that it is being sent to a legal correspondent as enumerated in the definition of "legal correspondence" in N.J.A.C. 10A:1-2.2 or in the definition of "legitimate public official" in N.J.A.C. 10A:18-1.3.</p> <p>N.J.A.C. 10A:18-3.3 Identification of incoming legal correspondence (state facilities)</p> <p>(a) The return address on the outside of an envelope should clearly indicate that the correspondence is being sent from a legal correspondent as established in the definition for "legal correspondence" in N.J.A.C. 10A:1-2.2.</p> <p>(b) Mail sent from a legal correspondent shall be considered legal correspondence and shall be handled in accordance with this subchapter.</p> <p>(c) The absence of a particular name of an attorney or judge shall not preclude the correspondence from being treated as legal correspondence if the return address indicates an</p>

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		<p>3. Name of the attorney for whom the representative is acting;</p> <p>4. Name of the organization the attorney or their representative represents (if any);</p> <p>5. A written statement from the attorney or their representative providing any disclosures set forth in N.J.A.C. 10A:18-6.3 and 6.9 and affirming compliance with the provisions set forth in this subchapter; and</p> <p>6. Date and time the interview is sought.</p> <p>(e) Form 292-I Request for Attorney-Client Contact Visit may be used to verify the inmate's desire to meet with the requesting attorney in the context of an attorney-client relationship.</p> <p>(f) Appropriate identification is required of attorneys and attorney representatives who visit the inmate at a correctional facility.</p> <p>(g) Contact visits with attorneys or their representatives may be restricted or prohibited when, in the judgement of the correctional facility Administrator or designee, the inmate is exhibiting inappropriate behavior or is especially dangerous, or when necessary to ensure the safe, secure and orderly operation of the correctional facility.</p> <p>Contact visits may also be denied where the attorney or representative poses a threat to the security or orderly operation of the correctional facility.</p> <p>(h) In those cases in which contact visits have been denied, every effort shall be made to provide a non-contact visit that is consistent with the safe, secure and orderly operation of the correctional facility.</p> <p>(i) The Administrator or designee may authorize a visit without prior written notice, under exceptional circumstances.</p>	<p>office or court as established in the definition for "legal correspondence" in N.J.A.C. 10A:1-2.2.</p> <p>N.J.A.C. 10A:18-3.4 Inspection of incoming legal correspondence (state facilities)</p> <p>(a) Incoming legal correspondence shall be opened and inspected by designated correctional facility staff for contraband only.</p> <p>(b) Incoming legal correspondence shall be opened and inspected only in the presence of the inmate to whom it is addressed.</p> <p>(c) Incoming legal correspondence shall not be read or copied. The content of the envelope may be removed and shaken loose to ensure that no contraband is included. After the envelope has been inspected the correspondence shall be given to the inmate.</p> <p>(d) The correctional facility may require that the inmate sign a slip acknowledging receipt of the incoming legal correspondence.</p> <p>(e) Where there is substantial reason to believe that the incoming correspondence is not legal in nature or that it contains disapproved content pursuant to N.J.A.C. 10A:18-2.14, the Administrator shall immediately notify the appropriate Assistant Commissioner. The incoming legal correspondence shall not be inspected in a manner other than as outlined in this subchapter without first obtaining instructions from the appropriate Assistant Commissioner.</p> <p>N.J.A.C. 10A:31-15.4 Legal correspondence (county facilities)</p> <p>(a) All incoming legal correspondence should clearly indicate on the outside of the envelope that the correspondence is being sent from a legal correspondent as established in the definition for "legal correspondence" at N.J.A.C. 10A:31-1.3. The absence of a particular name of</p>
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		<p>N.J.A.C. 10A:31-15.4 Attorneys and court related personal visits (county facilities)</p> <p>(a) Suitable meeting facilities shall be provided for inmates to meet with attorneys and representatives of attorneys in privacy with reasonable comfort.</p> <p>(b) Representatives of attorneys may include:</p> <ol style="list-style-type: none"> 1. Investigators; 2. Investigative aides; 3. Paralegals; and 4. Law students. <p>(c) Visits of attorneys and representatives of attorneys shall be permitted without notice, or upon reasonable notice, during at least six hours each business day.</p> <p>(d) Only necessary security requirements may be permitted to interfere with such visits.</p>	<p>an attorney or judge shall not preclude the correspondence from being treated as legal correspondence if the return address indicates it was sent by an office or court as established in the definition for "legal correspondence" at N.J.A.C. 10A:31-1.3.</p> <p>(b) Incoming legal correspondence shall be opened and inspected by designated adult county correctional facility staff only in the presence of the inmate to whom it is addressed.</p> <p>(c) All incoming legal correspondence shall be opened and inspected by designated adult county correctional facility staff only for contraband. Incoming legal correspondence shall not be read or copied. The content of the envelope may be removed and shaken loose to ensure that no contraband is enclosed. After the envelope has been inspected, the correspondence shall be given to the inmate.</p> <p>(d) The Administrator may establish internal management procedures requiring that the inmate sign a slip acknowledging receipt of the incoming legal correspondence.</p> <p>(e) Letter-writing materials shall be provided to inmates by staff at each adult county correctional facility and the facility shall assume the cost of mailing legal correspondence for indigent inmates (see "indigent inmate" as defined at N.J.A.C. 10A:31-1.3). The cost of mailing legal correspondence shall extend only to First Class or standard postage and shall not include:</p> <ol style="list-style-type: none"> 1. Registered mail; 2. Certified mail; 3. Preferential mail; or 4. Insured mail. <p>(f) Whenever an inmate is transferred from one adult county correctional facility to another facility, the inmate shall be responsible for notifying his or her correspondents of the change of address. The Administrator or designee of the adult county correctional facility from which the inmate</p>
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<p>New Mexico <i>Regulations/Guidance</i></p> <p>* New Mexico Corrections Department policies apply to state fun facilities. County and city jails are locally managed.</p>	<p>Phone CD-150300 Access to Telephones, Telephone Monitoring, Attorney Phone Calls D. Attorney Phone Calls: 1. Facilities will provide access to unmonitored telephones for attorney telephone calls. 2. Attorney telephone calls must be requested in writing using the Attorney Telephone Call Request form (CD-150302.1) and tracked by completing an Attorney Telephone Call Log Attachment 3. Every effort should be made to allow access as soon as practicable, especially in the event of an emergency or urgent need. However, the facility</p>	<p>Visitation CD-100200 Inmate Visitation 2-CO-5D-01 B. Each NMCD facility and contract facility shall provide a visiting program designed to enhance the inmates' opportunities to establish or maintain family and personal relationships and provide for confidential contact with their attorney or attorney's agent within the security limits of that facility. Approval of Visitors: 19. An attorney visit requires a 24-hour notice. An attorney may be limited to meeting with only one client at a time due to security risks. Special</p>	<p>is transferred shall develop internal management procedures that establish a time period that reasonably enables the inmate to have sufficient time to provide such notification to his or her correspondents via mail. This time period shall not exceed three months during which all incoming legal correspondence shall be forwarded to the correctional facility to which the inmate has been transferred. Any legal correspondence received after the time period established shall be returned to the sender. (g) All outgoing legal correspondence shall be clearly marked with the inmate's name and number on the envelope. (h) An inmate who is sending legal correspondence out of the adult county correctional facility shall be responsible for clearly marking "legal mail" on the front and back of the envelope. (i) The absence of the "legal mail" designation shall not mean that the correspondence may be treated as non-legal correspondence if the address on the envelope clearly indicates that it is being sent to a "legal correspondent" as enumerated in the definitions of "legal correspondence" or "legitimate public official" in N.J.A.C. 10A:31-1.3.</p>
			<p>Mail CD-151200 Correspondence Regulations A. Inmates are permitted to send sealed legal mail or privileged correspondence. Staff, in the presence of the inmate, may inspect outgoing legal mail and privileged correspondence for contraband before it is sealed. Incoming legal mail and privileged correspondence to inmates may be opened only to inspect for contraband and only in the presence of the inmate, unless waived in writing or in circumstances which may indicate contamination. ... H. Legal Mail and Privileged Correspondence: 1. Incoming and outgoing legal mail and privileged correspondence may be opened, inspected, and read to the</p>

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	<p>will provide access to unmonitored telephones for attorney telephone calls within two working days of receipt of an approved written request.</p> <p>4. Telephone calls will be placed by a facility staff member who will verify the identity of the receiving party. The telephone call between the inmate and the attorney or attorney's representative will take place in a location that assures the confidentiality of the conversation. This provision does not preclude NMCD staff from carrying out a visual observation of the inmate during a telephone call.</p> <p>5. Attorney telephone calls will be made collect if long-distance charges are applicable to the extent possible. In instances when a collect telephone call is not possible, the inmate will be informed in writing, prior to the telephone call being placed, that the cost of the telephone call will be \$.20 a minute deducted from the inmate's account and the inmate will sign a debit memo. After termination of the call, the staff member will post the time the telephone call started and ended and the cost of the telephone call to the debit memo and forward to inmate accounts for processing. The debit will be carried on the inmate's account until such time as there are funds to cover it.</p> <p>6. The Classification Officer is responsible for documenting the date and time any attorney telephone call takes place on both the Attorney Telephone Call Request form (CD150302.1) and the Attorney Telephone Call Log Attachment (CD-150301.A). 7. The Warden of each facility will designate an individual or office responsible for collection, review and retention of all documentation relating to attorney telephone calls.</p> <p>8. The Classification Officer shall submit all Attorney Telephone Call Logs and all corresponding</p>	<p>permission must be granted by the Warden for an attorney to meet with more than one inmate client at any one time. Attorney visits should be limited to times outside the normal visiting hours in order to better accommodate and facilitate an attorney visit. All attorney visits require prior approval of the Deputy Warden</p>	<p>limited extent necessary to determine its legitimacy; in the presence of the inmate in an appropriate, secure area of the facility by the Warden or a designee to help determine if the mail is legitimate, contains contraband, or when there is an indication of contamination. Opened privileged correspondence will be documented on the Receipt for Open Privileged Mail form (CD-151201.3).</p> <p>2. Staff will physically hand over the Privileged mail and legal mail will be scanned by the inmate to whom it is addressed and a copy will be made. The inmate will dispose of the original.</p> <p>3. Legal mail and privileged correspondence will not be routinely opened for inspection.</p> <p>4. Incoming legal mail and privileged correspondence will be tracked and signed for on the Incoming Legal Mail and Privileged Correspondence Log form (CD-151201.2).</p> <p>5. Letters in this category should be sealed by the inmate and dropped in the special box provided for such letters. 6. All PREA mail is considered privileged correspondence</p>
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<p>New York <i>Regulations/Guidance</i></p> <p>* State run facilities are subject to Department of Corrections regulations. Local facilities are subject to regulatory standards established by the State Commission of Correction.</p>	<p>Attorney Telephone Call Requests to the designated person or office on a monthly basis. 9. The designated person or office shall sort and file all Attorney Telephone Call Logs and all corresponding Attorney Telephone Call Requests by month</p>	<p>Visitation 7 CRR-NY 201.2 (state facilities) (4) The superintendent will designate an area for confidential meetings which will insure the privacy of conversations during professional visits of attorneys or their duly authorized representatives or visiting clergy.</p>	<p>Mail 7 CRR-NY 721.3 (state facilities) Unless otherwise provided for in this directive, the general correspondence procedures set forth in Part 720 of this Title, “Inmate Correspondence Program,” (such as the requirement to put return addresses on the front and back of outgoing envelopes) shall be followed. (a) Outgoing privileged correspondence. ... (2) Outgoing privileged correspondence may be sealed by the inmate, and such correspondence shall not be opened, inspected, or read without express written authorization from the facility superintendent as specified in subdivision (c) of this section. ... (b) Incoming privileged correspondence. (1) Incoming privileged correspondence shall not be opened outside the presence of the inmate to whom it is addressed, and shall not be read without express written authorization from the facility superintendent (see subdivision [c] of this section). (2) A log entry should document any incoming privileged correspondence erroneously opened outside the presence of the inmate to whom it is addressed (see paragraph [3] of this subdivision). If appropriate, a photocopy of an erroneously opened envelope shall be included. (3) Incoming privileged correspondence shall be given priority handling and shall be delivered in a consistent manner at a time when the inmates are available to receive it and which does not interfere with programming. If the</p>
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		<p>inmate to whom privileged correspondence is addressed is not currently at the facility, the provisions of Part 722 of this Title shall be followed.</p> <p>(4) A log shall be created to record receipt and delivery of incoming privileged mail. It shall identify the sender and include the inmate's name and number, the delivery date and time, the title of the delivery person, and note if the inmate refused to sign a receipt, refused delivery of the mail, or would not respond to delivery calls. If privileged mail is erroneously opened outside the presence of the inmate, that fact and any relevant explanation shall be noted in the log.</p> <p>(5) Inspection.</p> <p>(i) Where x-ray capability exists, incoming privileged correspondence should be x-rayed prior to being opened.</p> <p>...</p> <p>(6) Receipt.</p> <p>(i) The inmate to whom privileged correspondence is addressed shall sign a receipt for such correspondence. All receipts for incoming privileged correspondence shall be retained in an appropriate file.</p> <p>(8) Privileged correspondence originally sent out of the facility by an inmate, but subsequently returned to the inmate sender by the postal service, shall be processed as incoming privileged correspondence in accordance with the procedures as set forth in paragraphs (1) and (2) of this subdivision.</p> <p>(c) Authorization to read privileged mail.</p> <p>(1) The superintendent shall not authorize the reading of incoming or outgoing privileged correspondence unless there is a reason to believe that the provisions of this or any directive or rule or regulation have been violated, that any applicable State or Federal law has been violated, or that the content of such correspondence threatens the safety, security, or good order of a facility or the safety or well being of any person. Such authorization by the</p>
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		<p>superintendent shall be in writing and shall set forth facts forming the basis for the action.</p> <p>(2) The superintendent is advised to consult with the department's office of counsel before issuing such authorization. If the facility superintendent authorizes the reading of privileged correspondence, it shall be read only by the superintendent, a deputy superintendent or central office staff.</p> <p>(3) If after reading the contents of privileged correspondence there is reason to believe that the provisions of this or any directive or rule or regulation have been violated, or that any State or Federal law has been violated, or that the content of such correspondence threatens the safety, security good order of a facility or the safety or well-being of any person, then the correspondence may be confiscated, and the inmate must be given written notice of the confiscation, unless doing so would be inconsistent with the need to safeguard an investigation. The notice must include the reason(s) for the confiscation, and it must inform the inmate of the right to appeal the confiscation to the deputy commissioner for program services. In the case of incoming correspondence, the correspondent must also be given a copy of such notice and accorded the right to appeal, unless doing so would be inconsistent with the need to safeguard an investigation. Reason to believe that privileged correspondence is being used to introduce contraband or other materials not entitled to the privilege shall be sufficient reason for confiscation.</p> <p>(4) This subdivision shall not be deemed to require the express written authorization of the superintendent to inspect incoming privileged correspondence, in the presence of the inmate, to ensure that the materials contained in the correspondence are entitled to the privilege.</p> <p>9 CRR-NY 7004.4 (county jails)</p>
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		<p>Privileged incoming and outgoing correspondence</p> <p>(a) As used in this Part, legal privileged correspondence shall mean correspondence to or from attorneys and individuals under the direct supervision of attorneys, legal assistance agencies and individuals under the direct supervision of legal assistance agencies, and courts. General privileged correspondence shall mean correspondence to and from the State Commission of Correction and other correctional officials, local, State and Federal law enforcement agencies, and the media.</p> <p>(b) Incoming general and legal privileged correspondence shall not be opened and inspected for contraband except in the presence of the recipient prisoner.</p> <p>(c) Outgoing general and legal privileged correspondence shall not be opened and inspected for contraband except where the chief administrative officer determines there is reasonable suspicion to believe that the contents of such privileged correspondence threaten the safety or security of the facility or the safety and security of another person. A prisoner shall be present when his outgoing general or legal privileged correspondence is opened pursuant to this subdivision.</p> <p>(d) Incoming or outgoing prisoner legal privileged correspondence shall not be read except pursuant to a lawful search warrant. Such warrant shall be obtained within 24 hours of the facility's receipt of such correspondence and shall be enforced immediately after its issuance. A prisoner shall be present when his privileged correspondence is read pursuant to this subdivision.</p> <p>(e) Incoming and outgoing general privileged correspondence shall not be read except where the chief administrative officer determines there is reasonable suspicion to believe that the contents of such general privileged correspondence endanger or threaten the safety or security of the facility or the safety and security of another person. When the chief administrative officer</p>
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				<p>makes such a determination, he shall issue a written order which shall state the specific facts and reasons why such action is necessary to maintain the safety and security of the facility or the safety and security of another person. The recipient inmate shall be present when his incoming and outgoing general privileged correspondence is read pursuant to this subdivision.</p>
North Carolina	(no information located)			
North Dakota	Phone	Visitation	Mail	
<i>Regulations/Guidance</i>	<p>North Dakota Correctional Facility Standards 2022 Standard 77: Inmate Telephone Usage Correctional facilities may allow an inmate to make telephone calls to persons other than the inmate’s attorney within limitations set by the correctional facility. Correctional facilities shall notify inmates at intake and shall post a notice in a location accessible to all inmates that phone calls, except to attorneys, are subject to monitoring and recording.</p> <p>Standard 84: Inmate Attorney Telephone and Electronic Contact Correctional facilities shall allow inmates to make telephone calls to their attorneys at reasonable times. Calls to and from contacts verified as legal representation may not intentionally be audio monitored or recorded. Correctional facilities shall obtain the telephone number of an attorney who has called an inmate and permit the inmate to return the call at a reasonable time. Correctional facilities shall inform inmates electronic messaging is not a confidential means of communication.</p>	<p>North Dakota Correctional Facility Standards 2022 Standard 85: Attorney Visits Correctional facilities shall allow inmates to have visits from their legal counsel. Upon an inmate’s request, legal counsel may visit an inmate after admission or as soon as reasonably possible. All subsequent visits by legal counsel may be restricted to reasonable hours. Visits by legal counsel may be subject to staff or video visual observation, but without audio monitoring; however, when there may be observation, a notice must be posted in visiting areas. Audio or video recording of attorney visits is prohibited.</p>	<p>North Dakota Correctional Facility Standards 2022 Standard 81: Incoming and Outgoing Inmate Mail Correctional facilities shall have a written policy, procedure, and practice governing incoming and outgoing general, official, and legal mail that includes:</p> <ol style="list-style-type: none"> Mail depository or mail collection process; Procedures for screening incoming and outgoing general correspondence; Procedures for documenting and verifying incoming and outgoing legal and official mail and searching it for contraband; and Process for inmates to challenge mail rejections. 	
Ohio	Phone	Visitation	Mail	
<i>Regulations/Guidance</i>	<p>59-LEG-01 – Inmate Access to Courts and Counsel G. Communication with Attorneys (state facilities) 3. An attorney may request to confer with his/her client by telephone when there is not enough time</p>	<p>59-LEG-01 – Inmate Access to Courts and Counsel (state facilities) Communication with Attorneys</p>	<p>59-LEG-01 – Inmate Access to Courts and Counsel (state facilities) G. Communication with Attorneys</p>	
*State facilities are regulated by Ohio Department of				

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<p>Corrections rules. County and municipal jails are locally run but are subject to Minimum Standards for Jails. The DOC conducts inspections on county and municipal jails.</p>	<p>for the attorney to either correspond with or personally visit the inmate due to the circumstances of the inmate’s litigation. Such requests shall be directed to the managing officer or the person designated by the managing officer. Such conversations between the inmate and the attorney shall be considered confidential; the same as in person visits.</p> <p>4. Inmates may contact attorneys by telephones placed in the institution for general inmate use; however, because calls from such phones may be monitored and/or recorded, these phones should not be used to discuss confidential attorney/client matters.</p> <p>76-VIS-02 – Inmate Access to the Telephone and Electronic Mail</p> <p>C. Legal Calls</p> <p>1. On occasion, courts will schedule pre-trial hearings via conference calls between the plaintiff, plaintiff’s attorney, defendant, defendant’s attorney and the courts. In such cases, it is imperative that all factors are properly coordinated to ensure availability of the inmate, private telephone access, and visual monitoring. Upon receipt of such hearing notice, the managing officer will assign a specific employee to coordinate the telephone pre-trial hearing. All such calls shall be visually monitored, but not voice monitored.</p> <p>2. Inmates' use of telephones to place calls to parties outside of the institution is conditioned on their consent to these calls being monitored. As such, these telephone calls are not appropriate for legally recognized privileged communication. If an inmate wishes to have a privileged communication, then this generally should occur in person or through the U.S. mail, subject to the provisions</p>	<p>2. Attorneys shall be permitted to visit inmates under the procedures set forth in Administrative Rule 5120-9-20, Visits by Attorneys and Inmates Access to Legal Services. Attorney visits shall take place in a room designated for that purpose where they can talk in private but be subject to visual observation.</p> <p>H. Communication with Attorneys at Privately Operated Prisons</p> <p>1. In the case of a state correctional institution that is privately operated and managed pursuant to Ohio Revised Code (ORC) section 9.06, if normal meeting locations for attorneys and their inmate/resident clients are in areas where video cameras are present, the managing officer shall establish local procedures for accommodating an attorney request for a camera-free meeting area unless:</p> <p>a. Doing so would violate requirements of the ODRC as set forth in its administrative rules and policies;</p> <p>b. Doing so would interfere with the secure, safe, and orderly operation of the facility; or</p> <p>c. Doing so would endanger the security or safety of any person.</p> <p>2. The managing officer of a state correctional institution that is privately operated and managed pursuant to ORC section 9.06 may limit the number of simultaneous camerafree meetings and require advance scheduling of camera-free meeting spaces by visiting attorneys to ensure the orderly operation of the facility is not disrupted.</p> <p>Rule 5120:1-8-06 Communication (jails)</p>	<p>1. Legal mail, including inmate mail to and from attorneys, shall be handled pursuant to Administrative Rules 5120-9-17, Incoming Mail, and 5120-9-18, Outgoing Mail. Letters to or from staff members of the ODRC do not qualify as legal mail under this provision</p> <p>75-MAL-03 – Incarcerated Population Legal Mail (state facilities)</p> <p>A. Processing Incoming Legal Mail</p> <p>2. Staff shall visually inspect the envelope for obvious signs of contraband or anomalies. If there is no obvious indication that the mail contains contraband, staff shall proceed to the next step of this procedure. If there are obvious indications that the mail contains contraband, staff shall proceed to subsection V.I.B below.</p> <p>...</p> <p>4. The contents of legal mail should never be copied.</p> <p>Rule 5120:1-8-06 Communication (jails) (C) (Important) Legal mail or correspondence shall be opened and inspected in the presence of the inmate to intercept contraband. The jail shall document procedures for the appropriate disposition of intercepted items.</p>
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<p>Oklahoma <i>Regulations/Guidance</i></p> <p>*State facilities are regulated by the Oklahoma Department of Corrections policies. County jails are run by local law enforcement..</p>	<p>made in regulations governing legal services, mail, printed materials and visitation. In the event of an urgent legal matter, an inmate may contact unit personnel to request arrangement of an unmonitored telephone call. Telephone calls with an attorney, that have been cleared and approved by the managing officer/designee, shall not be voice monitored, but shall be visually monitored.</p> <p>Rule 5120:1-8-06 Communication (jails) (H) (Important) Inmates shall have access to legal counsel of record including telephone contact, written communication, and confidential visits.</p>	<p>(H) (Important) Inmates shall have access to legal counsel of record including telephone contact, written communication, and confidential visits.</p>	
	<p>Phone OP-030119 – Inmate Telephone Privileges II. Monitoring of Telephone Calls 1. Calls, other than those deemed legal, may be monitored by facility staff officials. 2. Legal calls are those by inmates to their attorney(s) and those persons working for the attorney(s). Inmates shall request to have attorney telephone numbers entered into the telephone system as privileged. The requests should be processed by the facility, as designated by the facility head, and entered into COMIT. Once submitted, the General Counsel’s office will verify the attorney’s telephone number and enter the verification into the inmate telephone system</p>	<p>Visitation OP-030118 – Visitation C. Attorney Visits Attorney visits are visits that occur between the inmate and his or her attorney or paralegal, investigator, law student, or expert witness working for the attorney representing the inmate. Inmates will be allowed the same general visiting privileges during an attorney visit as what is permitted for regular visits. Attorneys may be required to present an Oklahoma Bar Association membership card upon their arrival at the facility. Paralegals, investigators, law students, or expert witnesses appearing for an attorney visit may be required to present a letter on the attorney’s letterhead stating that the paralegal, investigator, law student or expert witness is working for the attorney on the case involving the inmate who is also the attorney’s client. Attorneys are encouraged to visit their clients during normal visiting hours of the facility. With advance notice, and approval of the facility head, attorney visits may occur during non-visiting hours; however, such attorney visits will normally be</p>	<p>Mail OP-030117 - Correspondence, Publications, and Audio/Video Media Guidelines 1.B. Legal Mail/Correspondents Mail to/from attorneys must be protected in recognition of the attorney-client privilege, 12 O.S. § 2502. 1. Mail to/from a paralegal service is not considered legal mail, as there is no attorney/client relationship or privilege. 2. Mail to/from the Attorney General of the State of Oklahoma and the courts will be processed as legal mail. V. Handling of Legal Mail A. The facility head or designee will ensure that the name and address of sender, name and address of the recipient, and the date of all incoming and outgoing legal mail is entered in a mail log and identified as legal mail. B. All outgoing legal mail will be correctly addressed and the envelope marked “Legal Mail.” If incorrectly marked or addressed, the mail will be returned to the inmate to be corrected. Legal mail will be submitted unsealed and a cursory inspection for foreign substances and suspicious features such as, escape plans, maps, music, art, coloring diagrams, and other documents obviously not legal material will be conducted. Reading legal mail for content review is</p>

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<p>Oregon <i>Regulations/Guidance</i></p> <p>*State facilities are subject to Oregon Department of Corrections rules while local facilities are subject to separate rules.</p>	<p>Phone 291-130-0021 Legal Calls (state facilities) (1) The department shall maintain a list of legal telephone numbers entitled the “legal call list.” Inmate calls to attorneys whose telephone numbers appear on the legal call list will not be monitored or recorded by the department. The legal call list shall include the official telephone numbers of all attorneys registered with and provided to the Oregon State Bar Association, official telephone numbers of attorneys who have requested and been added to the list as specified in subsection (2) below and business telephone numbers of other</p>	<p>restricted to normal business hours and the date, time and duration of the visit may be set by the facility head. With approval of the facility head, attorney visits may be barrier free, contact visits. Facility heads may approve an attorney, paralegal, investigator, law student or expert witness to bring a computer or tablet to the visit, if necessary for document review by the inmate or for testing that requires software/technology. Each facility head shall develop procedures for attorney visit requests and approval of attorney visits and should address all other matters that require approval of the facility head. Attorney visits may be visually observed by staff but are not to be audio recorded or occur in a location where the conversations between the inmate, attorney, paralegal, law student, investigator or expert can be overheard by staff.</p>	<p>not allowed unless authorized by the facility head upon reasonable suspicion that unauthorized activities or material has been placed in the outgoing legal mail. The envelope will then be sealed by the inmate in the staff member’s presence. C. Incoming mail marked “Legal Mail” that does not contain a return address will be returned to the post office. D. All incoming legal mail will be opened in the presence of the inmate addressee and a cursory inspection for foreign substances and suspicious features such as, escape plans, maps, music, art, coloring diagrams, stickers, unnecessary labels and other documents obviously not legal material will be conducted including leafing through the material to ensure nothing is concealed between the pages; however, reading legal mail for content review is not allowed unless authorized by the facility head upon reasonable suspicion that unauthorized activities or material has been placed in the incoming legal mail. 1. If the inmate has transferred, the legal mail will be forwarded within one business day to the inmate’s current facility. However, certified mail will not be accepted in accordance with Section II. F. item 2. of this procedure.</p>
		<p>Visitation 291-127-0450 Professional Visits (state facilities) (1) Professional visits shall be approved in advance by the superintendent or designee. Such visits should be made by appointment during regular visiting hours or hours as designated by the facility. (2) Persons approved for these types of visits with an inmate must present credentials or identification at the facility visiting desk or reception area sufficient to identify themselves. (3) These types of visits are not subject to a point deduction.</p>	<p>Mail 291-131-0030 Examination/Inspection of Legal and Official Mail (state facilities) (1) Legal or official mail shall be afforded special processing as provided in subsections (2) and (3) of this rule. (a) To qualify for special processing, mail that otherwise qualifies as legal or official mail under OAR 291 131 0010 (14) or (18) must have affixed to the addressee side of the envelope or parcel the words "LEGAL MAIL" or "OFFICIAL MAIL", as appropriate. The "LEGAL MAIL" or "OFFICIAL MAIL" designation should be set apart from both the return address and the mailing address, and should</p>

<p>organizations as deemed appropriate by department and whose communication with inmates shall be considered confidential. The list of official numbers of attorneys registered with the Oregon State Bar will be updated twice a year.</p> <p>(2) Upon request of an attorney whose official telephone number is not on the legal call list or upon request of the attorney's inmate client, the department will verify the number with the appropriate state bar and add the attorney's official telephone number to the list. However, the department will not include an attorney's home, cell or other telephone number on the department's legal call list that is not the attorney's contact telephone number provided to the appropriate state bar. Inmate calls to telephone numbers not on the legal call list will be subject to monitoring or recording by the department.</p> <p>(3) An inmate with an active or pending case with an imminent court deadline of ten business days or less who does not have regular access to the inmate telephone system (e.g., the inmate is in disciplinary segregation or Intensive Management Unit) may be permitted a legal call to his/her attorney as approved by the officer-in-charge or the inmate's counselor.</p> <p>(a) Use of Inmate Telephone System: Designated staff will make arrangements for the inmate to make the call.</p> <p>(b) Use of Staff Phones: Designated staff will facilitate the call and verify the identity of the person called. The staff member shall leave the area where the call is taking place; however, the inmate shall be kept under observation. The call should be placed as collect, if possible. Use of staff phones for such calls shall be held to a minimum.</p>	<p>(4) Professional visitors may be permitted to bring necessary documents or paperwork into the visiting area for exchange with the inmate with prior approval of visiting staff.</p> <p>(5) Computers, tape recorders, and other electronic devices may be permitted upon the approval of the superintendent or designee. All articles shall be searched for contraband.</p> <p>(6) These types of visits shall be permitted with only one inmate at a time, except as otherwise authorized in advance by the superintendent or designee.</p>	<p>be of sufficient size, to permit easy recognition by facility mailroom employees.</p> <p>(b) Mail that otherwise qualifies as legal and official mail but lacks the proper designation shall be processed as ordinary mail (shall be subject to inspection; for example, opening, examination, reading or photocopying)outside the inmate's presence.</p> <p>(2) Legal and official mail sent from or received in a Department of Corrections facility in sealed envelopes or parcels shall be opened and examined for contraband in the presence of the inmate, but shall not be read or photocopied, except as authorized in subsection (3) of this rule.</p> <p>(3) Legal and official mail may be inspected (i.e., opened, examined, read or photocopied) outside of the inmate's presence only when directed by the Department of Corrections facility functional unit manager or designee, and approved by the Assistant Director of Operations or the Inspector General, based on specific circumstances or specific information indicating that an inmate or other person has or may be in the process of violating provisions of law, department administrative rules, or may otherwise be engaged in activity that threatens or impairs the security, good order, or discipline of the facility and officials, staff, or inmates.</p>
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Pennsylvania	Phone	Visitation	Mail
<p><i>Statutes</i></p>	<p>Title 66 Pa.C.S.A. Public Utilities § 2907. State correctional institutions (a) Identification of calls.--Telecommunication service providers which provide telecommunication services to State correctional institutions shall identify to the called party any call made by an inmate as originating from a correctional institution. (b) Payment of calls.-- (1) The Department of Corrections may direct that calls made by an inmate shall be collect calls. (2) The Department of Corrections may provide guidelines for alternative payment methods for telephone calls made by inmates, provided that the alternative methods are consistent with security needs, orderly operation of the prison and the public interest. (c) No cause of action created.--This section shall not be construed to create any cause of action or any legal right in any person or entity. In addition, this section is not intended to create any right of an inmate to make a telephone call or to compel a particular method of payment.</p>		
<p><i>Regulations/Guidance</i></p> <p>* The Pennsylvania Department of Corrections policies and regulations apply to all facilities operated under the jurisdiction of, or conducting business with the Department of Corrections. It is not clear if DOC rules apply only to state facilities or to both state and county</p>	<p>DC-ADM 818. Automated Inmate Telephone System D. Facility Authorized Telephone Calls 1. Facility staff may authorize the use of the facility-owned telephone system for the following reasons: a. serious illness, hospitalization, or death of an immediate family member; b. contact with an attorney in matters of immediate need, which will last no longer than five to ten minutes. If additional time is needed, the attorney will be directed to contact the facility to set up a telephone conference;</p>	<p>37 Pa. Code § 93.3 - Inmate visiting privileges (c) Attorneys. An inmate may designate attorneys for whom the inmate desires visiting privileges at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total approved by the Department. (1) The confidentiality of the attorney-client relationship will be honored. Personnel will not be stationed in a manner as to be able to overhear normal conversation. (2) An attorney who has been designated by an inmate as the inmate's legal advisor may permit persons, such as law students or investigators to</p>	<p>DC-ADM 803 – Inmate mail and Incoming Publications 1(D) Incoming Inmate Mail Procedures – Privileged Mail 3. Processing of Incoming Privileged Correspondence. a. All incoming, privileged inmate correspondence must be addressed and sent to the inmate at the address of the institution where he or she is housed. ... d. Privileged correspondence shall only contain essential, confidential, attorney-client communication. ... h. Incoming privileged correspondence shall not be opened by the mailroom staff.</p>

<p>facilities (there are separate chapters within the state code, but the chapter pertaining to jails contains very little). The DOC inspects county correctional institutions.</p>	<p>c. when the attorney will not accept a collect call and the inmate has no funds available for a pre-paid call;</p> <p>d. contact with an attorney regarding a legal matter which, because of an immediate deadline, cannot be handled in person or via correspondence; and</p> <p>e. an extraordinary or unusual circumstance.</p> <p>2. The inmate must establish that an actual emergency exists. The staff member authorizing the inmate telephone call must verify the emergency exists prior to placing the call, document the call on a DC-121, Part 3, Employee Report of Incident, and forward the report to the Security Office and the Facility Manager/designee. In addition, a facility authorized call is to be monitored by the staff member providing this privilege. If the inmate does not agree to have this phone call monitored, he/she will not be granted the privilege of placing a telephone call on the facility-owned telephone system. An attorney phone call shall not be monitored; however, staff will first verify that the call is received by the attorney and the attorney is representing the inmate.</p> <p>37 Pa. Code § 93.7 - Telephone calls</p> <p>(a) Inmates in general population may make phone calls in accordance with 66 Pa.C.S. § 2907 (relating to state correctional institutions) and the Department of Corrections Inmate Handbook. Phone calls, except confidential communications between attorneys and inmates, will be subject to monitoring in accordance with 18 Pa.C.S. § 5704 (relating to</p>	<p>visit the inmate to act as the attorney's agents. Each person shall present to the facility at the time of the visit a written statement signed by the attorney on the letterhead of the firm of the attorney identifying each person as the attorney's agent and attesting that the visit is for the purpose of a legal consultation.</p> <p>(3) Attorneys and their agents are subject to the same rules and regulations as other visitors.</p>	<p>i. Mailroom staff will ensure that all the information below is entered into the Digital Master Log prior to the privileged correspondence being forwarded, unopened, to the facility Security Office:</p> <ul style="list-style-type: none"> (1) inmate name and institutional number; (2) institution; (3) ACN/CCN/MCN; (4) TC; (5) verification of sender/address; and (6) accepted/rejected with reason <p>...</p> <p>4. Incoming privileged correspondence may only be read upon the written approval of the Secretary/designee when there is reason to believe that there is a threat to facility security or criminal activity.</p> <p>37 Pa. Code § 93.2 - Inmate correspondence</p> <p>(c) Incoming mail. Mail sent to a facility will be opened and examined for contraband in the facility's mailroom or designated area except when permitted under paragraph (1).</p> <p>(1) The Department may permit sealed mail to be opened in the presence of an inmate under the following conditions:</p> <ul style="list-style-type: none"> (i) An attorney or authorized representative/designee may hand-deliver a sealed confidential client communication to an inmate if the attorney is unable to communicate through alternative means, if the following conditions are met: <ul style="list-style-type: none"> (A) The person making the delivery does so during normal business hours unless granted permission in advance by the Secretary or a designee. (B) The person making the delivery shall provide valid identification and information sufficient to verify that the person is the inmate's attorney or authorized representative of the attorney. (C) The person making delivery shall present the
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	<p>exceptions to prohibition of interception and disclosure of communications).</p>	<p>documents for inspection for contraband, unsealed and unbound. (D) Upon inspection, the documents will be sealed and delivered to the inmate where they will be unsealed and searched again for contraband. (ii) An attorney may obtain a control number from the Department's Office of Chief Counsel if the attorney wishes to have correspondence addressed to an inmate client opened in the presence of the inmate. (A) An attorney shall submit a written request for a control number to the Office of Chief Counsel. The request must include the attorney's name, address, telephone and facsimile numbers, State attorney identification number and a verification subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that all mail sent to inmates using the control number will contain only essential, confidential, attorney-client communication and will contain no contraband. (B) The attorney shall place the control number on each envelope that the attorney wishes to have opened in an inmate's presence. The number is confidential. It shall only be placed on the outside of the envelope so that it can be obliterated before it is delivered to an inmate client. (C) If a control number does not appear on the envelope, the mail will be treated as regular mail and opened in the mailroom unless the procedures in subparagraph (i) are followed. (D) The Department may change the control number for any reason upon notice to the attorney who requested it. (iii) A court may direct delivery of court documents sealed from public disclosure to an inmate by specific order. The court's representative shall deliver the sealed documents and the specific court order to the facility.</p>
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<p>Rhode Island <i>Regulations/Guidance</i></p> <p>* Rhode Island has a “unified” prison and jail system. The Department of Corrections regulations apply to all facilities.</p>	<p>Phone 240-RICR-30-00-2 - Inmate Telephone Privileges / Monitoring 2.3(D)(2). Inmate calls are limited to: a. Up to ten (10) social numbers; b. Up to five (5) attorney numbers. Only attorneys whose names and business telephone numbers appear in the State of Rhode Island and Providence Plantations Supreme Court ACS Attorney Registration will be recognized for this privilege, unless authorization is given by the Warden or designee.</p>	<p>Visitation 240-RICR-20-00-3 - Access to Institutional Facilities by Attorneys and Their Agents A. For the purposes of this Part, attorneys are defined as members in good standing with the Bar of Rhode Island or members of any other state or federal jurisdiction who represent clients incarcerated at RIDOC. See § 1.4(D)(1) of this Part for identification requirements.</p>	<p>Mail 240-RICR-10-00-1 – Inmate Mail 1.4.2 Privileged Mail A. General Guidelines 1. Privileged mail, whether it is incoming or outgoing, cannot be read by RIDOC staff. 2. Inmates are permitted to send and receive letters from the following persons: a. Any official of a court of the United States or the State of Rhode Island or acting on behalf of the court (judge, attorney, clerk, probation and parole officers); b. The President of the United States; c. The Governor of the State of Rhode Island; d. Any member of the Congress of the United States; e. Any member of the General Assembly of the State of Rhode Island; f. The Attorney General of the United States; g. The Attorney General of the State of Rhode Island; h. The Director or any agent of the Federal Bureau of Investigation (FBI); i. The senior administrator of any state’s State Police; j. The Director of the Rhode Island Department of Corrections; k. Any Assistant Director of the Rhode Island Department of Corrections; l. Any member of the Parole Board; m. RIDOC Inmate Grievance Coordinator; n. Any public official or agency, where the mail appears on its face to relate to legal matters; o. The American Civil Liberties Union (ACLU), its affiliates and sections, i.e., The National Prison Project; p. Public Defender; q. Attorney;</p>
			<p>Under no circumstances will documents filed in a court of public record be delivered sealed to an inmate.</p>

50 State Chart – Statutes, Regulations and Guidance Regarding Access to Counsel in Correctional Facilities

<p>South Carolina <i>Regulations/Guidance</i></p> <p>The South Carolina Department of Corrections administrative operations manual applies to state run facilities. City, County and regional jails must adhere to the Minimum Standards for Local Detention Facilities in South Carolina</p>	<p>Phone</p> <p>ADM-15.02, "Telephone Use" (state facilities)</p> <p>3.3 Inmates and called parties will hear an announcement that their calls may be monitored and recorded prior to the acceptance of the call. All telephone calls will be monitored except for calls to the inmate's attorney of record, if the attorney has requested that those calls not be monitored. Attorneys may request that calls not be monitored by providing their telephone number, the name and inmate # of the inmate they represent, and their bar association membership number in a formal request on their firm's letterhead. This request must be sent to: South Carolina Department of Corrections Office of the General Counsel PO Box 21787 4444 Broad River Road Columbia, SC 29221-1787 NOTE: Any questions regarding attorney telephone privileges or requests that calls not be monitored should be addressed to the RIM Help Desk.</p>	<p>Visitation</p> <p>OP-22.09, "Inmate Visitation" (state facilities)</p> <p>5.4 Attorneys: The SCDC recognizes that inmates have a guaranteed right to communicate with their attorneys and to be provided access to state and federal courts. The SCDC will ensure that inmates are afforded sufficient access to visit with their attorneys and authorized agents, e.g., paralegal or an investigator, who can show they are working for the attorney of record . An attorney desiring to visit an inmate who is not a member of his/her immediate family may gain admission to any SCDC institution by calling Monday through Friday during normal business hours and making an appointment with the Institution the inmate is housed at (on or about 8 A.M. - 4 P.M.) The Institutions will make every effort to accommodate attorney visits, but may require advance notice for the visit. The attorney will be required to present his/her bar identification card and a photo identification card as described in</p>	<p>r. Legal Aid Society.</p> <p>... B. Incoming Privileged Mail</p> <ol style="list-style-type: none"> 1. Incoming privileged mail may be opened and inspected in the presence of the inmate addressee. RIDOC staff is prohibited from reading privileged incoming mail. 2. Incoming privileged mail is treated as privileged only if the name and/or official status of the sender appear clearly on the envelope. <p>C. Outgoing Privileged Mail</p> <ol style="list-style-type: none"> 1. Outgoing privileged mail may only be inspected if a reasonable belief exists that the security of the institution is at risk. In such cases, it may be inspected for contraband only in the presence of the inmate. RIDOC staff is prohibited from reading outgoing privileged mail.
			<p>Mail</p> <p>PS-10.08, "Inmate Correspondence Privileges" (state facilities)</p> <p>8.3 Legal, Privileged, and Certified Mail: The Postal Director/designee will be responsible for date stamping and documenting all incoming legal, privileged, and certified correspondence on SCDC Form 10-12, "Legal/Privileged/Certified Mail Delivery Log." The disposition of such mail (e.g., inmate picked up mail, inmate refused mail - returned to sender, inmate released from the SCDC-mail forwarded, etc.) must be documented on the Legal/Privileged/Certified Mail Delivery Log. The Postal Director will be responsible for verifying the identity of the inmate by his/her SCDC identification card prior to delivering the mail.</p> <p>... 11.1 Legal: Inmates will be permitted to send legal mail as needed regardless of his/her indigent status, E.H. Cooper Trust Fund account cash balance, or canteen spending limit to the following recipients:</p>

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	<p>Minimum Standards for Local Detention Facilities in South Carolina (local facilities) 2014 - 33 TELEPHONES Telephones are available for inmate use. Discussion: Telephone facilities should permit reasonable and equitable access for all inmates and permit a reasonable amount of privacy. 2033 TELEPHONE Each facility shall develop and implement a written plan for the use of the telephone. Inmates may be required to pay for telephone calls. If telephone calls are to be monitored and/or recorded, notice shall be provided.</p>	<p>Procedure 5.2, above, to the Officer(s) at the entrance of the institution.</p>	<p>Officials of federal, state, and local courts - the inmate shall be required to demonstrate that s/he has an action pending in the court or that s/he is initiating an action in the court. For indigent inmates, all pending/initiated legal actions in court must relate to challenging or appealing the inmate's sentence or to challenging the conditions of his/her confinement. Attorneys (and their authorized representatives) - limited to inmate's attorney of record; attorney(s) representing the defendant in civil actions in which the inmate is a plaintiff. (An attorney/client relationship must be established by correspondence from the attorney confirming representation in a particular matter or court documents proving appointment in an on-going, not past case.)</p> <p>Minimum Standards for Local Detention Facilities in South Carolina (local facilities) 2032 CORRESPONDENCE Each facility shall develop and implement a written plan for the handling of inmate mail. Such a plan shall include the following provisions: (a) Inmate mail shall not be read except where there is reasonable suspicion that a particular item of correspondence threatens the safety or security of the institution, the safety of any person, or is being used for furtherance of illegal activities. All official mail shall be opened in the presence of the inmate to whom it is addressed. Official mail is defined as mail from officials or organizations including, but not limited to: courts, counsel, officials of the confining authority, government officials, administrators of grievance systems, Department of Corrections, Jail and Prison Inspection Division, Department of Juvenile Justice, and members of the Parole Board.</p>
<p>South Dakota <i>Regulations/Guidance</i></p>	<p>Phone 1.5.D.4 Inmate Access to Telephones and Tablets</p>	<p>Visitation 1.5.D.1 Inmate Visiting</p>	<p>Mail 1.5.D.3 Inmate Correspondence</p>

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<p>Department of South Dakota policies apply to state run facilities. County and police jails and locally run.</p>	<p>7. Attorney or Privileged Calls: A. When a caller who has identified themselves as the inmate’s Attorney at Record or a privileged source calls a DOC institution and requests to speak to an inmate, the call will be transferred to a member of the inmate’s unit team. If a staff member not available to take the call, the call will be transferred to the Officer-In-Charge (OIC). The contact may choose to leave a message or voicemail. Staff will notify the inmate of the contact within two business days of receipt of the attorney contact. 1. Staff may contact the State Bar of South Dakota at (605) 224-7554 to confirm whether the person holds a State Bar of South Dakota Certificate of Membership (only applicable to SD attorneys). 2. Staff will provide the inmate with the name and contact information of the contact, as provided. 3. The inmate may use the telephone system. Inmates must contact unit staff to arrange for a privileged/non-monitored telephone call. 4. If the inmate’s telephone privileges are temporarily suspended, or the inmate is indigent, the inmate may request unit staff or the OIC arrange a time and day for the inmate to call the contact. Return calls requested by the inmate to contact should be scheduled within two (2) business days of the inmate’s request. The inmate may be granted additional telephone access until the contact is successfully reached, or a message can be left. a. Attorney/privileged telephone calls are generally limited to weekdays (Monday/Friday,</p>	<p>5. Attorney of Record and Recognized Officials: A. Attorneys, judges, Chief Justice, Justice of the Supreme Court, Governor, Lieutenant Governor, Governor’s staff and cabinet, current legislators, parole board members, or other recognized federal or state officials (VIPs) may be exempted from a criminal background check by the Warden or Deputy Warden, provided the person’s identify and position can be verified. 1. Attorneys entering the institution for an Attorney of Record visit should be prepared to present a valid “Certificate of Membership” (State Bar card) AND a valid government photo ID (See ARSD 17:50:02:21). If the person refuses or is not able to produce a valid State Bar card and valid government issued ID, the person is required to complete a Visit List Verification form and is subject to approval by the Warden or Deputy Warden prior to admittance to the institution. B. Any request by an inmate for an attorney visit, which may include the Attorney of Record or any representative of an approved attorney (i.e. paralegal or another attorney from the same firm) that is requested for a time or day outside the regularly scheduled visitation hours or days, must be forwarded to unit staff at least one business day prior to the requested attorney visit. 1. Approval of attorney visits outside regular visit hours or days may be contingent on the existence of extenuating circumstances, such as an imposed deadline for filing or a hearing date. Extenuating circumstances will be considered on a case-by-case basis. ... K. Audio monitoring (either electronically or in-person) of attorney visits is not permitted. DOC</p>	<p>3. Incoming Privileged/Legal Correspondence: A. Only privileged/legal correspondence readily and clearly identifiable as privileged/legal correspondence shall be treated as such. It is the responsibility of the sender to clearly indicate the correspondence contained within the envelope or package is privileged/legal. B. Correspondence/envelopes and package clearly designated privileged/legal shall remain secure and in the control of authorized staff until personally delivered to the inmate addressee. C. Privileged/legal correspondence or packages will be examined, scan searched and inspected by designated staff in the presence of the inmate, to ensure the contents meet policy requirements and do not contain contraband (See ACA 4-4492). Correspondence and packages may be searched outside the presence of the inmate in emergency situations, such as correspondence or packages perceived to pose an immediate threat. An emergency exception requires authorization from the Mail Security Coordinator or Special Investigation Unit staff. During the inspection of privileged/legal correspondence, staff will determine the genuineness of the addressor (See ARSD 17:50:10:04). 1. Staff shall not read, censor or unreasonably delay privileged/legal correspondence or packages, unless, after opening the envelope or package, there is a reasonable belief supporting the correspondence contained is not privileged/legal correspondence, poses an immediate threat or otherwise violates policy or correspondence requirements. Such inspection will be completed in the presence of the inmate. If any of the content is withheld from delivery, the inmate shall be notified of reason and this shall be noted on the Inmate Legal Mail Acknowledgement form 2. Inspection may include opening all seams of any</p>
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	<p>excluding state or federal holidays) and regular business hours (8:00 a.m.-5:00 p.m.) and must not interfere with the daily operation of the unit or institution.</p> <p>b. Telephone calls may be scheduled to take place in a staff member’s office on a staff telephone.</p> <p>c. Telephone calls scheduled by a staff member are generally limited to no more than fifteen (15) minutes. The time limit does not apply to court-ordered telephonic hearings.</p> <p>d. Staff will not audio monitor the phone call.</p> <p>Visual monitoring of the inmate during the call is permitted.</p> <p>1) If there are no windows to facilitate visual monitoring of the inmate, the office door must remain partially open to permit visual observation of the inmate by the supervising staff member.</p> <p>2) If there are windows that allow for visual monitoring of the inmate, the office door may be closed during the call. Staff will maintain visual monitoring of the inmate for the duration of the telephone call.</p> <p>e. Collect calls are limited to a maximum of 30 minutes.</p> <p>B. Inmates will have access to the telephone system to contact their Attorney of Record or privileged source, unless otherwise prohibited (See ACA 4-4275). Inmates who do not have telephone privileges, have not been assigned a PIN number, do not have access to telephones, tablets or kiosks, or are indigent, must submit a written request to unit staff to call their Attorney of Record or privileged source. Staff will respond to the inmate’s request</p>	<p>staff may visually monitor attorney visits. A private visiting area will be made available to inmates for the purpose of discussing legal matters (See ARSD 17:50:02:06). Inmates may be restricted to non-contact visits with an attorney, based on risk and status.</p>	<p>envelope containing legal/privileged correspondence. If the envelope is to be withheld from delivery to the inmate for safety and security reasons, the inmate may request a photocopy of the outside portion of the envelope showing the sender’s name, return address and postmark date. Privileged/legal correspondence/envelopes may be on colored/non-white envelopes and paper and shall be delivered to the intended recipient.</p> <p>3. The inmate will be informed in writing if privileged/legal correspondence properly marked and intended for delivery to an inmate, is accidentally opened by staff outside the presence of the inmate.</p> <p>...</p> <p>6. Outgoing Privileged/Legal Correspondence:</p> <p>A. Inmates shall be permitted to mail privileged/legal correspondence to designated officials (privileged correspondence). Only correspondence properly designated as privileged/legal correspondence will be considered privileged/legal correspondence.</p> <p>B. Each housing unit will maintain regular and designated times on weekdays for inmates to mail privileged/legal correspondence. The correspondence must be delivered to staff by the inmate in an unsealed, self-addressed envelope or provided to staff making rounds to collect correspondence prepared for mailing.</p> <p>C. Outgoing privileged/legal correspondence will be inspected. Staff shall not read, censor, copy or unreasonably delay privileged/legal correspondence without cause.</p> <p>1. Staff will not read privileged/legal correspondence but may inspect the correspondence page-by-page in the inmate’s presence (ACA 4-4492).</p>
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	<p>within two (2) business days of receipt of the request.</p> <p>C. When utilizing the DOC telephone service to contact the inmate's Attorney of Record or privileged source, it is the inmate's responsibility to request a non-monitored telephone line. Calls placed from inmate tablets or kiosks are not confidential and may be monitored and/or recorded.</p> <p>D. All inmates, regardless of their assigned unit or status shall be permitted to participate in telephonic or electronic court hearings, as directed/ordered by the court. Accommodations may be provided if an attorney requests the inmate participate in a telephonic hearing, as deemed appropriate by unit staff.</p> <p>1. Participation in court hearings must be arranged with unit staff in advance. Confirmation may be required from the inmate's attorney or representative of the court. The DOC must be provided sufficient advance notice of the time and date set for the hearing. Courtordered telephonic hearings are typically at the expense of the DOC.</p> <p>2. Telephonic judicial hearings are not typically subject to recording or audio monitoring, unless otherwise deemed a public hearing. The inmate will be visually monitored by staff.</p> <p>E. The DOC may not apply limitations to inmate telephone calls or access to telephones when an inmate demonstrates communication with their Attorney of Record or privileged source through privileged correspondence or privileged visitation is not adequate to meet the inmate's legal needs (ARSD 17:50:02:17). In emergency cases, during normal business hours, a telephone phone number can be added to an inmate's approved contact list the</p>	
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<p>Tennessee <i>Regulations/Guidance</i></p> <p>* Tennessee Department of Corrections policies and procedures apply to state run institutions. Jails are locally run but are inspected by the state.</p>	<p>same business day, or as soon as possible to facilitate communication with the Attorney of Record or privileged source.</p> <p>F. Privileged source or Attorney of Record phone calls may be denied or terminated if there is reasonable belief the call is a threat to the safety or security of the institution. The Deputy Warden shall be notified if staff deny or terminate such a call.</p>	<p>Visitation</p> <p>503.08 – Telephone Privileges</p> <p>E. Monitoring/Recording at Facilities with ITS Equipment:</p> <p>1. Telephone calls to an attorney shall not be monitored or recorded.</p>	<p>Mail</p> <p>507.02 – Inmate Mail</p> <p>VI.</p> <p>C. Incoming mail shall be handled as follows:</p> <p>1. Incoming privileged mail shall be opened only by a staff member in the presence of the inmate addressee in order to examine the contents for contraband, and then documented. Any mail which has papers which are bound together by metal clips shall be disassembled by removing the metal clip. The staff members shall not read the privileged mail or listen to legal tapes unless the Warden/Superintendent has, on the basis of reasonable suspicion, determined that privileged mail or tapes may contain information relating to criminal activity. The privileged mail/tape may be read or listened to outside the presence of the inmate if doing so is necessary to avoid compromising an on-going criminal investigation. A bound ledger shall be maintained by mail room staff that lists each of privileged mail received/sent, the date inspected and delivered, and recipient’s signature. Mail relating to the implementation of Policy #511.05 is not considered privileged mail.</p> <p>2. All incoming inmate privileged mail, staff mail, and packages shall be fluoroscoped for contraband prior to leaving the mail room.</p> <p>... K.</p>
		<p>505.09 – Attorney Access to Inmates</p> <p>VI. A. Attorneys shall be permitted access to inmates when such access is directly related to the provision of legal services. Such access shall be during the hours established by the facility, but not less frequently than from 8:00 a.m. to 4:30 p.m. local time, five days a week. Attorneys who desire such access must contact the Warden/Superintendent or his/her designee in advance of the intended visit to facilitate entry into the facility and make meeting arrangements.</p> <p>... G. Unless specifically authorized by the Warden/Superintendent or his/her designee, all meetings between attorneys and inmates shall be one-on-one; however, all videoconference meetings between attorneys and inmates shall always be one-on-one. The Warden/Superintendent or his/her designee shall make every reasonable effort to provide a room where an attorney can meet confidentially with an inmate. In any event an inmate must be maintained under visual supervision. A meeting place shall be provided in which the discussion between the inmate and attorney cannot reasonably be overheard by others.</p>	

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<p>Texas <i>Regulations/Guidance</i></p> <p>*The Texas Department of Criminal Justice Board Policy rules apply to state facilities. Counties are responsible for jails and subject to minimum standards under state law.</p>	<p>Phone</p> <p>BP-03.81 – Rules Governing Inmate Access to the Courts, Counsel and Public Officials (state facilities)</p> <p>VI. Attorney and Inmate Telephone Calls</p> <p>A. General Guidelines</p> <p>...</p> <p>2. Attorneys are not permitted to use an attorney and inmate telephone call to provide contact between the inmate and any other person.</p> <p>...</p> <p>4. Inmates may place telephone calls to their attorney of record using the Inmate Telephone System (OTS). OTS telephone calls shall be placed in accordance with ED-03.32, “Inmate Access to Telephones.” Calls between an inmate and the attorney registered as the attorney of</p>	<p>Visitation</p> <p>BP-03.81 – Rules Governing Inmate Access to the Courts, Counsel and Public Officials (state facilities)</p> <p>V. Attorney Visitation</p> <p>A. Periods of Visitation: Except as limited by this policy, an inmate may visit with an attorney or designated representative on business days for any length of time between 8:00 a.m. and 5:00 p.m., including lunch and dinner hours. In compelling circumstances, the warden or designee may permit the visit to extend past 5:00 p.m. On Saturdays, Sundays, and state and national holidays, attorneys or designated representatives may visit subject to the rules governing non-attorney visits. At the warden’s discretion, the warden may permit an</p>	<p>4. Outgoing privileged mail shall have the envelope date stamped immediately upon its receipt by a designated employee, who will also make an entry in the log for privileged mail. The mail must be identified as privileged by the inmate, who may write “privileged” on the front of the envelope or who may inform the mail room staff. This requirement shall apply for all inmates, including those in segregation or protective custody status.</p> <p>...</p> <p>7. Privileged mail may only be opened and/or read with the written permission of the Assistant Commissioner of Prisons/designee. A written request stating the reason for this action must be submitted by the Warden/Superintendent/designee to the Assistant Commissioner of Prisons/designee for approval. Excluding weekends and holidays, approval must be obtained within 24 hours of the mailrooms receipt of the outgoing correspondence.</p>
			<p>Mail</p> <p>BP-03.91 – Uniform Inmate Correspondence Rules (state facilities)</p> <p>III. Legal Correspondence</p> <p>A. Permissible Correspondence</p> <p>To facilitate the attorney-client privilege, an inmate may send sealed and uninspected letters directly to legal correspondents. No correspondence from an inmate to any legal correspondent shall be opened or read. All incoming correspondence from any legal correspondent shall be opened and inspected for contraband only. The inspection shall be in the inmate’s presence. No correspondence to an inmate from any legal correspondent shall be read.</p>

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	<p>record with the OTS vendor shall not be recorded or monitored.</p> <p>5. Inmate requests for telephone contact with their attorneys may be granted in critical circumstances, such as the inmate receives correspondence from a court requiring immediate contact with the attorney or when a foreign national needs to call the consulate. In such circumstances, the inmate shall submit an I-60 to the unit ATC supervisor with an explanation of the critical circumstance. If the scheduled date for the court appearance or hearing precludes a personal visit or correspondence, the request for telephone contact shall be approved. Telephone calls shall be arranged between 8:00 a.m. and 5:00 p.m. during business days unless there are compelling circumstances.</p> <p>6. All other requests for telephone contact shall be made in writing by the inmate's attorney using the I-162, Attorney/Inmate Telephone Call Application, and the attorney shall provide the unit with at least 24 hours notice, unless the need is preempted by a legal emergency. 7. Frequency and duration of attorney and inmate telephone conversations shall be decided on a case-by-case basis according to need. 8. The telephone call can be scheduled on the same day as the request or on a day that is convenient for all parties. 9. Except as authorized by warrant or court order, telephone calls to attorneys pursuant to this policy shall not be monitored or recorded; however, security staff shall maintain visual surveillance of the inmate for the duration of the call.</p> <p>B. Telephone Call and Attorney of Record Approval</p>	<p>attorney to visit an inmate on Death Row on a non-business day if the attorney offers a reasonable explanation for the necessity of a visit.</p> <p>B. Notice: By 3:30 p.m. of the business day immediately preceding the date that an attorney or designated representative wishes to visit an inmate, the attorney shall provide the warden or designee the name and profession of each visitor, the name of each inmate to be visited, and the estimated arrival time. If visiting multiple inmates, the attorney shall propose a time at which the attorney or designated representative would visit each inmate. The warden or designee shall produce the inmate for the scheduled visit without unreasonable delay</p> <p>C. Identification This section does not apply to SCFO attorneys or employees of the Office of the Attorney General (OAG). 1. Attorneys: Attorneys shall satisfactorily identify themselves to the warden or designee and complete and sign a copy of the I-163, Attorney Application to Visit TDCJ Offender. An attorney bar card and either a valid driver license, identification (ID) card issued by a governmental agency that includes a photograph, or valid United States passport are satisfactory ID. Any other individuals accompanying an attorney shall have the attorney complete the I-166, Attorney Authorization for Approved Representative to Visit TDCJ Offender, before the visit is considered. 2. Upon arrival at the unit, the representative shall present a valid driver license, ID card issued by a governmental agency that includes a photograph, or a valid United States passport, to the warden or designee and provide a copy of the I-166, if not already provided</p> <p>...</p>	
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	<p>1. Designation of Attorney of Record for OTS Purposes Attorneys of record shall register with the OTS vendor by submitting a letter on the attorney’s letterhead stating the attorney’s name; phone number, which shall be verified as matching the number registered with the State Bar of Texas; attorney’s state bar association number and state of registration; a list of TDCJ number and inmate first and last name(s); and a statement that the attorney has an attorney-client relationship with the listed inmate(s). If the attorney is not listed with the State Bar of Texas, the phone number of the bar association where the attorney is licensed shall be included.</p>	<p>G. Visitation Procedures 1. Privacy: Unless requested to do otherwise by either the attorney or the inmate, the warden or designee shall respect the privacy of the visit and maintain a sufficient distance from the visiting inmate and attorney or designated representative to preserve the privacy of communications between them. This rule does not limit the ability of the warden or designee to maintain visual surveillance during the visit or to terminate the visit in case of a threat to security. Attorney visits shall be conducted in the designated attorney visitation area</p>	
<p>Utah</p>	<p>(no information located)</p>		
<p>Vermont <i>Regulations/Guidance</i> * Vermont has a “unified” prison and jail system. The Department of Corrections policies apply to all facilities.</p>	<p>Phone DOC Policy#325 Telephone Use 6. A. Monitoring of Inmate Telephone Conversations Inmate telephone conversations, with the exception of privileged communications, shall be recorded and may be monitored. Each facility shall ensure that inmates receive advance notice of recording and/or monitoring of their telephone calls through: 1. A recorded message at the beginning of each phone call that advises both the inmate and the other party to the call that the call is subject to recording and/or monitoring; 2. The Inmate Telephone System Number Request Form – A statement that the acceptance of an account and use of inmate telephones is deemed as consent to recording and/or monitoring of inmate telephone calls. B. Monitoring of or Access to Recorded Inmate Telephone Conversations</p>	<p>Visitation DOC Policy #327.01 Inmate Visits 4c. Attorney and Legal Visits ... i. Attorneys or other legal representatives may visit the facility provided there is reasonable advance notice and that permission is granted by the Superintendent or designee. ii. Attorneys or their legal assistants do not need to be on the inmate visitor list; however, their visit will be logged. Legal assistants must have a letter of introduction signed by the attorney on the firm’s stationary. Legal assistants may not have been on their visiting list previously. The attorney’s name, etc., will be posted on the back of the visiting card. They must have a current/valid photograph identification at the time of the visit. iii. All conversations between the inmate and their legal visitor may be visually observed by supervising correctional staff, but not overheard, listened to or recorded in any manner in order to</p>	<p>Mail DOC Policy #409.05 Inmate Mail, Publications, and Audio/Video Regulations 4. Privileged Correspondence a. Outgoing Privileged Correspondence i. Outgoing privileged correspondence will meet the same requirements as outgoing general mail except that the words “Privileged Mail” or “Legal Mail” will be written by the inmate on the front of the envelope. ii. An inmate may not use an official Department of Corrections envelope to mail privileged correspondence. iii. Staff will handle outgoing privileged correspondence in the same manner as outgoing general mail, except that it may not be opened without the inmate being present unless it is necessary to open the correspondence for the sole purpose of determining the identity of the inmate who sent it. iv. Outgoing privileged correspondence may be opened and inspected in the presence of the inmate when the Superintendent or designee has reasonable suspicion that the mail contains contraband or is otherwise in violation</p>

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<p>Virginia Regulations/Guidance</p> <p>The Virginia Department of Corrections operating procedures apply to state facilities. Jails and lockups must conform to the Minimum Standards For Jails And Lockups</p>	<p>The contents of a recorded/monitored inmate telephone call shall only be disclosed in accordance with 28 V.S.A. § 601(10). However, the department may provide copies of recorded phone calls to the Human Resources Investigation’s Unit in response to investigations into employee misconduct.</p>	<p>reasonably preserve the confidentiality of the attorney client relationship.</p> <p>iv. No limit will be set to the number of legal visits an inmate may receive. Legal visits will be kept within the framework and times of normal business hours whenever possible. Prior approval from the Superintendent or designee should be received for legal visits expected to exceed normal business hours. v. Pertinent legal materials may be brought for use during the visit but must be inspected by correctional staff and must leave the institution with the legal visitor, unless other arrangements have been made.</p>	<p>of this directive.</p> <p>... b. Incoming Privileged Correspondence i. Incoming correspondence will be treated as privileged only if it is in an official envelope, with a verifiable return address and from an individual, agency, or organization covered by definition as “privileged” in this directive. ii. Incoming privileged correspondence will be handled in the same manner as incoming general mail, and will not be opened outside the presence of the inmate to whom it is addressed.</p>
<p>Virginia</p> <p><i>Regulations/Guidance</i></p> <p>The Virginia Department of Corrections operating procedures apply to state facilities. Jails and lockups must conform to the Minimum Standards For Jails And Lockups</p>	<p>Phone</p> <p>Operating Procedure 803.3 Offender Telephone Service (state facilities) C2. Blocking Attorney Calls from Recording and Monitoring a. It is the offender’s responsibility to request a recording block to prevent recording and monitoring of an attorney call using a Request to Block Attorney Numbers. b. Facility staff will email the completed Request to Block Attorney Numbers to GTL at va_att_form@gtl.net. c. GTL staff should process the Request within two days. i. When GTL staff cannot process the Request within two days for any reason, they must notify the Facility Unit Head and the Operations Support Manager. ii. The Facility Unit Head will ensure that the offender is provided the opportunity to speak to their attorney using the administrative phone system.</p>	<p>Visitation</p> <p>Operating Procedure 85.1.1 Visiting Privileges (state facilities) B. Legal Visits 1. An attorney or representative acting on the attorney’s behalf on official business may qualify for a legal visit with an inmate or probationer/parolee. a. An attorney or the attorney’s legal representative may request to visit with an inmate or probationer/parolee by submitting a Legal Visit Request to the Facility Unit Head or designee. i. In the absence of Court documents requiring the visit, legal visits will be limited to attorneys and legal representatives of law firms with a current attorney-client relationship with the inmate or probationer/parolee. ii. The Legal Visit Request must be submitted with reasonable advance notice, normally 48 hours but not less than 24 hours, of the intended visit.</p>	<p>Mail</p> <p>Operating Procedure 803.4 Central Mail Distribution Center (state facilities) I. Legal Correspondence Processing A. All inmate and CCAP probationer/parolee legal correspondence must be mailed directly to the Central Mail Distribution Center at 3521 Woods Way, State Farm, Virginia 23160 for screening and inspection, prior to delivery to the facility and issuance to the inmate or CCAP probationer/parolee. 1. Facility mailroom staff will return all legal correspondence received at the facility that is not received from the Central Mail Distribution Center to the sender and will notify the sender of the reason for return using the Notice of Unauthorized Correspondence 803_F2. 2. Facility mailroom staff will provide the inmate or CCAP probationer/parolee with a copy of the Notice of Unauthorized Correspondence as notification that the correspondence was returned. B. Initial Check-in Process</p>

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<p>d. Numbers are subject to verification, including the existence of a bona fide attorney-client relationship.</p> <p>e. Home numbers of attorneys will not be permitted unless the attorney’s office of record and their residence are the same.</p> <p>f. Paralegals and investigators are not considered attorneys for the purpose of blocking call recording and monitoring.</p> <p>g. A recording block will only be provided upon verification by the vendor that the telephone number is for an attorney or law firm.</p> <p>h. The offender will not receive a confirmation that the recording block is in effect. When a recording block is in effect, the message at the beginning of the call will not say that the call is being monitored and recorded.</p> <p>i. If an area code split affects a number with a recording block, it is the offender’s responsibility to resubmit the changes to continue to have the number blocked from monitoring and recording.</p> <p>Minimum Standards For Jails And Lockups (jails and lockups)</p> <p>6VAC15-40-660. Access to telephone facilities. Written policy, procedure, and practice shall ensure inmates have reasonable access to telephone facilities, except where safety and security considerations are documented.</p>	<p>iii. Visits will occur during normal working hours of the facility unless otherwise approved by the Facility Unit Head or designee.</p> <p>iv. The Facility Unit Head or designee will review the Request and notify the attorney or attorney’s legal representative of the decision.</p> <p>b. A Court Order is required to take an inmate’s or probationer’s/parolee’s deposition in a facility; video depositions will never be required nor will they be allowed.</p> <p>c. A Court Order is required for an expert to evaluate an inmate or probationer/parolee for a Court proceeding, unless the evaluation is initiated by the DOC or the Office of the Attorney General.</p> <p>d. Attorneys and their legal representatives will be required to present a government-issued identification card in order to enter the facility for a scheduled legal visit.</p> <p>i. An attorney must also present their State Bar Association card.</p> <p>ii. Legal representatives must present a letter on official letterhead signed by the attorney or law firm authorizing the representative to visit on the attorney’s behalf.</p> <p>e. Conditions for inmate or probationer/parolee visits with an attorney or a legal representative must maintain the confidentiality of the attorney-client conversations while ensuring proper security and sight supervision.</p> <p>i. Conversations between attorneys and an inmate or probationer/parolee are monitored only by sight.</p> <p>ii. Attorneys and legal representatives must not give any articles directly to the inmate or probationer/parolee.</p>	<p>1. Upon receipt of legal correspondence, Central Mail Distribution Center staff will enter the following information into the center’s electronic log system:</p> <p>a. Date received</p> <p>b. Inmate or CCAP Probationer/Parolee Name</p> <p>c. DOC Number</p> <p>d. Sender’s information from the outer envelope</p> <p>e. Correspondence Acceptance or Rejection based on but not limited to the following:</p> <p>i. Unable to identify recipient due to full name or DOC number not provided</p> <p>ii. Package does not appear to be legal correspondence</p> <p>iii. Unable to identify sender as an attorney, law firm, legal services provider, court, or governmental office</p> <p>2. Central Mail Distribution Center staff will conduct a preliminary review to confirm the validity of the legal correspondence prior to forwarding the incoming legal correspondence to the screening area for inspection.</p> <p>a. Central Mail Distribution Center staff must not open legal correspondence under any circumstances.</p> <p>b. Central Mail Distribution Center staff must not reject or return the legal correspondence to the sender without approval from the Central Mailroom Distribution Supervisor.</p> <p>c. When applicable, the reason for rejection, i.e., unable to verify law office, or attorney denies affiliation, etc. must be provided unless doing so would compromise an investigation.</p> <p>3. After completing the preliminary review, Central Mail Distribution Center staff must forward the legal correspondence to the screening area before the legal correspondence is returned to the sender.</p> <p>C. Screening and Inspection (5-ACI-7D-08; 2-CO-5D-01)</p> <p>1. All unopened legal correspondence, accepted and rejected, must be forwarded to the screening area where</p>	<p>1. Upon receipt of legal correspondence, Central Mail Distribution Center staff will enter the following information into the center’s electronic log system:</p> <p>a. Date received</p> <p>b. Inmate or CCAP Probationer/Parolee Name</p> <p>c. DOC Number</p> <p>d. Sender’s information from the outer envelope</p> <p>e. Correspondence Acceptance or Rejection based on but not limited to the following:</p> <p>i. Unable to identify recipient due to full name or DOC number not provided</p> <p>ii. Package does not appear to be legal correspondence</p> <p>iii. Unable to identify sender as an attorney, law firm, legal services provider, court, or governmental office</p> <p>2. 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All unopened legal correspondence, accepted and rejected, must be forwarded to the screening area where</p>
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		<p>(a) Legal documents must be searched, not read, by the Corrections Officer supervising the visit who will then hand the documents to the inmate or probationer/parolee.</p> <p>(b) Legal documents must be in paper format, no CD's, DVD's, flash drives, or other data storage formats will be given to the inmate or probationer/parolee.</p> <p>f. All photographs and audio or video recordings made at the facility in connection with a legal visit must be requested in advance of the legal visit and approved by the Facility Unit.</p> <p>i. The attorney or attorney's legal representative is responsible to provide documentation of the specific legal necessity to make a photograph, audio, or video recording.</p> <p>ii. This documentation must include the specific court case or other legal authorization and attach any Court Orders.</p> <p>iii. The Facility Unit Head or their designee may contact the Office of the Attorney General for guidance in individual cases.</p> <p>Minimum Standards For Jails And Lockups (jails and lockups) 6VAC15-40-1330. Attorney visits.</p> <p>Written policy and procedures shall ensure that attorneys are permitted to have confidential visits with detainees.</p>	<p>it will be screened by a Canine Detection team and scanned using a security X-ray screening unit, ion scanner or any other reliable detection equipment.</p> <p>2. When the Canine Detection team, security X-ray screening unit, ion scanner or other reliable detection device indicates the presence of contraband, staff must immediately notify the Central Mailroom Operating Procedure 803.4, Central Mail Distribution Center Effective Date: July 1, 2022 VIRGINIA DEPARTMENT OF CORRECTIONS Distribution Supervisor and secure the legal correspondence as evidence; see Operating Procedure 030.1, Evidence Collection and Preservation, for guidance on the collection, documentation, control and preservation of legal correspondence as evidence.</p> <p>a. Staff will verify that the address is legitimate, contact the law office to confirm the legal correspondence with the attorney, and verify the attorney's bar number if provided on the outside of the envelope; the results of verification must be documented in the Central Mail Distribution Center's electronic log system.</p> <p>b. Security staff will contact the facility and arrange for a polycom using the telejustice system.</p> <p>i. Staff will open the legal correspondence in the presence of the inmate or CCAP probationer/parolee.</p> <p>ii. Prior to opening the legal correspondence, security staff will establish ownership from the inmate or CCAP probationer/parolee and will record the event. c. In the event a telejustice polycom is not feasible, staff will notify the Special Operations Unit Drug Task Force Team who will arrange for a drug task force agent, Canine Officer, or Special Investigations Unit (SIU) Special Agent to pick-up and hand deliver the evidence to the inmate's or CCAP probationer's/parolee's assigned facility in order to</p>
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			<p>maintain the integrity of the chain of custody process.</p> <p>d. When contraband is found, Central Mail Distribution Center staff will provide written notification of the rejected, nondelivered correspondence to the sender using the Notice of Unauthorized Correspondence 803_F2 with a copy provided to the inmate or CCAP probationer/parolee unless doing so would compromise an investigation. (5-ACI-7D-05; 4-ACRS-6A-08)</p> <p>e. Central Mail Distribution Center staff must not reject legal correspondence without approval of the Central Mailroom Distribution Supervisor.</p> <p>3. When contraband is not detected, staff will forward the unopened legal correspondence to the all-clear area where the legal correspondence will be sent by USPS priority express delivery to the appropriate facilities daily for processing and delivery to the inmate or CCAP probationer/parolee in accordance with Operating Procedure 803.1, Inmate and Probationer/Parolee Correspondence.</p> <p>Minimum Standards For Jails And Lockups (jails and lockups)</p> <p>6VAC15-40-640. General and legal correspondence. All general correspondence may be opened, examined, and censored by authorized personnel as per the USPS Administrative Support Manual, Section 274.96. If searched, all legal correspondence shall be opened in the presence of the inmate.</p>
<p>Washington <i>Regulations/Guidance</i></p> <p>* Washington Department of Corrections policies and regulations apply to state</p>	<p>Phone</p> <p>WAC 137-48-080 Telephone usage (state facilities)</p> <p>(3) The superintendent shall promulgate written regulations outlining the hours of telephone availability, maximum length of calls (not less than five minutes), limitations on telephone use, and</p>	<p>Visitation</p> <p>WAC 137-48-030 Inspection of Mail (state facilities)</p> <p>(3) Mail (incoming or outgoing) which is clearly identified on the outside of the envelope as legal mail, as defined in WAC 137-48-020, shall be inspected only in the presence of the individual.</p>	<p>Mail</p> <p>DOC 150.150 Visits and Tours of Department Facilities and Offices (state facilities)</p> <p>F. Professional visitor (eg attorney, clergy, social worker not escorting a minor, victim advocate) visiting a Department facility will be processed per local procedures</p>

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<p>facilities. County and city jails are locally managed.</p>	<p>provisions for monitoring, recording, and operator-announced calls as provided for in RCW 9.73.095.</p> <p>DOC 450.200 Telephone Use by Incarcerated Individuals (state facilities)</p> <p>E. Calls to the Office of Correctional Ombuds (OCO), Attorneys, and Consular Officers</p> <p>1. Calls on a telephone designated for incarcerated individuals to call their attorney or OCO will not be intercepted, recorded, or monitored. This includes calls placed on a TTY/TTD or VRS.</p> <p>a. To ensure that calls from individuals are not recorded, attorneys will provide their telephone number to the Chief of Investigative Operations/designee, who will verify the number with the applicable bar association</p> <p>b. Individuals may call their attorney ayt another telephone number, but those calls may be recorded</p> <p>See also Attorney Communication with Individuals Incarcerated at DOC</p>	<p>Legal mail shall not be read but may be inspected in the presence of the individual to verify legal mail status and that the mail is free of contraband.</p>	
<p>West Virginia</p>	<p>Phone (no information located)</p>	<p>Visitation</p>	<p>Mail</p>
<p>Wisconsin</p> <p><i>Regulations/Guidance</i></p> <p>* Wisconsin Department of Corrections policies and regulations apply to state facilities. County and city jails are locally managed.</p>	<p>DOC 309.405 Telephone calls to attorneys. (state facilities)</p> <p>(1) Inmates may call attorneys regarding legal matters with the permission of the appropriate staff member. Such calls may be made regardless of the inmate's security status.</p> <p>(2) An inmate's telephone calls to an attorney are not subject to the maximum limit in number, and an attorney's name need not be on the inmate's approved visiting list.</p>	<p>DOC 309.10 Special visits. (state facilities)</p> <p>(1) Public officials, elected tribal officials, tribal judges, and members of private and public organizations who provide services to inmates may visit institutions with the approval of the warden. These visitors shall make arrangements for all such visits in advance with the warden to minimize interference with normal operations and activities. The warden may limit the duration of such visits for security reasons. A person who has not attained the</p>	<p>DOC 309.04 Inmate mail (state facilities)</p> <p>(3) Institution staff may not open or read for inspection mail sent by an inmate to any of the parties listed in pars. (a) to (j), unless the security director has reason to believe that the mail contains contraband. Institution staff may open mail received by an inmate from any of these parties in the presence of the inmate. Staff may inspect the document but only to the extent necessary to determine if the mail contains contraband, or if the purpose is misrepresented. Staff may read the mail if staff has reason</p>

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<p>Wyoming Statutes</p> <p><i>Regulations/Guidance</i></p> <p>* Wyoming Department of Corrections policies and regulations apply to state facilities. County and city jails are locally managed.</p>	<p>(3) An inmate's telephone calls to an attorney shall be made collect unless payments from the inmate's general account is approved.</p> <p>(4) Staff shall give permission for calls to attorneys for the following reasons:</p> <ul style="list-style-type: none"> (a) To allow an inmate to return a call from an attorney. (b) When there is a statutory time limit that would be missed and the inmate needs to convey information to the attorney. (c) When it appears to staff that a call to an attorney is in the best interest of the inmate. (d) When an inmate is unable to write. (e) When an emergency exists. 	<p>age of 18 may not participate in any group visit except with the approval of the warden, unless the person is a family member on the inmate's approved visitor list.</p>	<p>to believe it is other than a legal document. The department shall process contraband in accordance with sub. (4) (e) (intro.) and 1., (f) and (g). This subsection applies to mail clearly identifiable as being from one or more of the following parties:</p> <ul style="list-style-type: none"> (a) An attorney.
<p>Wyoming Statutes</p>	<p>Phone</p>	<p>Visitation</p>	<p>Mail</p>
<p>* Wyoming Department of Corrections policies and regulations apply to state facilities. County and city jails are locally managed.</p>	<p><u>Wyoming DOC Policy and Procedure 5.402 Inmate Telephone Access</u> (state facilities)</p> <p>IV(D. Monitoring and Recording of Inmate Calls for security purposes, with the following exceptions:</p> <ul style="list-style-type: none"> i. Legal Calls. Calls between an inmate and an attorney, court or court official, legal aid bureau, or other agency providing legal services to inmates must generally be placed using the automated inmate telephone system. a. Calls between an inmate and an attorney, court or court official, legal aid bureau, or other agency providing legal services to inmates, which are made using the inmate telephone system to pre-registered attorney phone numbers recognized by the automated inmate telephone system, will not be monitored or recorded. b. Either the inmate or the attorney, court or court official, legal aid bureau, or other agency 	<p><u>Wyoming DOC Policy and Procedure 5.403 Inmate Access to Attorneys</u> (state facilities)</p> <p>IV(A)(3)</p> <ul style="list-style-type: none"> i. When authorized, visitation in a WDOC correctional facility is permitted, neither as a matter of right nor as a privilege of the inmate or the inmate's visitor. Rather, visitation is permitted when it is consistent with the safe, secure and orderly management and operation of the facility. a. Attorney visits requested in accordance with this policy will normally be authorized unless WDOC has reasonable suspicion that permitting the visitation would jeopardize the safety, security, health or good order of the facility, and/or the safety and security of other inmates, staff, visitors, contractors, or the community. b. Specific reasons for denial of a visiting request pursuant to this policy include, but are not limited to, the following: 	<p><u>Wyoming DOC Policy and Procedure 5.401 Inmate Mail</u> (state facilities)</p> <p>B. General Guidelines for Privileged Mail</p> <ul style="list-style-type: none"> 1. Legal Mail and Official Mail Treated as Privileged Mail. Both legal mail and official mail qualify as privileged mail and will be handled in accordance with this section. (ACI 5-7D-4492) 2. Mail To or From WDOC. <ul style="list-style-type: none"> i. Mail addressed to or from the Director of WDOC will be handled as "Official Mail" and may be mailed or placed into intra-agency mail by mail room staff. ii. Mail to WDOC staff other than the Director is not "Official Mail". Mail sent to a staff not located at the inmate's home institution, outside of the inmate grievance process and disciplinary appeals, will require individual postage and will be handled as non-privileged mail. <ul style="list-style-type: none"> a. Grievance and disciplinary appeals will not require postage; facilities shall ensure a procedure is in place for processing said appeals.

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	<p>providing legal services to inmates, whose phone numbers are not pre-registered with and recognized by the automated inmate telephone system, may request registration of the number in writing to the CEO.</p> <p>c. Inmates may do so by listing the attorney and his/her contact information on the WDOC Form #507, Inmate Calling List Request Form.</p> <p>d. Legal telephone number registration requests will not be counted as modifications, deletions or additions to the approved calling list under section IV.A.3, of this policy.</p>	<p>(1) The prospective visitor has previously introduced contraband into a jail or other corrections facility, or there is reasonable suspicion that the prospective visitor will introduce contraband into a WDOC correctional facility through the visiting process; or</p> <p>(2) The inmate or prospective visitor has previously disrupted the visiting process or violated visiting rules and procedures within a jail or other corrections facility by words or acts, or there is reasonable suspicion that the inmate or prospective visitor will disrupt the visiting process or violate visiting rules and procedures within a WDOC correctional facility by words or acts.</p> <p>B. Arrangements for Attorney Visits. Arrangements may be made for an attorney/authorized legal representative to meet with the inmate who is his/her client during any regularly scheduled inmate visiting period.</p> <p>1. The attorney shall be required to contact the correctional facility where the inmate is located by telephone or fax, at least one (1) work day prior to the attorney or the attorney's authorized representative's arrival at the correctional facility, to schedule the inmate for a visit. Notice is normally expected to also occur at least twenty-four (24) hours in advance of the requested visit.</p> <p>2. At the time of contact, the attorney will be asked to provide the name and institution number of the inmate to be visited; the name, address, telephone number and Bar Card Number of the attorney; the expected time of arrival and projected length of the visit, and if the visit is a personal social visit or a legal visit.</p> <p>...</p>	<p>3. Mail More than Three (3) Inches Thick. Mail, other than "official mail" or "legal mail" more than three (3) inches in thickness, regardless of other dimensions, will be handled as a package and will be returned to the sender unless receipt has been pre-approved using WDOC Form #522, Package Authorization.</p> <p>4. Privileged Mail Not Marked As Such. Mail which otherwise qualifies as legal or official mail, but that lacks the proper designation as "LEGALMAIL" or "OFFICIAL MAIL," shall be processed as non-privileged mail (i.e., opened and inspected) outside the inmate's presence and shall not be considered privileged mail accidentally opened.</p> <p>i. Mail that is received by a WDOC correctional facility, addressed to an inmate, and which has a return address that is clearly from a court or official shall be treated as "Legal Mail" or "Official Mail", even if it is not properly marked.</p> <p>ii. Correspondence from attorneys must be marked as "Legal Mail" in order for it to be processed as privileged mail, even if the address appears to be from an attorney.</p> <p>5. Privileged Mail to Be Logged. All incoming and outgoing legal mail and official mail will be logged by the warden or designee.</p> <p>i. The log shall include date, sender and recipient, and logging staff member.</p> <p>ii. The log will also reflect any accidental opening of privileged mail.</p> <p>iii. The full name and initials of the staff member doing the logging must appear on each page of the log book to allow for identification of the staff member for future reference.</p> <p>iv. Outgoing legal mail shall be date stamped the day it is received by mailroom staff despite any necessary time for processing.</p>
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	<p>C. Attorney Visiting Rules. Attorneys/authorized representatives shall be required to follow the rules of WDOC and the correctional facility.</p> <p>...</p> <p>iii. Recording devices of any kind, cameras, cell phones, pagers, etc. may not be brought into the visiting room.</p> <p>a. The use of audio or audio/video recording devices may be authorized for depositions, etc., when previous arrangements have been made with the warden's office at least one (1) work day in advance and approval has been provided in writing. Notice is normally expected to also occur at least twenty-four (24) hours in advance of the requested visit.</p> <p>E. Attorney Visit as Privileged Visit. If none of the subdivisions of Paragraph D.1., above, apply then the visit shall be conducted as a privileged visit in the open visiting room or other designated space.</p> <p>1. If the visit is privileged in nature, arrangements may be made upon request for the meeting to occur in a more private area of the open visiting room where discussion between the inmate and attorney can be more confidential.</p> <p>F. General Provisions Applying to All Attorney Visits</p> <p>1. Visual observation shall be maintained throughout the visit to ensure safety and security considerations are met.</p> <p>2. An inmate may refuse to visit with the attorney/authorized representative, with such refusal to be noted by staff on WDOC Form #509, Special Visit Form, for tracking and filing purposes.</p>	<p>6. Search of Privileged Mail. Inmates are permitted to send sealed letters to a class of persons and organizations identified within the definitions in this policy and procedure of legal mail and official mail, including but not limited to the following: courts, counsel; officials of the confining authority; state and local chief executive officers; administrators of grievance systems; and members of the paroling authority.</p> <p>i. Staff, in the presence of the inmate, may be allowed to inspect outgoing privileged mail for contraband before it is sealed.</p> <p>ii. Legal mail and official mail sent to inmates shall be opened and inspected for contraband in the presence of the inmate addressee as provided in WDOC Policy and Procedure #3.013, Searches.</p> <p>a. The inspection shall be done by the staff member delivering the mail to the inmate, unless waived in writing by the inmate, or unless approved in advance in writing by the CEO or acting CEO using WDOC Form #306, Search of Inmate's Legal Material, for opening and inspection outside the presence of the inmate in circumstances which may indicate contamination.</p> <p>iii. Incoming legal mail and official mail shall not be examined, scan searched, read, or photocopied by staff, unless authorized in advance in writing by the warden using WDOC Form #306, Search of Inmate's Legal Material.</p> <p>a. Such authorization shall be based upon documentation showing there is a reasonable suspicion that the content is not in fact privileged matter or otherwise violates section IV.E.6 (Criteria for Rejection of Mail) of this policy.</p> <p>7. Accidental Opening of Privileged Mail. The inmate addressee shall be informed in writing of the circumstances of accidental openings of legal mail or official mail outside</p>
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		<p>3. Attorney visits may be arranged after normal visiting hours with the prior approval and scheduling by the correctional facility warden in unique circumstances, such as attorney visitation with a condemned inmate within three (3) days of a scheduled execution.</p> <p>4. If the inmate becomes disruptive or the inmate or visitor creates a disturbance during the attorney/authorized representative visit, the visit will be immediately terminated and documented as staff report on WDOC</p>	<p>the inmate's presence using WDOC Form #523, Notification of Privileged Mail Accidentally Opened.</p>
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APPENDIX F

**Committee questions and answers compiled for review
at September 21, 2022 meeting**

Committee to Ensure Constitutionally Adequate Contact with Counsel – Compiled Questions and Answers from the First Meeting

Wednesday, September 21, 2022

Department of Public Safety – Paul Cavanaugh

Questions

1. With regard to the confidentiality of attorney-client telephone conversations for persons who are in custody in a jail, municipal detention facility or correctional facility:
 - A. Please provide copies of any training materials, policies, procedures or guidance that are provided to members of the Maine State Police. .

Please provide materials related to procedures to be followed by a member of the Maine State Police who comes into possession of attorney-client telephone conversations.

Answers

- 1(A). The MSP has a directive to its members that they are not to listen to phone calls between anyone in custody and their attorneys. Should such a call be identified while the member is listening, the member is to immediately stop listening, document relevant information about the call and how long they listened and report the incident to their supervisor and appropriate prosecutorial office. There are no documents or material to provide the committee.
- 1(B) Our answer is the same here as above.

Maine Criminal Justice Academy – Director Desjardins

Questions

During the course of the meeting, the Committee discussed training of correctional officers, law enforcement officers and requested more information regarding the extent to which correctional officers and law enforcement officers are trained about how to ensure attorney - inmate confidentiality. This includes confidentiality during attorney calls, attorney visits, and of the handling of legal mail and documents. Does the MCJA have written training materials related to these topics? If so, could you please provide them to us?

Answers

As you're probably aware the Mainer Criminal Justice Academy's Board of Trustees approves the curricula for the basic certification training and certifies all law enforcement and corrections officers in Maine. The current basic training programs for both corrections and law enforcement have lesson blocks with sections that inform the students on the constitutional protections of individuals and includes attorney/client privilege.

The Basic Law Enforcement Training Program (BLETP) has additional instruction related to Constitutional protections, including Admissions and Confessions and the guidance from Supreme Court decisions, i.e. the Mirada decision and other prevailing legal decisions. These

blocks are typically delivered by attorneys from the Maine Attorney General's Office and have been a part of our curricula for many years.

Topics related to facility policies, internal system management, managing interactions with attorneys, etc. wouldn't fall within the scope our basic training programs nor does the Academy have exclusive jurisdiction in these regards. I would defer to the specific agencies on how they train locally on specific or advanced trainings methods .

Attached are a few examples of the training goals and objects in our basic training programs and I'm happy to help provide additional information or refer you to the instructors that cover the material.

Attachments

- *3.1.0 Constitutional Law final LP*
- *3.3.0 Search and Seizure*
- *3.4.0 Admissions & Confessions*
- *3.5.0 Maine Criminal Law & Investigations*
- *BCTP Curriculum Outline*
- *Corrections Law Lesson Plan*

Attorney General's Office- Lisa Marchese

Questions

1. The Committee requests copies of any training materials provided by the Office of the Attorney General to AAGs or Office of the Attorney General investigators related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.
2. The Committee requests copies of any policies, procedures, or guidance materials related to the use and confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations, including any materials related to procedures to be followed in the event an AAG or investigator comes into possession of confidential communications.

Answers

The Office of the Attorney General has no written training material or policies, procedures or written guidance relating to confidential communications with DOC or County jail residents. I have been with the Criminal Division of the Attorney General's Office for 36 years, the last 8 years as Division Chief, and I would represent that we maintain very few written policies or procedures that govern our day to day practice. Although there is no written training material or guidance as it relates to privileged communications, we have a very specific practice in place if an AAG or a law enforcement officer we are working with comes into possession of privileged communications. This practice has been discussed with attorneys in the criminal division on numerous occasions and with the law enforcement agencies we work with. I wish to assure you and all individuals working on this important issue that the prosecution team, including law

enforcement, does not want to possess or listen to any privileged communications. We recognize and respect that a person has a constitutional right to confidential communications with their attorney. If an AAG or law enforcement officer we are working with believes they have been inappropriately provided a privileged call, that person immediately stops listening to the recording. If it is a law enforcement officer, that officer notifies the AAG assigned to the case, who immediately notifies me as the Division Chief and the defense attorney. If an AAG comes into possession of a privileged phone call, that attorney stops listening and notifies me as the Division Chief and the defense attorney. At this point in the process, we defer to the defense attorney as to how the recording should be handled. Different defense attorneys take different approaches. In most cases, the Court is notified.

Although the OAG does not have written policies or procedures relating to privileged calls, in July of 2020, the OAG collaborated with the District Attorneys and sent a letter to all Sheriff and Jail Administrators, with a copy to the Executive Director of MCLIS, reminding them of the importance of protecting privileged communications.

Attachments

- *Jail cell letter*

Department of Corrections – Commissioner Liberty

Questions

The *Committee to Ensure Constitutionally Adequate Contact with Counsel* held its first meeting on Wednesday, September 7. During the course of the meeting, the Committee identified a number of questions and requests for the Department of Corrections. Those questions are below:

1. The Committee requests copies of any correctional officer training materials provided by or known to the DOC related to confidentiality of attorney communications with residents at DOC facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.
2. The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with residents at DOC facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations.
3. The Committee requests copies of any written materials that are provided or available to residents regarding recording of telephone calls. If no such information is provided, it would be helpful to know that as well.
4. The Committee requests copies of any forms provided to residents that are used by the resident to provide the telephone numbers of their attorneys for the purpose of ensuring confidentiality of attorney calls.
5. The Committee requests copies of any policies, procedures, or guidance, including materials related to the use of video, laptops, or electronic means by a resident to confidentially communicate with attorneys.

6. The Committee requests copies of any policies, procedures, or guidance, including materials related to ensuring confidentiality of attorney visits with residents at DOC facilities.
7. The Committee requests copies of any policies, procedures, or guidance, including materials related to ensuring confidentiality (including storage policies) of legal materials held by residents at DOC facilities.
8. The Committee would like copies of any policies regarding strip/ body searches of residents following visits by attorneys to residents of Long Creek Development Center.
9. The Committee requests staffing data for DOC facilities, including, to the extent this information is available, the total positions at each facility and the current vacancy rate.
10. The Committee is interested in better understanding the degree to which the DOC provides guidance, technical assistance or oversight to DOC and to county and municipal facilities to help those facilities ensure that attorney client confidentiality is maintained.
11. The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with DOC residents who are present in courthouses.

Answers

1. Staff receive initial training during their Maine Criminal Justice Academy program, including a course titled Corrections Law which specifically addresses the issue of privileged communication.
 - Attached is the PowerPoint for this course.
 - Staff are also provided refreshed trainings throughout their employment on the issue of privileged communication.
 - MDOC facility staff are required to read and sign off that they understand the pertinent policies.
2. Attached are MDOC policies that include and or overlap with the topic of privileged communication:
 - Adult Facility Policy 21.2,
 - Prisoner Mail, Procedure D and Procedure K.1;
 - Adult Facility Policy 21.3, Prisoner Telephone System, Procedures A.16, 17, 18, Procedure B, and Procedure F.1;
 - Adult Facility Policy 21.4, Prisoner Visitation, Procedure A.10, 18 and Procedure K.1;
 - Juvenile Facility Policy 16.1, Resident Mail, Procedure A.13, Procedure C;
 - Juvenile Facility Policy 16.2, Access to Telephones, Procedure A. 11, 12, 13, Procedure C, and Procedure G.1;
 - Juvenile Facility Policy 16.3, Visitation, Procedure A.10, 15 and Procedure O.1.

- Juvenile Facility Policy 14.1, Access to Legal Rights.
3. Residents of MDOC facilities receive a number of written documents that mention this topic, including:
- The adult facility phone policy is in each adult facility library and uploaded onto the facility Edovo tablet system.
 - The juvenile facility phone policy is in the Long Creek library.
 - The handbooks (attached) also make reference to the topic
 - Mountain View, pages 10, 23
 - Maine State Prison, page 23
 - Bolduc Correctional , page 41
 - Downeast Correctional Facility, page 18
 - Women’s Services (MCC female), page 25
 - Maine Correctional Center (male), pages 27-29
 - The general phone policy (attached as Policy Supplemental to Handbook) is also contained in the adult facility handbooks
 - In all MDOC facilities (including juvenile) there are signs next to the resident phones that state:

“WARNING It is possible that communications by or with prisoners (residents) made through any phone used by prisoners (residents) will be listened to and/or recorded by an investigative officer or other employee of the Maine Department of Corrections authorized to exercise law enforcement powers. This does NOT apply to attorney/client privileged calls.”

4. Residents of adult facilities fill out the attached form called Legal phone call list form .i.e., *Resident Telephone System Legal Call Number List*.

Juveniles at LCYDC do not need a form, as each juvenile has an attorney, and the facility is aware who represents each juvenile. The phone numbers for these attorneys are all designated as privileged.

- If a juvenile wants to designate an additional attorney, they simply inform LCYDC staff. The addition happens seamlessly.
5. Generally speaking the MDOC does not encourage the use of video visitation, texting, and/or email for privileged communication between a resident and their legal counsel. Primarily because:
- Resident use of email via departmental issued laptops and/or computer is only approved for those residents in certain educational programs.
 - “Video visitation” is a term MDOC uses to designate a virtual visit by a family member/friend and includes a process for signing up for and agreeing to the technology utilization and other requirements for these sorts of visits.
 - Those residents with access to text messaging via the Edovo tablet system are aware there is no way to designate recipients of text messages are legal counsel, and therefor there should be no belief that text messages can remain confidential.

6. Many of the attached policies relate to this question, including:

- Adult facility visit policy (Procedure A.10, 18 and Procedure K.1);
- Juvenile facility visit policy (Procedure A.10, 15 and Procedure O.1);
- Signs in the visit rooms at all the MDOC facilities, including the juvenile facility state clearly:

“WARNING It is possible that communications by or with prisoners (residents) made during visits will be listened to and/or recorded by an investigative officer or other employee of the Maine Department of Corrections authorized to exercise law enforcement powers. This does NOT apply to attorney/client communications.”

7. The attached policies address this:

- The facility mail policy addresses
- The facility property policy
- Juvenile facility mail policy

8. The Committee would like copies of any policies regarding strip/ body searches of residents following visits by attorneys to residents of Long Creek Development Center.

Unclothed body searches of juvenile residents following visits from anyone (not exclusive to legal counsel) do not occur –unless there is reasonable suspicion that cannot be confirmed through less intrusive means.

- The attached juvenile facility visit policy outlines this (procedure L)
- LCYDC reports the last time an unclothed body search took place, post visit was prior to 2019.

9. As of 9/3/2022:

	Total # officer or juvenile program worker positions	Vacancies
MSP	206	45
MCC	167	53
MVCF	83	16
LCYDC	74	15
Total	530	129

10. The MDOC conducts reviews of county jails’ compliance to standards as outlined in the Detention and Correctional Standards for Maine Counties and Municipalities, which is attached as *jail standards*.

- Standard J.20 outlines the method for compliance related to privileged communication.

The MDOC is not aware of county jails requesting technical assistance related to this mandatory standard. The MDOC would provide assistance on this topic if requested.

11. This is outside the jurisdiction of the MDOC.

Attachments

- *Adult Facility Mail Policy – see meeting #1 materials*
- *Adult Facility Phone Policy – see meeting #1 materials*
- *Adult Facility Property Policy*
- *Adult Facility Visits Policy – see meeting #1 materials*
- *BCF Resident Handbook*
- *Corrections Law PowerPoint*
- *DCF Resident Handbook*
- *Jail Standards – see meeting #1 materials*
- *Juvenile Facility Mail Policy – see meeting #1 materials*
- *Juvenile Facility Phone Policy – see meeting #1 materials*
- *Juvenile Facility Visit Policy – see meeting #1 materials*
- *Juvenile Legal Rights Policy*
- *Legal Phone Call List Form*
- *MCC Male Resident handbook*
- *MSP Handbook*
- *MVCF Handbook*
- *Policy Supplement to Handbook*
- *Women’s Services Resident Handbook*

Maine Prosecutors Association – Maeghan Maloney

Questions

1. The Committee requests copies of any training materials provided by or known to the Maine Prosecutors Association related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. The Committee is particularly interested in any materials related to confidentiality of telephone conversations.
2. The Committee requests copies of any policies, procedures, or guidance, including materials related to confidentiality of attorney communications with residents at DOC facilities or inmates at county or municipal facilities. Again, the Committee is particularly interested in any materials related to confidentiality of telephone conversations, including any materials related to procedures to be followed in the event a DA or ADA or district attorney investigator comes into possession of confidential communications.

Answers

Attachments

- *DVI Policy*

APPENDIX G

DOC's Resident Telephone System Legal Call Number List

MAINE DEPARTMENT OF CORRECTIONS

RESIDENT TELEPHONE SYSTEM LEGAL CALL NUMBER LIST

Legal calls to the following (verified) attorneys, paralegals, private investigators/court clerk's offices/Maine Human Rights Commission/legal advocacy organizations
WILL NOT be recorded or listened to:

Name: _____ PIN # _____ MDOC # _____

Housing: _____ Signature: _____ Date: _____

Add (A) Delete (D)	Name of Legal Phone Call Recipient	Area Code	Telephone Number
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

APPENDIX H

September 24, 2020 MDEA interoffice memorandum

DEPARTMENT OF PUBLIC SAFETY
MAINE DRUG ENFORCEMENT AGENCY

INTEROFFICE MEMORANDUM

TO: MDEA ALL
FROM: ROY E. MCKINNEY, DIRECTOR
SUBJECT: CORRECTIONAL FACILITY INMATE CALLS DIRECTIVE
DATE: 9/24/2020
CC: FILE



Digitally signed by
RoyMcKinney409008334-71337
DN: c=US, o=Sprint, ou=External,
ou=eSite,
cn=RoyMcKinney409008334-713
37
Date: 2020.09.24 15:22:07 -04'00'

BACKGROUND:

It has recently come to the attention of some correctional facilities that not all attorney phone numbers had been flagged by inmate telephone providers. This has resulted in these privileged, confidential calls between attorney and client being included in those inmate's calls received by an investigator requesting inmate phone calls. Some of you may have already heard of or encountered this. This directive is not to be interpreted as any MDEA staff having purposefully listened to inmate-protected calls or that any don't understand that such calls are privileged communication.

To establish protocols for obtaining, reviewing and reporting when inmate calls are sought for investigative purposes, and to ensure continued total transparency and ethical practices by Maine Drug Enforcement personnel, all will adhere to the following directive.

If correctional facilities currently allow you, as a MDEA Special Agent, to have direct access to the jail telephone system you need to formally relinquish this direct access immediately notifying the jail recording system manager to revoke your access. Deputy sheriffs assigned to MDEA may retain this access should their Sheriff require it. However, those MDEA staff will not use that access in support of your MDEA duties. The only exception to this is if, as a deputy sheriff, the MDEA agent is designated as the jail's point of contact for phone recording requests submitted by MDEA.

PROCEDURE:

ALL requests for inmate calls will only be made in writing and transmitted by State of Maine email by the requesting officer to the correctional facility point-of-contact for MDEA inmate phone recording requests.

The request will document that:

- A. You are requesting calls only specific to an ongoing investigation or pending prosecution;
- B. MDEA incident #;
- C. The inmate's name;
- D. Timeframe of the call recording request; and
- E. Include a statement that "no attorney calls are to be included."

Only an officer will make requests and listen to the calls received from the jail. A copy of the call(s) may be provided to the case prosecutor.

Upon receiving the recording(s), the requesting officer will immediately complete a supplemental report detailing the request for inmate call(s), number of recorded calls that were received and what medium they are stored in, which is labeled and made part of the case file. The email message requesting the calls is to be included with the supplemental report and both uploaded to the applicable Spillman incident after supervisor review and approval.

If during the review of a recording an officer discovers a conversation between an inmate and their attorney, they will immediately stop the recording playback.

The officer will then immediately notify the following of their discovery:

- A. Their supervisor and commander by email;
- B. The correctional facility point-of-contact for MDEA inmate phone recordings; and
- C. The case prosecutor.

In addition, the officer will return the recording(s) containing the privileged call to the jail's point-of-contact and request another without the privileged call. A supplemental report detailing this will be completed.

For any clarification, do direct questions to your respective commanders.

APPENDIX I-1

MCILS Notice to Counsel

Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, May 3, 2022 3:31 PM
To: MCILS
Subject: Jail Recording Notices
Attachments: MPA Noitce.05032022.pdf; OAG Notice.05032022.pdf; DOC Notice.05032022.pdf; Sheriffs and Jails Notice.05032022.pdf; York County Jail Notice.05032022.pdf; Securus Notice.05032022.pdf; Attorney Phone Numbers.05032022.xlsx

Good afternoon, counsel.

Attached to this email are documents that may be useful to you on the issue of jail recordings. These include the list of people we've received telephone numbers from, together with the notices I have sent to Securus, the Sheriffs, DOC, the Maine Prosecutors' Association, and the Office of the Attorney General. If you were one of the people who provided numbers that we included on the list, you may want to retain copies of these documents to eliminate any argument the State might raise on the issue of notice. At least for the reasonably foreseeable future, I am available to you to testify as to delivery of these missives, should that be helpful to your cases.

I am frustrated beyond belief that our efforts to address these issues through legislation were rebuffed. For now, this is what we can do. We will be back at it next session.

JWA

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

APPENDIX I-2

MCILS Notice to MPA

Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, May 3, 2022 3:23 PM
To: Maeghan Maloney
Cc: MCILS
Subject: FW: Attorney Phone Numbers
Attachments: Attorney Phone Numbers.05032022.xlsx

Good afternoon, Maeghan. Attached for delivery to you on behalf of the Maine Prosecutors' Association, please find a list of attorneys with the telephone numbers each uses to engage in privileged communication with clients.

JWA

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: Andrus, Justin
Sent: Tuesday, May 3, 2022 3:15 PM
To: MCILS <MCILS@maine.gov>; dale.lancaster@somersetcounty-me.org
Cc: esamson@androscoggincountymaine.gov; jchute@androscoggincountymaine.gov; vlangelier@androscoggincountymaine.gov; Shawn.Gillen@aroostook.me.us; Craig.I.Clossey@aroostook.me.us; Andrew.tomah@aroostook.me.us; Joyce@cumberlandcounty.org; Kortess@cumberlandcounty.org; Cholmes@cumberlandcounty.org; snichols@franklincountymaine.gov; dblauvelt@franklincountymaine.gov; skane@hancockcountysso.org; Trichardson@hancockcountysso.org; fdhepard@hancockcountysso.org; Kmason@kennebecso.com; Bsslaney@kennebecso.com; KhKarlsson@kennebecso.com; tcarroll@knoxcountymaine.gov; rwood@knoxcountymaine.gov; asmith@knoxcountymaine.gov; jmerry@sagadahoccountyme.gov; jbailey@tbrj.org; scarmichael@tbrj.org; cwainwright@oxfordcountysheriff.com; ddillingham@oxfordcountysheriff.com; tmorton@penobscot-sheriff.net; tmorton@penobscot-sheriff.net; Ryoung@piscataquis.us; Mlandry@piscataquis.us; Awintle@piscataquis.us; jmerry@sagadahoccountyme.gov; jbailey@tbrj.org; scarmichael@tbrj.org; DLancaster@SomersetCounty-ME.org; Cory.swope@somersetcounty-me.org; Cameron.Arcidi@somersetcounty-me.org; sheriff@waldocountyme.gov; correctionsadministrator@waldocountyme.gov; detentionmanager@waldocountyme.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; wlking@yorkcountymaine.gov; ncthayer@yorkcountymaine.gov; mtjones@yorkcountymaine.gov; ljmarks@yorkcountymaine.gov
Subject: Attorney Phone Numbers

Good afternoon.

The attorneys listed on the attached spreadsheet have provided the telephone numbers specified in response to an offer from the Maine Commission on Indigent Legal Services to gather and disseminate to you those telephone numbers each attorney uses to conduct privileged client-attorney communications. This list does not purport to be an exhaustive list of the telephone numbers attorneys do or may use to communicate with clients. These numbers, however, should be included among those that are marked exempt from monitoring, recording or distribution because they are used for privileged communications. In providing this list MCILS provides you notice of the risk that in monitoring, recording or permitting the recording of calls to or from these numbers you

risk monitoring or recording a privileged call; and, that in permitting or facilitating the monitoring, playback, copying, or distribution of calls to or from these numbers, you risk permitting or facilitating the monitoring, playback, copying, or distribution of a privileged call.

Nothing in this email or its incorporated list should be construed as permission or cause to delete or disregard any other number with respect to which you may have notice of the risk of recording or monitoring a privileged call.

If you have questions or concerns, you may email me at mcils@maine.gov.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

APPENDIX I-3

MCILS Notice to OAG

Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, May 3, 2022 3:20 PM
To: Frey, Aaron
Cc: Marchese, Lisa J; Gannon, Ariel; MCILS
Subject: FW: Attorney Phone Numbers
Attachments: Attorney Phone Numbers.05032022.xlsx

Good afternoon, everyone. Attached to this email please find a list of attorneys, together with the telephone numbers each uses to engage in privileged conversations with clients.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: Andrus, Justin <Justin.Andrus@maine.gov>
Sent: Tuesday, May 3, 2022 3:15 PM
To: MCILS <MCILS@maine.gov>; dale.lancaster@somersetcounty-me.org
Cc: esamson@androscoggincountymaine.gov; jchute@androscoggincountymaine.gov; vlangelier1985@yahoo.com <vlangelier@androscoggincountymaine.gov>; Shawn.Gillen@aroostook.me.us; Craig L. Clossey <craig.l.clossey@aroostook.me.us>; andrew.tomah <andrew.tomah@aroostook.me.us>; Joyce@cumberlandcounty.org; Kortess@cumberlandcounty.org; Cholmes@cumberlandcounty.org; snichols@franklincountymaine.gov; dblauvelt@franklincountymaine.gov; skane@ HancockCountyso.org; Trichardson@HancockCountyso.org; fdhepard@HancockCountyso.org; kmason <kmason@kennebecso.com>; Bsslaney@kennebecso.com; KhKarlsson@kennebecso.com; tcarroll@knoxcountymaine.gov; Robert Wood <rwood@knoxcountymaine.gov>; asmith <asmith@knoxcountymaine.gov>; Joel Merry <jmerry@sagadahoccountyme.gov>; jbailey@tbrj.org; scarmichael@tbrj.org; cwainwright@oxfordcountysheriff.com; ddillingham@oxfordcountysheriff.com; tmorton <tmorton@penobscot-sheriff.net>; tmorton <tmorton@penobscot-sheriff.net>; Ryoung@piscataquis.us; Mlandry@piscataquis.us; Awintle@piscataquis.us; Joel Merry <jmerry@sagadahoccountyme.gov>; jbailey@tbrj.org; scarmichael@tbrj.org; DLancaster@SomersetCounty-ME.org; Cory.swope@somersetcounty-me.org; Cameron.Arcidi@somersetcounty-me.org; sheriff@waldocountyme.gov; correctionsadministrator@waldocountyme.gov; detentionmanager@waldocountyme.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; wlking <wlking@yorkcountymaine.gov>; ncthayer <ncthayer@yorkcountymaine.gov>; mtjones@yorkcountymaine.gov; ljmarks@yorkcountymaine.gov
Subject: Attorney Phone Numbers

Good afternoon.

The attorneys listed on the attached spreadsheet have provided the telephone numbers specified in response to an offer from the Maine Commission on Indigent Legal Services to gather and disseminate to you those telephone numbers each attorney uses to conduct privileged client-attorney communications. This list does not purport to be an exhaustive list of the telephone numbers attorneys do or may use to communicate with clients. These numbers, however, should be included among those that are marked exempt from monitoring, recording or distribution because they are used for privileged communications. In providing this list MCILS provides you notice of the risk that in monitoring, recording or permitting the recording of calls to or from these numbers you

risk monitoring or recording a privileged call; and, that in permitting or facilitating the monitoring, playback, copying, or distribution of calls to or from these numbers, you risk permitting or facilitating the monitoring, playback, copying, or distribution of a privileged call.

Nothing in this email or its incorporated list should be construed as permission or cause to delete or disregard any other number with respect to which you may have notice of the risk of recording or monitoring a privileged call.

If you have questions or concerns, you may email me at mcils@maine.gov.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

APPENDIX I-4

MCILS Notice to DOC

Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, May 3, 2022 3:17 PM
To: Black, Anna
Cc: MCILS
Subject: FW: Attorney Phone Numbers
Attachments: Attorney Phone Numbers.05032022.xlsx

Good afternoon, Anna. Out of deference to our last communications, in which I understood that MCILS might have caused frustration by contacting members of DOC, I am sending this email directly and only to you. Attached please find a list of attorneys with the telephone numbers each uses to have privileged communications with their clients.

JWA

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: Andrus, Justin <Justin.Andrus@maine.gov>
Sent: Tuesday, May 3, 2022 3:15 PM
To: MCILS <MCILS@maine.gov>; dale.lancaster@somersetcounty-me.org
Cc: esamson@androscoggincountymaine.gov; jchute@androscoggincountymaine.gov; vlangelier1985@yahoo.com <vlangelier@androscoggincountymaine.gov>; Shawn.Gillen@aroostook.me.us; Craig L. Clossey <craig.l.clossey@aroostook.me.us>; andrew.tomah <andrew.tomah@aroostook.me.us>; Joyce@cumberlandcounty.org; Kortess@cumberlandcounty.org; Cholmes@cumberlandcounty.org; snichols@franklincountymaine.gov; dblauvelt@franklincountymaine.gov; skane@hancockcountysopro.org; Trichardson@hancockcountysopro.org; fdhepard@hancockcountysopro.org; kmason <kmason@kennebecso.com>; Bsslaney@kennebecso.com; KhKarlsson@kennebecso.com; tcarroll@knoxcountymaine.gov; Robert Wood <rwood@knoxcountymaine.gov>; asmith <asmith@knoxcountymaine.gov>; Joel Merry <jmerry@sagadahoccountymaine.gov>; jbailey@tbrj.org; scarmichael@tbrj.org; cwainwright@oxfordcountysheriff.com; ddillingham@oxfordcountysheriff.com; tmorton <tmorton@penobscot-sheriff.net>; tmorton <tmorton@penobscot-sheriff.net>; Ryoung@piscataquis.us; Mlandry@piscataquis.us; Awintle@piscataquis.us; Joel Merry <jmerry@sagadahoccountymaine.gov>; jbailey@tbrj.org; scarmichael@tbrj.org; DLancaster@SomersetCounty-ME.org; Cory.swope@somersetcounty-me.org; Cameron.Arcidi@somersetcounty-me.org; sheriff@waldocountymaine.gov; correctionsadministrator@waldocountymaine.gov; detentionmanager@waldocountymaine.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; wlking <wlking@yorkcountymaine.gov>; ncthayer <ncthayer@yorkcountymaine.gov>; mtjones@yorkcountymaine.gov; ljmarks@yorkcountymaine.gov
Subject: Attorney Phone Numbers

Good afternoon.

The attorneys listed on the attached spreadsheet have provided the telephone numbers specified in response to an offer from the Maine Commission on Indigent Legal Services to gather and disseminate to you those telephone numbers each attorney uses to conduct privileged client-attorney communications. This list does not purport to be an exhaustive list of the telephone numbers attorneys do or may use to communicate with clients. These numbers, however, should be included among those that are marked exempt from monitoring, recording or

distribution because they are used for privileged communications. In providing this list MCILS provides you notice of the risk that in monitoring, recording or permitting the recording of calls to or from these numbers you risk monitoring or recording a privileged call; and, that in permitting or facilitating the monitoring, playback, copying, or distribution of calls to or from these numbers, you risk permitting or facilitating the monitoring, playback, copying, or distribution of a privileged call.

Nothing in this email or its incorporated list should be construed as permission or cause to delete or disregard any other number with respect to which you may have notice of the risk of recording or monitoring a privileged call.

If you have questions or concerns, you may email me at mcils@maine.gov.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

APPENDIX I-5

MCILS Notice to Sheriffs

Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, May 3, 2022 3:15 PM
To: MCILS; dale.lancaster@somersetcounty-me.org
Cc: esamson@androscoggincountymaine.gov; jchute@androscoggincountymaine.gov; vlangelier@androscoggincountymaine.gov; Shawn.Gillen@aroostook.me.us; Craig.I.Clossey@aroostook.me.us; Andrew.tomah@aroostook.me.us; Joyce@cumberlandcounty.org; Kortess@cumberlandcounty.org; Cholmes@cumberlandcounty.org; snichols@franklincountymaine.gov; dblauvelt@franklincountymaine.gov; skane@hancockcountysopro.org; Trichardson@hancockcountysopro.org; fdhepard@hancockcountysopro.org; Kmason@kennebecso.com; Bsslaney@kennebecso.com; KhKarlsson@kennebecso.com; tcarroll@knoxcountymaine.gov; rwood@knoxcountymaine.gov; asmith@knoxcountymaine.gov; jmerry@sagadahoccountymaine.gov; jbailey@tbrj.org; scarmichael@tbrj.org; cwainwright@oxfordcountysheriff.com; ddillingham@oxfordcountysheriff.com; tmorton@penobscot-sheriff.net; tmorton@penobscot-sheriff.net; Ryoung@piscataquis.us; Mlandry@piscataquis.us; Awintle@piscataquis.us; jmerry@sagadahoccountymaine.gov; jbailey@tbrj.org; scarmichael@tbrj.org; DLancaster@SomersetCounty-ME.org; Cory.swope@somersetcounty-me.org; Cameron.Arcidi@somersetcounty-me.org; sheriff@waldocountymaine.gov; correctionsadministrator@waldocountymaine.gov; detentionmanager@waldocountymaine.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; Richard.Rolfe@sheriffwashingtoncountymaine.gov; wlking@yorkcountymaine.gov; ncthayer@yorkcountymaine.gov; mtjones@yorkcountymaine.gov; ljmarks@yorkcountymaine.gov
Subject: Attorney Phone Numbers
Attachments: Attorney Phone Numbers.05032022.xlsx

Good afternoon.

The attorneys listed on the attached spreadsheet have provided the telephone numbers specified in response to an offer from the Maine Commission on Indigent Legal Services to gather and disseminate to you those telephone numbers each attorney uses to conduct privileged client-attorney communications. This list does not purport to be an exhaustive list of the telephone numbers attorneys do or may use to communicate with clients. These numbers, however, should be included among those that are marked exempt from monitoring, recording or distribution because they are used for privileged communications. In providing this list MCILS provides you notice of the risk that in monitoring, recording or permitting the recording of calls to or from these numbers you risk monitoring or recording a privileged call; and, that in permitting or facilitating the monitoring, playback, copying, or distribution of calls to or from these numbers, you risk permitting or facilitating the monitoring, playback, copying, or distribution of a privileged call.

Nothing in this email or its incorporated list should be construed as permission or cause to delete or disregard any other number with respect to which you may have notice of the risk of recording or monitoring a privileged call.

If you have questions or concerns, you may email me at mcils@maine.gov.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254

Justin.andrus@maine.gov

APPENDIX I-6

MCILS Notice to York County

Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, May 3, 2022 10:44 AM
To: Matthew T Jones
Subject: Attorney Telephone Numbers
Attachments: Attorney Phone Numbers.05032022.xlsx

Good morning, Matt. In follow up to our discussion of attorney telephone numbers, I have attached a spreadsheet of those numbers we've received.

The listed attorneys have provided the telephone numbers specified in response to an offer from the Maine Commission on Indigent Legal Services to gather and disseminate to you those telephone numbers each attorney uses to conduct privileged client-attorney communications. This list does not purport to be an exhaustive list of the telephone numbers attorneys do or may use to communicate with clients. These numbers, however, should be included among those that are marked exempt from monitoring, recording or distribution because they are used for privileged communications. In providing this list MCILS provides you notice of the risk that in monitoring, recording or permitting the recording of calls to or from these numbers you risk monitoring or recording a privileged call; and, that in permitting or facilitating the monitoring, playback, copying, or distribution of calls to or from these numbers, you risk permitting or facilitating the monitoring, playback, copying, or distribution of a privileged call.

Nothing in this email or its incorporated list should be construed as permission or cause to delete or disregard any other number with respect to which you may have notice of the risk of recording or monitoring a privileged call.

If you have questions or concerns, or would like a copy of the list in electronic form, you may email me at mcils@maine.gov.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

APPENDIX I-7

MCILS Notice to Securus



MAINE COMMISSION ON INDIGENT LEGAL SERVICES

May 3, 2022

Securus Technologies, LLC
c/o CT Corporation System
128 State Street #3
Augusta, ME 04330

Certified Mail, Return Receipt Requested
7019 1120 0000 5127 9353

Re: **Attorney Telephone Numbers**

To whom it may concern:

The following listed attorneys have provided the telephone numbers specified in response to an offer from the Maine Commission on Indigent Legal Services to gather and disseminate to you those telephone numbers each attorney uses to conduct privileged client-attorney communications. This list does not purport to be an exhaustive list of the telephone numbers attorneys do or may use to communicate with clients. These numbers, however, should be included among those that are marked exempt from monitoring, recording or distribution because they are used for privileged communications. In providing this list MCILS provides you notice of the risk that in monitoring, recording or permitting the recording of calls to or from these numbers you risk monitoring or recording a privileged call; and, that in permitting or facilitating the monitoring, playback, copying, or distribution of calls to or from these numbers, you risk permitting or facilitating the monitoring, playback, copying, or distribution of a privileged call.

Nothing in this letter or its incorporated list should be construed as permission or cause to delete or disregard any other number with respect to which you may have notice of the risk of recording or monitoring a privileged call.

If you have questions or concerns, or would like a copy of the list in electronic form, you may email me at mcils@maine.gov.

Sincerely,

/s/ Justin W. Andrus

Justin W. Andrus, Esq.
Executive Director
MCILS

154 State House Station, Augusta, Maine 04333

(207) 287-3257 • (207) 287-3293 Fax

www.maine.gov/mcils

APPENDIX J

Prosecutorial District IV - Policy for Domestic Violence/Sexual Assault Investigators

Maeghan Maloney
District Attorney

Frayla Tarpinian
Deputy District Attorney

Francis Griffin
1st Assistant District Attorney



Kennebec County Courthouse
95 State Street, Augusta, ME 04330
(P) 207-623-1156 or 207-623-1157
(F) 207-622-5839

Somerset County Courthouse
41 Court Street, Skowhegan, ME 04976
(P) 207-474-2423 or 207-474-5517
(F) 207-474-7407

STATE OF MAINE
OFFICE OF THE DISTRICT ATTORNEY
PROSECUTORIAL DISTRICT IV

Policy for Domestic Violence/Sexual Assault Investigators, Prosecutorial District IV

Purpose: The purpose of this policy is to assist the Domestic Violence Investigator/Detective (DVI) in their duties, responsibilities and job scope as it pertains to conducting investigations, operations and assistance to other agencies.

The DVIs for the Kennebec and Somerset County District Attorney's Office will report to the District Attorney, or the assigned Assistant District Attorney on any case involving a domestic violence crime, sex crime or elder abuse situation as necessary. DVI's are sworn, full time law enforcement officers.

Definitions:

DVI-Domestic Violence Investigator. A detective level position working for the Kennebec/Somerset County District Attorney.

EM-Electronic Monitoring. GPS electronic ankle bracelet monitor.

HRRT-High Risk Response Team. The High Risk Response Team are a group of involved individuals in any domestic violence case where the defendant has a high risk of re-offending once released from custody. The DVI will stand up the HRRT when necessary for the protection of a victim. The DVI is responsible for coordinating and disseminating this information when appropriate.

FVP-Family Violence Project. The civilian agency responsible for assisting victims of domestic violence.

PFA-Protection from Abuse Order. Court order for protection of individuals.

VWA-Victim Witness Advocate. The VWA works in the DA's office as the direct link between prosecutor and victim. DVI's and VWA's will work closely to coordinate activities involving Domestic Violence cases.

Independent Investigation. Case initiated by our office without being submitted by an outside law enforcement agency.

Primary Duties and Responsibilities

Review all Domestic Violence Cases received by the District Attorney's Office. The DVI's are divided into three sections; Northern Kennebec and Southern Kennebec County and Somerset County. Each DVI will handle the cases originating out of their respective section. See Attached for Kennebec County map divided by Northern and Southern towns/cities.

DVI's will write affidavits, coordinate investigations that are multi-jurisdictional, investigate cases assigned by the District Attorney, track DV cases through the judicial process, interview victims, witnesses, defendants, photograph and collect evidence as needed, enter information into various computer systems, arrest defendants for violations.

Offense Log: Upon receipt of a DV case the DVI will log it into their DVI cases log spreadsheet for reference. The spreadsheet will consist of the following information: 1) Date of offense, name and dob of offender, charge(s), Arresting department, town of offense, status of incarceration, victim name, current disposition, any notes, BID number. This document is used internally only for easy reference, status of offender and tracking of follow ups by the DVI.

When indicated, DVI's will conduct follow up interviews with victims to include gathering more information necessary for the prosecutor and work closely with the victim witness advocate (VWA). Liaising with local law enforcement in their assigned section of the county as well as Statewide is essential in successful investigations. DVI's will be sworn in by the Attorney General's office as Detectives with statewide jurisdiction for the purpose of conducting these investigations.

Bail Checks: DVI's will conduct bail checks involving those defendants on pre-conviction bail as appropriate. Possible bail violations will be reported and appropriate enforcement action (arrest, summons, warrant request, etc.) will be taken. In some cases, DVI's will be required to operate the GPS ankle bracelet electronic monitoring (EM) device. In those cases, prior training with the EM device is necessary and will be completed prior to deploying the device.

Protection from Abuse Orders (PFA): During the course of any investigation when appropriate, the DVI will assist the victim in obtaining a PFA. This will include follow up with the Family Violence Project, assisting the victim with the court process, serving the order on the defendant when proper to do so. DVIs will attend PFA hearings as necessary to determine possible violations of the PFA or courtroom testimony which could become useful in the underlying domestic violence case. If the DVI, through the course of their work during the process observes or obtains information about a possible PFA violation, a report will be generated by the DVI and an investigation will be conducted to determine if a violation has occurred. Proper enforcement and reporting action by the DVI will be undertaken.

High Risk Response Team: The DVI in consultation with the appropriate victim witness advocate (VWA), FVP representative, and area law enforcement is responsible for coordinating a HRRT informational report and meeting (virtual or in person) regarding those defendants who are deemed high risk and for victims who request an elevated level of safety planning. The format for this informational flyer is attached to this policy.

Community Outreach Programs: The DVI will work cooperatively with other agencies, programs and entities in furtherance of the protection of victims. These include but are not limited to the Family Violence Project (FVP), the Department of Health and Human Services (DHHS), Elder Abuse Task Force, Kennebec/Somerset Domestic Violence Task Force and the Sexual Assault, Crisis, and Support Center. DVIs will become familiar with these organizations and attend regular meetings, seminars and working groups in furtherance of victim protection and successful prosecution of offenders.

Report Writing: DVI's are responsible for completing reports through their agencies electronic records management system. Each DVI will have separate access to this Records Management System (RMS) for the completion of offense reports (OF), arrest reports (AR) and field interviews (FI) as necessary. Cases resulting in prosecution will be uploaded to the Sharefile cloud system and use of that website will be granted by the DA's office to each DVI. Consultation with the proper ADA or legal secretary prior to uploading is indicated in cases already under investigation by another agency. First time offenses being enforced by the DVI can be uploaded directly after the IMC report is completed and copied for upload to the Sharefile site.

No Independent Investigations are to be conducted, except for VCR's or with approval of the DA/DDA/ or First Assistant DA.

DVI's will complete reports, affidavits, request arrest warrants and search warrants. DVI's should become familiar with latest information pertaining to search warrants, especially when dealing with social media or electronic devices. The Maine Attorney General's Office has specific information regarding the latest search warrant formats.

In Custody Defendants: DVI's will maintain a list of current, in custody DV and sex assault defendants. It will be the responsibility of the DVI to monitor jail phone calls, video chats, etc. in order to detect violations of bail conditions, protective orders and possible tampering cases. DVI's will follow the Securus training. Securus blocks all defense attorney phone calls (provided the defense attorney has given his or her number to the jail). If a defense attorney call is accidentally heard, the following procedure will be followed:

1. As soon as a defense attorney is identified--turn off the recording. Write down what you heard.
2. Notify the prosecutor handling the case and provide your written document.
3. The prosecutor will notify the defense attorney and give your written document to the defense attorney.
4. The prosecutor and the defense attorney will notify the Court.

Investigative Programs: There are several types of programs essential to the success of the DVI while conducting investigations, follow up, surveillance information and assisting other agencies. These include the **OpenFox** system for running criminal history, obtaining DMV information and generating ATN's for criminal cases. DVI's will obtain the proper certification through the Maine State Police for access to this system.

JUSTWARE: DVI's will become familiar with the prosecutor's records management system for research, information and updating pertaining to a particular case or defendant including adding notes.

NESPIN (New England State Police Information Network) provides a myriad of services and training; login and password are required for access to their network. The DA's office pays an annual fee for their services so DVI's will complete the training associated with this service.

SECURUS jail phone call monitoring. Recorded non-confidential phone calls are captured through this system and using it will allow the DVI the ability to provide information, generate cases, and ensure victim safety.

MIAC (Maine Information Analysis Center) is the Maine State Police fusion center. Information is shared through their portal and creating an account and getting on their listserv for this purpose is essential for the DVI.

Training: DVI's are required to maintain their full-time law enforcement certification. This requires the DVI to keep up to date with the current Maine Criminal Justice Academy licensing standards as required by law. DVI's are also encouraged to request further police related training as it pertains to their position as a detective with the DA's office in order to enhance their abilities as detectives within this office. DVI's will adhere to the standard operating polices of the DA's office and the law enforcement polices of the Kennebec/Somerset County Sheriff's Office and the Maine Attorney General.

APPENDIX K

Public comment solicitation

SEN. ANNE CARNEY, CHAIR
SEN. LISA KEIM
NORMAN KEHLING
HON. ERIC MEHNERT
ATTORNEY GENERAL AARON M. FREY
COMMISSIONER RANDALL LIBERTY
COMMISSIONER MICHAEL SAUSCHUCK



REP. THOMAS HARNETT, CHAIR
REP. PATRICK W. COREY
REP. ERIN SHEEHAN
ANDREA MANCUSO
MEAGAN SWAY
JUSTIN ANDRUS
DALE LANCASTER
AMBER TUCKER
MAEGHAN MALONEY

STAFF
SAMUEL SENFT, LEGISLATIVE ANALYST
JANE ORBETON, LEGISLATIVE ANALYST

**STATE OF MAINE
130TH LEGISLATURE
COMMITTEE TO ENSURE CONSTITUTIONALLY ADEQUATE CONTACT WITH COUNSEL**

Solicitation of Public Comment for October 5, 2022 Meeting

The Maine Legislature's *Committee to Ensure Constitutionally Adequate Contact with Counsel* is seeking public comment. The Committee was established by legislation, known as Resolve 2021, c. 182 (or LD 1946), which you can read online at the following link:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1451&item=3&snum=130>.

The Committee's website, which includes background materials, can be found at

<https://legislature.maine.gov/constitutionally-adequate-contact-with-counsel-committee>

Background

Residents of correctional and detention facilities and criminal defendants in court facilities have a constitutional right to counsel, which includes the right to confidential communications with their attorneys. In response to concerns regarding the ability of residents of correctional facilities and defendants to communicate in a confidential manner with their attorneys, the Maine Legislature established the Committee to study this issue and submit recommendations to the Legislature.

Public Comments requested for Meeting on Wednesday, October 5, 2022:

The Committee is seeking public comments on the following questions:

1. For incarcerated or formerly incarcerated individuals:
 - a. *While incarcerated, what was your experience communicating with your attorney in a confidential (private) manner?*
 - b. *How were you made aware of your right to speak confidentially with your attorney while in jail or prison?*
 - c. *When you arrived in prison or jail, were you given the opportunity to provide the phone number for your attorney, in order for that number to be added to a list of phone numbers to be protected from recording?*
 - d. *When you spoke to your attorney by phone while you were in jail or prison, did you feel comfortable that your conversation was not being recorded?*
 - e. *When you have been in a courthouse to appear before a judge or when you have appeared remotely (for example, over Zoom) before a judge, what has been your experience in having time and a place to speak privately to your attorney?*

- f. *When you received mail from your attorney in prison or jail, was that mail opened in your presence?*
- g. *In prison or jail, did you have a safe place to store legal documents?*
- h. *What recommendations do you have for this Committee?*

2. For attorneys:

- a. *What has your experience been in speaking with clients over the phone when the client is incarcerated at a prison or jail? Does your experience differ from facility to facility?*
- b. *Have you ever experienced a situation in which a conversation with a client was recorded, that you are aware of?*
- c. *What has been your experience in getting your telephone number on the list of numbers exempt from phone surveillance at each facility?*
- d. *What has been your experience meeting with clients confidentially in jails or prisons?*
- e. *What has been your experience meeting with clients confidentially in courthouses?*
- f. *What recommendations do you have for this Committee?*

How to provide public comments:

You may submit your comments orally at the Committee meeting scheduled to take place on October 5, 2022 or you may submit written comments or you may choose both to speak during the meeting and to submit written comments.

1. **Public comments during the October 5, 2022 meeting:** If you would like to speak during the meeting, you may attend the meeting in person in Room 228 of the State House (the AFA Committee Room) or you may attend the meeting remotely using Zoom. If you prefer to attend by Zoom, you must register in advance through the following link: https://legislature-maine.gov.zoom.us/webinar/register/WN_FDAUrRJFSuWPrOUa_wPAvw

Depending on the number of people who want to speak at the meeting, the chairs may limit the time each person has to speak. Please remember that the Committee meeting will be publicly livestreamed on the Legislature's website and a recording of the meeting will also be publicly available on the Legislature's website. For that reason, you may wish to avoid discussing any private or sensitive information that you do not want shared with the public.

2. **Written comments:** If you wish to send a written comment to the Committee, please email your comment to both samuel.senft@legislature.maine.gov and jane.orbeton@legislature.maine.gov **by 5:00 p.m. on Monday, October 3rd.**

Comments received after that date may not be distributed to the Committee members until after the meeting.

Please remember that all comments, documents and information you send to the Committee or to Committee staff are considered “public records” under Maine’s Freedom of Access Act. Materials will be posted online with other materials used by the Committee and will be viewable and searchable by the public.

If you have questions or require additional information, please contact the Committee’s staff, Jane Orbeton and Samuel Senft at jane.orbeton@legislature.maine.gov and samuel.senft@legislature.maine.gov or by phone at (207) 287-1670.

APPENDIX L-1

**Public comment testimony submitted for October 5, 2022 meeting
1. Bate, D.**

Dear Committee to Ensure Constitutionally Adequate Contact with Counsel:

Thank you for your attention to this issue. I have been taking court-appointments in Penobscot County since 1994. I have not been made aware of confidentiality issues regarding attorney-client communications at PCJ. However, the jail phones' sound is inadequate about half the time. It's only a guess but, because the quality has gone down over time, I would assume that the phones have been abused by inmates not happy with the news they receive through the phone -- a kind of shoot-the-messenger mentality.

Communicating confidentially with in-custody clients at the Penobscot Judicial Center has been adequate.

I think very special attention should be given to the non-contact visit rooms at Somerset County Jail where I am often visiting my federal clients. These comments would apply to State clients as well. Communication is frustrating: difficult to hear and very echoey, especially when one raises one's voice to be heard. The visitor and inmate are separated by glass. The frame on the glass on the side has small holes through which almost no sound passes. Contact visits are still not permitted due to COVID, I believe. The staff is always nice and efficient with me but the non-contact communication is inadequate. I would highly suggest that someone investigate this issue at SCJ. Other facilities have glass partitions with holes drilled in them and the acoustics are much better.

Dave

--

David W. Bate
15 Columbia Street, Suite 301
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207-945-3233 office
207-478-1093 cell
davidbatelaw@gmail.com

APPENDIX L-2

**Public comment testimony submitted for October 5, 2022 meeting
2. Ruffner, R.**

(email submission – October 5, 2022)

Good morning, (please excuse the typos)

I am LOD today and will be tied up with that duty for much of the meeting but will listen when I can and will attend after I complete my duties as LOD this afternoon.

I wanted to present you with my perspective on the issue as it pertains to monitoring of calls of those in custody from our jails and prisons.

We are looking at entirely backwards.

The issue isn't when should the State not be allowed to monitor calls and other electronic communications but rather:

- 1 When, if at all, should the State be allowed to monitor communications of an incarcerated individual?
- 2 Who should be allowed to monitor?
- 3 To what end or purpose?
- 4 Under what circumstances could it be shared outside of the incarcerating facility?
- 5 Under what circumstances could it be used by the State for purposes beyond facility safety and security?

I would answer these as follows

- 1: Any communications should not be monitored until the individual is either sentenced or has had their initial appearance in Court before a judge.
- 2: Absent a court order, only facility employees should be able to monitor or review communications
- 3: Absent a court order, the communications may only be used for facility safety and security purposes internally
- 4: Absent a court order, only to prevent the immediate loss of life of an individual
- 5: Absent a court order, none.

The State and Law Enforcement in Maine, and across the nation, talk about the need to monitor communications in order to investigate crimes. This is a ruse. The State and Law Enforcement enjoy free rein to invade the privacy of incarcerated individuals and to listen to their most private conversations all without meeting the prerequisites for a warrant.

I personally have had the prosecution use calls with family:

- As grounds to increase the client's bail when then believed the family was going to be able to post the current bail amount

- Disclose they listened to discussions about whether the client would accept a felony plea (against counsel's advice) if a misdemeanor was not offered
- Disclose they listened to conversations explaining that the case would be continued to seek a private mental health evaluation
- Disclose they listened to conversations where the client conveyed the attorney's opinion as to the strength of the State's case.
- and countless others

There is no reason that the State should have ever had access to these communications. Remember, the Prosecution would never be able to do this for someone who had the means to bail out. The Prosecution would never be able to get a condition of bail that allowed the State to tap all of the defendant's phone calls while out on bail. They should not have access to these communications for the poor.

Besides the privacy and Constitutional dimensions to this issue there is the mental and emotional toll on incarcerated individuals which have been shared by others with the Committee. If they listen to their attorney, incarcerated individuals are completely cut off from family and supports with respect to their legal issues. They would be advised not to discuss anything unless to their attorneys. Not just case related but not taking about substance abuse, not taking responsibility for their actions or acknowledging the effect of their actions on those they care about. They would be advised not to engage in any conversation about anything that could be used against them for bail or sentencing purposes. Not to share plans for the future (employment or education) in case it could somehow be used against them. "Your Honor, we oppose the reduction in bail as Mr. Smith has been speaking with family about possibly pursuing opportunities out of State" ... referring to job or education opportunities discussed with family.

The emotional and psychological toll, not to mention thwarting the beginnings of accepting responsibility, are immeasurable.

For all these reasons, and many I have not raised, I would urge Maine stop thinking about the way this issue is and start thinking about it, like the sign says, "the way life should be".

Thank you,

Robert J. Ruffner, Esq.
Ruffner - Greenbaum
Attorneys At Law

APPENDIX L-3

**Public comment testimony submitted for October 5, 2022 meeting
3. Zink, J.**

JOHN F. ZINK
Attorney At Law
28 Marshview Drive
Freeport, Maine 04032-6046

(207) 865-6611
Maine Bar Registration No.: 9322

zinklaw@mac.com

September 30, 2022

To: Committee to Ensure Constitutionally Adequate Contact with Counsel
From: John F. Zink, Attorney At Law
Re: Comments on Counsel Contact with Incarcerated Clients

In response to the Committee's request for comments regarding defense counsel experiences in communications with incarcerated clients, particularly by telephone, I want to submit the following observations:

a. What has your experience been in speaking with clients over the phone when the client is incarcerated at a prison or jail? Does your experience differ from facility to facility?

Response: I note that it has been my experience that defense counsel are unable to telephone a client who is incarcerated, meaning that the attorney is unable to telephone a jail or state prison facility to have immediate or direct contact with a client. During the Covid-19 emergency, when personal attorney-client visits were impossible due to facility shut-downs, my experience was that county jails and state prisons would make good faith efforts at arranging for the defendant client to telephone the attorney. Prior to the Covid-19 emergency, incarcerated defendant clients had the option to make telephone calls from facilities, mostly using the "inmate" telephone services (usually at excessive cost to the call-recipient); during the Covid-19 emergency, it was my experience that facilities worked to enable no-cost but brief (15 minute limited) calls from inmate to the attorney.

Overall, it was my experience that the staffs at the Cumberland County Jail, York County Jail, Hancock County Jail, and Two Bridges Regional Jail were courteous and made efforts to arrange to telephone contact. I also note that the staff at the Maine State prison also made efforts to arrange to telephone contacts. (I want to add that jail and state prison staff assisted me in arranging for Zoom Meeting participation in hearings for incarcerated clients.)

However, I do think that the inmate telephone service, which requires that the recipient establish an account and pay an excessive rate, borders on a denial of attorney/client communication. In addition, the apparent "automatic" limitation of attorney/client telephone calls to no more than 15 minutes significantly limits the ability of the attorney to advise the incarcerated client.

Facility Differences: My experience is primarily in dealing with the County Jail staff at Cumberland and York Counties and the Two Bridges Regional Jail. I have had occasional contact with county jail staff at Lewiston-Auburn and Hancock jails. I have dealt with state facility staff on limited occasions. Overall, county jail staff have been helpful in arranging telephone contact with clients, and is addressing the inmate telephone system. I recognize that most (if not all) county jails have been experiencing staffing shortages, which limits the jail responsiveness. As for the Maine State prison system, I have experienced these facilities to be more “bureaucratic” but also willing to be of assistance.

b. Have you ever experienced a situation in which a conversation with a client was recorded, that you are aware of?

Response: No. However, as I am aware that jail facilities often (routinely?) record inmate telephone conversations, other than those with the inmate’s attorney, I found it necessary to always advise a client that telephone calls could be recorded, and as such I would limit the client’s conversation with me to avoid any client statements that would incriminate the client. As such, I had to arrange in-person attorney/client meetings. This presented difficulties during Covid-19 “lock downs”.

c. What has been your experience in getting your telephone number on the list of numbers exempt from phone surveillance at each facility?

Response: I do not recall ever being informed or finding any information about getting on an “exempt” list, although I do recall a staff person at the Cumberland County Jail informing me that the CCJ exempted attorney calls.

d. What has been your experience meeting with confidentially in jails or prisons?

Response: It is important to note that I, and I am certain other defense attorneys, recognize that county jails and state DOC facilities have staffing/personnel limitations that affect the ability and timing for attorney/client meetings at facilities. In jails that routinely did not allow “face-to-face” visits, requiring visits to be conducted using a “phone” and having the client and attorney separated by a thick glass barrier, these meetings were better than telephone “meetings”, but still hampered communication for proper representation. It is hard to review evidence, or even conduct a conversation regarding the case under such restrictions. Again, I understood some of the need for such denial of “face-to-face” attorney/client meetings due to security issues and jail staffing issues.

At the Cumberland County Jail, before Covid-19 restrictions, attorney/client meetings were held in individual meeting rooms. However, even in such “private” rooms, I cautioned the client to keep our voices as quiet as possible as these rooms are never “sound proof”

At the Two Rivers Regional Jail, when I did Lawyer of the Day arraignments, confidentiality was a significant problem as the LOD often had to meet with the defendants within “ear shot” of jail deputies in the same video room for the

arraignments and hearings on Motions. (I would also add that in LOD client meetings, defense counsel are not afforded sufficient time to review case information and advise the client, making such meetings a somewhat meaningless exercise.)

e. What has been your experience meeting with clients confidentially in courthouses?

Response: In a word, awful. First, I think that the “in-custody” Lawyer of the Day format for the initial appearance of defendants borders on a denial of due process. My experience as LOD was before the Courts for Cumberland County and the courts housing inmates at the Two Rivers Regional Jail. In Cumberland County, the LOD would not have access to the Discovery materials (including Complaint or Indictment) until mid-morning on the day of the 1:00 p.m. court session. Inmates would be brought to the Courthouse around 11:30 a.m. to Noon, allowing the LOD very little time to review (sometimes) extensive Discovery materials, then meet with the defendant. LODs had to meet with the defendants in the small holding cell, always in the presence of other defendants. There was simply no reasonable opportunity to discuss plea offers or possible defenses, or bail arguments. Under Covid-19 restrictions and the use of Zoom Meeting video arraignments, this process became even less meaningful. Constitutionally meaningful representation, even at the initial appearance stage handled by the Lawyer of the Day, requires an opportunity to confidentially meet with the defendant, adequate time to review the Discovery, and an opportunity to confidentially discuss bail and possible plea offers with the Assistant District Attorney. Before the Portland UDC for the initial appearance as LOD, I do not think the LODs are afforded time and an environment to do the job.

In Portland, if the defendant was in custody, defense counsel had no place for a confidential attorney/client meeting. In addition, due to “transport” issues and timing, defense counsel are not given sufficient time to meet with the client.

My other experience was in serving as LOD at the Two Rivers Regional Jail. In my opinion, this was a denial of sufficient opportunity to review Discovery, discuss plea options and offers, confidentiality, and with no opportunity to discuss bail or plea offers with the DA representative. I would also note that in the Two Rivers Regional Jail LOD sessions, the various DA Offices would post the Discovery in bits and pieces on a “secure” web-link, during the morning and often just before the start of court; this prevented the LOD from adequately reviewing Discovery. (When I attempted to inform one of the Judges of these problems, he said “If you don’t like it, just quit”, so I did!)

I recall also doing the initial arraignment LOD sessions at the York County Jail on a few occasions. This was several years ago, so my not be the current practice. In one session, I was able to meet with defendants in a visitation room, in another session, I had to meet with defendants in a storage closet!

In instances when the client defendant was not incarcerated, the Cumberland County Courthouse does have a limited number of “conference” rooms, allowing for adequate attorney/client meetings.

f. What recommendations do you have for this Committee?

1. Lawyer of the Day: I think that the Courts place an undue burden on the attorneys serving as the Lawyer of the Day to meet the constitutional burden of due process. First, LODs are expected to pick-up and review Discovery materials (for “walk-ins”[defendants not in custody], LODs may obtain most of the Discovery the day before, for “in-custody” LODs were to pick-up the Discovery from the DA office after 10:00 a.m. despite the fact that it was regularly not complete). The LODs have to then review the often lengthy Discovery materials, then have sufficient time to meet with the defendants in a small, cramped, and very uncomfortable courthouse “holding cell”, lacking in any confidentiality. As the Sheriff deputies would often be late, LODs were regularly able to just spend a few minutes with each defendant before the Judge started court. *I think that it should be the Court’s responsibility to assure that the defendants are afforded due process, and not place that responsibility on the LODs!*

My recommendation, particularly for “in-custody” arraignments/initial appearances: (1) require that the DA Offices provide all Discovery 24 hours before the arraignment/initial appearance, (2) require that the LODs are provided a secure, individual conference room allowing for confidential meetings with individual defendants, and (3) require that the LODs have sufficient time for each defendant, allowing for time for bail and possible plea discussion with a DA authorized to make definitive decisions.

2. Telephone and In-Person Meetings: This pertains mostly to cases where the defendant is incarcerated and particularly with court-appointed cases. I recommend that all telephone calls from the incarcerated defendant and the appointed attorney be free of costs, AND that the attorney not be required to work through the “inmate telephone system” to set-up an account or to otherwise assure that access is enabled. (I have personally spent many hours just to attempt to set-up such contact, often without success). It should be the responsibility of the Court, through the Clerk’s office, that the court-appointed defense attorney has this access. (If it is too hard or burdensome for the Court Clerk office, then why it is burden placed on the attorney?)

As for in-person meetings at a jail or other facility, such facilities should be required to provide secure, confidential meeting rooms to allow for face-to-face meetings between the attorney and the defendant. Talking through a thick glass window on a poorly working hand phone is not adequate. In addition, the times for allowing attorney/client(defendant) meetings should be as great as possible during the business day (8:00 a.m. to 5:00 p.m.).

I am highly supportive of facility security, and do not oppose reasonable security efforts in any facility visit. However, such security should NOT allow for any facility to monitor attorney/client conversations or correspondence.

At courthouses, there should be a requirement that an adequate number of confidential conference rooms exist for attorney/client meetings

It should be the responsibility of the Court to assure that the defense attorney has the physical facilities at the courthouse to provide constitutionally adequate

initial and subsequent representation. The Court should also be responsible to require both the Court Clerks and the District Attorneys to provide full and timely Discovery materials and access to files. Defense attorneys should not have to carry the burden of protecting the defendant's constitutional rights, while also assuring the criminal justice system (prosecutors and court clerks) do their jobs to make the criminal justice system work.

Sincerely,

John F. Zink

APPENDIX M

**Committee questions and answers compiled for review
at October 5, 2022 meeting**

Committee to Ensure Constitutionally Adequate Contact with Counsel – Compiled Questions and Answers from the Second Meeting

Wednesday, October 5, 2022

Committee Questions

- For MCILS

1. **Committee members were interested in learning what space was available in each courthouse for attorneys to meet with their clients. .**

Our response to this request is in process. We will share responses we get.

2. **Does MCILS track caseload statistics? The Committee asked for caseload data for each court.**

MCILS has access to data that allows us to generate certain reports about some caseload data. We do not necessarily routinely produce reports on all data. We can break out data out by the court in which a case was pending. We would be happy to produce information on request. Information may be subject to redaction to comply with the requirements of our statute.

MCILS does not track court specific data other than that contained in our case management and billing software.

In the context of our last conversation, I understood that one specific request was for data showing the number of people involved in each lawyer of the day program. This is not information to which MCILS has access outside of a few limited instances in which someone has happened to share a list with us.

3. **Do you have access to lists of protected phone numbers from Securus and GTL or any idea how we might obtain these lists.? Also, I was hoping you could confirm (or correct) my understanding of the process for an attorney to protect her number from surveillance. My understanding is that an attorney wishing to add a number to the list of protected numbers needs to contact the jail in which her client is residing, speak to whomever that particular jail has designated as a point person, and provide her number. The point person in the jail works with the vendor to add the number to the list, and the number is then protected from surveillance regardless of the inmate. Is that an accurate description of the process? An attorney would need to contact each individual courthouse to make sure her number is on that courthouse's list, correct?**

We do not have access to a list or lists of protected telephone numbers from any telecom provider or client facility. Past MCILS efforts to obtain data from the facilities was only partially successful. In my view, the Committee should request that each facility provide these lists. (See my request of 9/28/2022 regarding proposed information requests from the facilities.)

I am not able to provide you with the process by which an attorney may successfully protect a telephone number from being recorded. MCILS has attempted to participate in that process, most recently by providing each facility with a list of then known to MCILS attorney numbers on May 3, 2022. I can tell you that the York County Jail has accepted a list of numbers from MCILS with a commitment to enter those numbers into its telephony account. We appreciate the ability to work with that facility on this issue.

Attorneys have had varying experiences in trying to make safe their telephone numbers.

Our perspective is that there should be one statutorily defined process by which attorneys register their numbers for blocking; by which those numbers are in fact blocked; and by which there is produced an auditable record of that process.

- 4. As far as you know, is there any way for an attorney to confirm that her number is protected, aside from calling the jail and asking?**

Not to my knowledge

- For Courts

- 1. For each courthouse, what space is available for attorneys to meet privately with clients?**
- 2. Are current arraignment caseload statistics available for each court (walk in and in custody arraignments) and if so, can these statistics be shared with the committee?**
- 3. Can you describe the process each courthouse uses to determine whether appearances will be in person or remote?**

- For Sheriffs' Association

- 1. Do you have access to lists of protected phone numbers from Securus and GTL or any idea how we might obtain these lists.? Also, I was hoping you could confirm (or correct) my understanding of the process for an attorney to protect her number from surveillance. My understanding is that an attorney wishing to add a number to the list of protected numbers needs to contact the jail in which her client is residing, speak to whomever that particular jail has designated as a point person, and provide her number. The point person in the jail works with the vendor to add the number to the list, and the number is then protected from surveillance regardless of the inmate. Is that an accurate description of the process? An attorney would need to contact each individual courthouse to make sure her number is on that courthouse's list, correct?**
- 2. As far as you know, is there any way for an attorney to confirm that her number is protected, aside from calling the jail and asking?**

We will endeavor to ascertain the answers to your questions. We would like to have the following questions answered and respectfully request they be added to the next meeting agenda as discussion items:

- 1, What is State's annual budget for legal defense for indigent people?*
- 2. What is the number of individuals that the legal defense fund has represented in the last fiscal year?*
- 3. What percentage of indigent people vs non-indigent people are obtaining defense legal services in the last fiscal year?*
- 4. How many practicing defense attorneys are currently practicing in the State of Maine?*
- 5. How many complaints have been lodged from defense lawyers referencing phone call conversations being erroneously captured from registered phone numbers while their client has been incarcerated?*
- 6. How many criminal cases have been developed in the State of Maine from conversations between a defense attorney and client?*
- 7. How many convictions have there been from a lawyer/ client incarcerated erroneously captured conversations?*
- 8. How many crimes have been prevented from properly captured communication in Maine's eight prosecutorial districts?*

It is extremely important that we protect the lawyer/ client privilege. I believe to address their concerns, we need to be cognitive of the scope of the concern.

Questions from Sheriffs Association

- For MCILS

1. What is State's annual budget for legal defense for indigent people?

For Fiscal Year 2022, MCILS spent \$20,358,402 on direct and indirect costs associated with providing legal services to consumers of indigent legal services. On that, \$18,616,677 was spent on the direct cost of legal fees to attorneys serving those consumers across our program.

2. What is the number of individuals that the legal defense fund has represented in the last fiscal year?

Assuming for the purpose of this answer that "legal defense fund" means "Maine Commission on Indigent Legal Services," during the period July 1, 2021 to June 30, 2022

MCILS assigned counsel provided legal services to 36,880 uniquely identified people. This number includes those whose cases were open on July 1, 2021, and those whose cases were opened during the window. Some people have more than one matter. Those people have not been counted more than once. This number excludes those people who were served by lawyers for the day, but who were not then represented by assigned counsel in the remainder of a substantive matter.

3. What percentage of indigent people vs non-indigent people are obtaining defense legal services in the last fiscal year?

MCILS does not have the ability to answer this question directly because the information we would need to do so resides with the Court. The last best information MCILS has in its possession on this issue was received from then Judicial Branch staff person Anne Jordan in mid-2021. The following table is excerpted from her communication

TOTAL CR	Original Adult CR Filings (excludes Class T, V & X)	# of Filings with Retained Counsel	# of Filings with Court-Appointed Counsel	# of Filings without Counsel
FY19	44,319	6,378	14,095	23,846
FY20	39,084	5,585	14,488	19,011
FY21	35,615	4,493	12,792	18,330

TOTAL CR	Original Adult CR Filings (excludes Class T, V & X)	% of Filings with Retained Counsel	% of Filings with Court-Appointed Counsel	% of Filings without Counsel
FY19	44,319	14.4%	31.8%	53.8%
FY20	39,084	14.3%	37.1%	48.6%
FY21	35,615	12.6%	35.9%	51.5%

4. How many practicing defense attorneys are currently practicing in the State of Maine?

MCILS does not have the ability to identify those attorneys who may practice criminal defense in whole or in part, but who are not part of the MCILS ecosystem. As of September 28, 2022, there are a total of 209 individual attorneys available to serve consumers of indigent legal services. Of those, 24 serve only as lawyers for the day. 164 attorneys currently serving consumers indicate at least the limited availability to serve additional clients. 8 attorneys appear to be available but do not appear to be actually accepting cases.

5. How many complaints have been lodged from defense lawyers referencing phone call conversations being erroneously captured from registered phone numbers while their client has been incarcerated?

For clarity, no defense lawyers have lodged formal complaints with MCILS around this issue, because we are not the authority able to address it outside of our efforts in the legislative arena. The information we have has been anecdotal to date. We have asked our counsel to report their experiences to us so that we can share that information with the group. We will do that as the information arrives.

Our understanding is that for the bulk of the history of MCILS, properly blocking attorney phone numbers from recording depended on the prisoner to designate the attorney's number, and a jail staff person to enter that number. We do not have the ability to know how or when that happened.

The most useful information on this issue would come from an analysis of jail recording logs after MCILS promulgated its list of known attorney telephone numbers on May 3, 2022.

6. How many criminal cases have been developed in the State of Maine from conversations between a defense attorney and client?

MCILS does not have the ability to answer this question because the information we would need to do so resides with law enforcement or in the offices of prosecutors. The fact that no one in the defense function can assess the prevalence of this issue is a primary driver of the need for a system level solution to the issues. I would note that privilege extends to members of the defense team, and that the analysis should thus include calls with investigators and others inside the defense privilege.

7. How many convictions have there been from a lawyer/ client incarcerated erroneously captured conversations?

Again, MCILS does not have the ability to answer this question because the information we would need to do so resides with law enforcement or in the offices of prosecutors. The fact that no one in the defense function can assess the prevalence of this issue is a primary driver of the need for a system level solution to the issues. I would note that privilege extends to members of

the defense team, and that the analysis should thus include calls with investigators and others inside the defense privilege.

8. How many crimes have been prevented from properly captured communication in Maine's eight prosecutorial districts?

MCILS does not have the ability to answer this question because the information we would need to do so resides with law enforcement or in the offices of prosecutors. MCILS does not question that some crimes have been prevented through recorded conversations. A comparison of the relative counts of instances of improper recording and playback against the instances of proper recording and subsequent proper law enforcement deployment of that intelligence would be grounded in a false equivalency, however. Law enforcement enjoys no constitutional prerogative to record prisoner communications, while prisoners do enjoy a fundamental right to adequate privileged contact with counsel.

APPENDIX N

**Answers to questions submitted to the Judicial Branch and reviewed
at October 5, 2022 meeting**

QUESTIONS:

COURTHOUSE SPACE

(1) What type of space is available at each Courthouse for confidential meetings between attorneys and defendants? How many of these types of spaces are available? ***While the inquiry is general, the primary focus of this Committee's work is on those first court appearances (Initial Appearances and/or Arraignments), so the answer to this question would be referring to the space that Lawyers of the Day have to meet with defendants.

SEE SPREADSHEET

(2) If in-custody persons were brought to the Courthouse, rather than appearing by Zoom, what type of space is available at each Courthouse for confidential meetings between attorneys and in-custody defendants? How many of these types of spaces are available? ***While the inquiry is general, the primary focus of this Committee's work is on those first court appearances (Initial Appearances and/or Arraignments), so the answer to this question would be referring to the space that Lawyers of the Day have to meet with in-custody defendants.

SEE SPREADSHEET.

*****NOTE FROM FACILITIES/MARSHALS:**

Though few courthouses are set up with dedicated space(s) within the secure prisoner circulation area for meetings with counsel, MJB security manages the need operationally using the other conference and meeting rooms in the courthouse facility.

(3) Is there a difference between older courthouses and newer judicial centers in terms of the type and number of confidential spaces for lawyer/defendant meetings?

YES.

*****NOTE FROM FACILITIES/MARSHALS:**

The new YJC is designed with 2 public conference rooms per courtroom. The PJC & CJC follow this general plan. This ratio is more generous than typically seen in older courthouses. As older buildings evolve to meet the current operational needs of a courthouse, conference rooms are a prime candidate for repurposing. I only mention that to further suggest that the ratio of conference spaces to courtrooms is less than 2:1 for older structures.

VIRTUAL vs LIVE

(4) Who decides if Court (especially Initial Appearances and/or Arraignments) is virtual versus live? Has the answer to this question changed since the onset of COVID-19? ***While the inquiry is general, the primary focus of this Committee's work is on those first court appearances (Initial Appearances and/or Arraignments), so the answer to this question would be referring to who determines if Initial Appearances and/or Arraignments are virtual vs. live (with an emphasis on those in-custody, which are believed to be virtual in all but 1 county at this time).

~NOTE: Prior to the onset of COVID-19, many Districts handled in-custody Initial Appearances and/or Arraignments by Video, so the pandemic didn't change that practice, but the Committee still wants to know who made the decision pre-COVID for the court appearances to be by video, and who has made the decision for it to continue in that manner.

SEE SPREADSHEET.

NUMBERS

(5) What are the caseload numbers for both in-custody and walk-in Initial Appearances/Arraignments at each courthouse? How do the present numbers compare to 2019?

SEE SPREADSHEET (for walk-in data, other than Cumberland).

*****NOTE: Unable to specifically compare to 2019 at this time.**

APPENDIX O

Courthouse data from Judicial Branch

COUNTY JAIL

If in-custody persons were brought to the Courthouse, rather than appearing by Zoom, are there spaces in the holding areas for attorneys to meet with defendants privately? If yes, how many?

Since the onset of COVID-19, who has directed whether a specific court appearance is going to be virtual or in-person? (i.e. in-custody Arraignments)

Prior to the onset of COVID-19, many Districts handled in-custody Arraignments by Video, so the pandemic didn't change that practice -- so, prior to COVID-19, who directed in-custody Arraignments to be by video in those Counties where that has been the practice?

For those counties that handled in-custody Arraignments by video pre-COVID, what year did it start, and what prompted the change from in-person?

Other

Androscoggin

Yes, two.

The Court

Only in-person pre-COVID

N/A

At present, it depends on the day whether Court for in-custodies is in-person vs on Zoom (Court decides and informs necessary parties)

Aroostook

Yes, there is at least one meeting room at each Court location.

The Court

Arraignments have been by video both pre and during COVID; unknown who directed that to occur
N/A

Unknown

Cumberland

It depends on the # of persons in-custody. Jail/transport staff will accommodate as best they can if a private conversation has to occur, but the space is not set up to do so automatically.

Court.

N/A

N/A

Harder on CCJ staff to be on video; CCJ would prefer in-person.

Franklin

It varies depending on the # of persons in-custody that are brought to Court. No space is specifically designed for private atty/inmate communication, but there are some rooms that can be utilized IF there is staffing AND no security issues created.

Court

It was on polycom for some time pre-COVID, now it's Zoom.

Unknown

Much more efficient by Zoom.

Hancock

No formal space at courthouse; accommodations could be made at the jail for the LOD/Defendant meetings, but only one of these meetings could take place at a time

Court in consultation with the jail

Prior to COVID, Arraignments were in person

N/A

Kennebec	<i>The jail has 3 spaces for for confidential meetings with attorneys, but they are non-contact. There are also interview rooms on each floor, and bigger or different space can be accommodated if appropriate notice is given.....if Arr were at the Courthouse, there is a private space on the 1st floor and 3rd floor, and then other larger general holding areas, but given the staffing and security concerns, video Arraignments are better all-around.</i>	<i>Court</i>	<i>Prior to COVID, the Court in consultation with the jails conducted Arraignments by video.</i>	<i>Video Arraignments started before 2006, but an exact date is unknown.</i>
Knox	<i>1 designated holding area at the courthouse</i>	<i>Court</i>	<i>Prior to COVID, Arraignments were in person</i>	<i>N/A</i>
Oxford	<i>1 at the courthouse; there are 2 at the jail</i>	<i>Court</i>	<i>Prior to COVID, court in consultation with the jails</i>	<i>10 years ago; made things more efficient given the number of Courts OCJ had to take people to, and the geographic distance that would have to be traveled</i>
Penobscot	<i>Yes, two in holding area; one outside holding area off courtroom where in-custodies.</i>	<i>Court</i>	<i>Prior to COVID, Arraignments were in person</i>	<i>N/A</i>
Piscataquis	<i>Yes, two in holding area.</i>	<i>The Clerk of Courts directs virtual or in person appearances.</i>	<i>Clerk of Courts</i>	<i>5 years ago; unknown why the change</i>
Somerset	<i>No (there is an area for meetings, but it's not private because jail staff is present and it's through glass with necessitates louder voices).</i>	<i>The Court.</i>	<i>Prior to Covid, DA/Court determined video vs in-person for in-custody Arraignments (M/F video; Wed in person)</i>	<i>November 2008 (when new jail was opened).</i>
Two Bridges (Sag & Lincoln)	<i>Two</i>	<i>Court</i>	<i>Court</i>	<i>At least 14 years, possibly longer -- 2-3 areas in jail for LODs to meet with inmates for Arraignments</i>
Waldo	<i>Break-out rooms now; new courthouse since COVID, their holding area has 2 spaces for private meetings (non-contact, but totally private)</i>	<i>Court and jail jointly</i>	<i>Prior to COVID court was in-person</i>	<i>N/A</i>

Washington

Washington County has a new courthouse with multiple rooms for private meetings, but most attorneys meet with their clients at the jail prior to any in-person Court.

Court and Jail jointly.

N/A

N/A

York

At the jail, there are 4 spaces for confidential conversations; while the current courthouses do not have dedicated spaces for in-custody persons to have confidential meetings with their clients, the new courthouse (opening April 2023) will have 5 private areas for in-custody meetings, and there will be a separate video chat conference room as well

Court and jail jointly

Prior to COVID, video Arraignments have been going on for years (court and jail decision) As long as anyone at the jail can remember

CONFERENCE ROOMS AND/OR OPTIONAL SPACE FOR EACH COURT

			<i>LAWYER ROOMS USED FOR</i>		<i>PRISONER CONFERENCE ROOM</i>
REGION 1	<i>CONFERENCE ROOMS</i>	<i>ALCOVES (OPEN SPACE)</i>	<i>CONFERENCE SPACE</i>	<i>JURY ROOM SPACE USED</i>	
Alfred	0	0	0	0	0
Biddeford	6	0	0	0	0
Springvale	10	0	0	0	0
York	5	0	0	0	0
REGION 2					
Portland	7	0	0	0	0
Bridgton	3	0	0	0	0
REGION 3					
Lewiston	11	4	1	0	0
Androscoggin	2	0	1	0	1
So Paris	6	0	0	0	0
Rumford	2	0	0	0	0
Franklin	1	0	0	0	0
Farmington	4	0	0	0	1
REGION 4					
Augusta	14	0	0	0	0
Waterville	4	0	0	0	0
REGION 5					
Bangor	15	0	0	0	0
Dover	3	0	0	0	0
Lincoln	4	0	0	0	0
Millinocket	3	0	0	0	0
Newport	3	0	0	0	0
REGION 6					
West Bath	6	0	0	0	0
Sagadahoc	2	0	0	0	0
Rockland	3	0	0	0	0
Belfast	11	1	0	0	0

REGION 7

Calais	2	0	1	0	0
Machias	6	0	1	0	0
Ellsworth	3	0	0	1	0

REGION 8

Fort Kent	4	0	0	0	0
Madawaska	3	0	0	0	0
Presque Isle	4	0	0	0	0
Caribou	4	0	0	0	0
Houlton	3	0	0	0	0

Region	COURT	HOW MANY ARR PER MONTH	FULL OR HALF DAY ARR?	AVG # OF CASES PER ARR SESSION?
1	SPRINGVALE	2	1/2 day	90
1	YORK DC	2	1/2 day	40-50
1	BIDDEFORD	4	2 full days plus two 1/2 days	80-90 for Saco/OOB PD; 60-75 for Other Depts
2	BRIDGTON DC	2	Oxford County cases: full day (1/2 adult, 1/2 JV); Cumberland County cases: full day	Oxford County day: 30-40 cases; Cumberland County day: 60-80 cases
2	PORTLAND	24 (1/2 in-custody, 1/2 walk-in)	Each session is a 1/2 day	Walk-ins: 20-60 (depends on day/department); In-custody: 15 (higher pre-COVID)
3	FRANKLIN	1	Full days	80
3	RUMFORD	1	Full Day	80-100
3	SOUTH PARIS	1	Full	75-90
3	LEWISTON	4	full	75
4	WATERVILLE	2	Full days	60-75
4	Skowhegan/Somerset	4	half days - times are 8:30 am session 1 1:00 pm session 2 Week 1 and Week 2 of each month	40-50
4	Augusta	4-5	half days	65
5	Dover-Foxcroft	1	Less than 1/2 a day	<50
5	Newport	2	Half Days	25-30
5	Bangor	6	Half days	80-140 (depends on PD)
6	Wiscasset	2	full days	15-20 in AM; 15-20 in PM
6	West Bath DC/Sagadahoc UCD	5 (3 for Sag, 2 for Cumb)	Half days	35-45
6	Rockland	3	Half Days	30-50
6	Waldo County Courts	3	half day	25
7	Ellsworth	2	Full days	75
7	Machis	1	full	90
7	Calais District Court	2 in 1 morning	We have a session @ 8:30 and 10:30	10-20 the first session and 15-30 the second session
8	Houlton Courts	1	Full day	65
8	PRESQUE ISLE DISTRICT COURT	1 (with AM & PM session)	FULL DAY	60-75
8	Caribou	1	half days	50 to 60

APPENDIX P

Jail data from Maine Sheriffs' Association

Please identify your jail:	Does your jail distribute written policies, procedures, or guidance related to confidentiality of attorney communications with inmates?	Does your jail possess written materials that are provided or available to inmates regarding recording of telephone calls.	Does your jail provide forms to detainees or inmates that are used by the inmate to provide the telephone numbers of their attorneys for the purpose of ensuring confidentiality of attorney calls?
Androscoggin County Jail	Yes	No	No
Aroostook County Jail	Yes	Yes	Yes
Cumberland County Jail	Yes	Yes	No
Franklin County Jail	Yes	Yes	No
Hancock County Jail	No	No	No
Kennebec County Jail	Yes	Yes	No
Knox County Jail	Yes	Yes	No
Oxford County Jail	Yes	Yes	Yes
Penobscot County Jail	Yes	Yes	No
Piscataquis County Jail	No	Yes	Yes
Somerset County Jail	Yes	Yes	Yes
Two Bridges Regional Jail	Yes	Yes	Yes
Waldo County Correctional Facility	Yes	No	No
Washington County Jail	Yes	No	Yes
York County Jail	Yes	Yes	Yes

Please identify your jail:	Does your jail utilize policies, procedures, or guidance, including un-promulgated materials related to the use of video, laptops, or electronic means by an inmate to confidentially communicate with attorneys?	Does your jail have policies pertaining to storage of legal materials by inmates?	Does your jail have policies, procedures, or guidance, including materials related to confidentiality of attorney communications with inmates who are present in courthouses.	Number of staff required to operate your jail at full capacity:	Are you fully staffed?	If no, what percentage of your staff is currently unfilled?
Androscoggin County Jail	Yes	Yes	Yes	55	No	10%
Aroostook County Jail	Yes	No	No	32	No	15%
Cumberland County Jail	No	Yes	No	185	No	47%
Franklin County Jail	No	No	No	22	No	9%
Hancock County Jail	No	No	No	23	No	13%
Kennebec County Jail	Yes	Yes	No	62	No	25%
Knox County Jail	Yes	Yes	Yes	30	No	60%
Oxford County Jail	Yes	Yes	Yes	23	No	10%
Penobscot County Jail	No	Yes	No	86	No	29%
Piscataquis County Jail	Yes	No	No	19	No	5%
Somerset County Jail	Yes	Yes	Yes	77	No	44%
Two Bridges Regional Jail	No	No	No	43	No	20-25%
Waldo County Correctional Facility	No	Yes	Yes	17	Yes	0
Washington County Jail	Yes	No	Yes	24	No	12.50%
York County Jail	No	No	No	89	No	65%

APPENDIX Q

Bobby Nightingale - transcribed testimony

Testimony of Bobby Nightingale for submission to the Committee to Ensure Constitutionally Adequate Access to Counsel

Transcribed by Office of Policy and Legal Analysis

Norman Kehling: Bobby, please state your name and give your testimony please

Bobby Nightingale: My name is Bobby Lee Nightingale and this is my testimony about the Securus phone calls that have been recorded. I don't blame the county jails of Maine for the recording of my lawyer's phone calls or for the recording of any of the calls made to attorneys. The Securus company is to blame. The same issue that we are facing today has become a trend for Securus. Lawyer calls are recorded, please complain to Securus, Securus fights, then they settle and they do it again. Those are the facts in a nutshell. Maine just happens to be Securus's newest victim.

The county jails of Maine have a contract that tells Securus it is illegal to monitor or record lawyer phone calls. Securus has lawyers register their phone numbers with Securus so Securus can put those numbers on a do not record list. Our lawyers also register those numbers with the bar association and with the lawyers association. But with those precautions why would any lawyer think that they also need to register that number with every county jail in the United States of America as a precaution, when a client gets locked up in any of those counties. Securus is used in over 3,000 facilities in the US. That a lot of calls that my lawyers need to make to ensure that I can talk to them.

In my case, I blame Securus for recording my private calls. But I don't... but I blame Detective Roy and Attorney General Meg Elam for not being honest with my lawyers and with the court. Detective Roy should have immediately reported this issue the first time he heard one of my calls, but he didn't. He waited months. He should have taken note of when he heard it.

If this is an attorney call, please hang up and call 1-800-844-6591

The fact he didn't even think to make a side note leads me to believe he was never going to report this issue. He was never gonna tell anybody about the calls. Not to mention, he changed his story from him reporting to the AG's office on his own accord. He waited months..

If this is an attorney call, please hang up and call 1-800-844-6591

He waited months and reported it only because a newspaper article gave a push at his conscience for him to do the right thing. AG Meg Elam has made what should have been a very simple, lets figure this out, cooperate with each other and move on situation to a complicated, blame everyone else, take no responsibility, I did nothing wrong situation.

It reminds me of two kids, child number one, who is covered in magic marker and child number two that is clean. The wall is covered in magic marker. As a parent, we might have had this situation happen a time or two, and it's a chance to find out what morals and principles we have instilled in our kids, and if they are gonna be honest. So as a parent, we've all asked, what happens when child number one immediately points at child number two and says, "he did it." Ok, look, we can make our own assumptions here. Child number one did it but is scared of the consequences. The crazy part of this story here is that child number two says, "mom, dad I messed up by leaving my markers out and my brother

used them.” Child number two didn’t need to say that, but the kid is being honest and accepting his part of the responsibility.

My lawyer, Jack Tebbetts, is child number two. Even if he didn’t register his phone number with the Cumberland County jail, he didn’t know he had to. He didn’t register with the Aroostook County jail – he didn’t know he had to when they switched their system. He registered with Securus, who said they would take care of everything. He didn’t know he had to, it’s that simple. Just like he didn’t know that Detective Roy would listen to the lawyer calls and not research the phone number, not record it right away, and not even tell us where he heard it, when he heard it, or even the month that he even, he heard these calls, so that we can try to find out on our own what he may have heard. Jack Tebbetts also didn’t know that Meg Elam would be so defensive over an innocent mistake and instead make all of us believe that there could be more to this. We can’t as lawyers and clients begin any type of investigation without there being a law set in place to help us.

I believe the best way to fix these problems in the future would be simply to have in our contracts with Securus or any phone company that does stuff with the county jails, would be that they check with the American Bar Association, they check with the lawyer’s association, and if that number to my lawyer, Jack Tebbetts, or Verne Paradie or any lawyer in the state of Maine, is already with those, then that should be it. If I were to still have to call Securus or call one of the companies out there, to do lawyer phone calls, or do phone calls for the jails, it should be that simple. One call to stop it from ever being listened to again. If the situation arises again, that’s in your guy’s hand to make it to make a decision on what should be done. I thank you guys for your time and for the chance to be heard. Thank you.

Norman Kehling: Bobby, thank you for your time. I appreciate your time, thank you.

APPENDIX R

**Answers to questions submitted to the Judicial Branch and reviewed
at October 19, 2022 meeting**



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

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MEMORANDUM

TO: Committee to Ensure Constitutionally Adequate Contact with Counsel

FROM: Sam Senft and Jane Orbeton

DATE: October 18, 2022

RE: Information for October 19th meeting

1. Deputy Attorney General Lisa Marchese emailed following regarding the Prosecutor's model policy as it relates to training law enforcement officers who listen to jail telephone calls:

As part of any policy relating to protecting confidential communications between attorneys and clients adopted by the Attorney General's office or the District Attorney's office, the policy must include training for any law enforcement officer who, as part of a criminal investigation, may inadvertently hear privileged communications. The training must clearly outline the process for protecting confidential communications between attorneys and clients, as well as the policies to be followed in the event there is a breach of confidentiality.

2. Anna Black, Department of Corrections, Director of Government Affairs, emailed the following information regarding a possible recommendation that all jails and the Department of Corrections contract with a single entity to provide outgoing telephone and tablet communications services for persons who are incarcerated:

While the MDOC understands the theory behind the interest in creating a unified phone system that would include State and county correctional facilities, this is not something the department is willing to consider at this point. As the committee has heard and seen during reviews of the many phone and communication policies the MDOC's system works well. Among other concerns, we'd fear that forcing disparate systems together would have a negative impact on residents and put into jeopardy the legally binding state contracting in place with phone vendor and tablet vendor.