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Date: (Filing No. S-)

JUDICIARY

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 635, L.D. 1603, “An Act to Implement the Recommendations of the Committee To Ensure Constitutionally Adequate Contact with Counsel”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

Sec. A-1. 4 MRSA §1804, sub-§3, ¶N, as amended by PL 2021, c. 481, §3, is further amended to read:

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; ~~and~~

Sec. A-2. 4 MRSA §1804, sub-§3, ¶O, as enacted by PL 2021, c. 481, §4, is amended to read:

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court; ~~and~~

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

P. Develop and maintain a registry of names, telephone numbers and other contact information for attorneys who provide legal services to persons who are incarcerated. The commission shall on a weekly basis provide these names, telephone numbers and other contact information to all sheriffs' offices and to the Department of Corrections. On the Monday following transmission of the information, the sheriffs' offices and the Department of Corrections have constructive notice that communications to and from these attorneys by residents of jails and correctional facilities are subject to the

COMMITTEE AMENDMENT

1 attorney-client privilege. The attorneys' names, telephone numbers and other contact
2 information are confidential.

3 **Sec. A-4. 5 MRSA §200-N** is enacted to read:

4 **§200-N. Confidential attorney-client communications**

5 **1. Policies.** By January 1, 2024, the Attorney General shall adopt a written policy for
6 the protection of confidential attorney-client communications by employees and agents of
7 the Attorney General, which must include, at a minimum, processes to protect and ensure
8 confidentiality of attorney-client communications and processes to be followed in the event
9 that there is a breach of attorney-client confidentiality.

10 **2. Training.** By January 1, 2024, the Attorney General shall develop a training
11 program for all state, county and municipal law enforcement officers and investigators
12 who, as part of a criminal investigation, may inadvertently hear confidential attorney-client
13 communications, which must include, at a minimum, practices and procedures for
14 protecting and ensuring confidential attorney-client communications and practices and
15 procedures to be followed in the event that there is a breach of attorney-client
16 confidentiality.

17 **Sec. A-5. 15 MRSA §714** is enacted to read:

18 **§714. Intercepted attorney-client communications of jail and correctional facility**
19 **residents**

20 **1. Intercepted attorney-client communications of jail and correctional facility**
21 **residents.** If the sender or the recipient of an intercepted oral communication or wire
22 communication was, at the time the communication was made, a resident in either a jail or
23 an adult or juvenile correctional facility administered by the Department of Corrections and
24 the other party was an attorney and if the resident demonstrates that the jail or correctional
25 facility had actual or constructive notice at the time the communication was made of the
26 attorney's name and, if the communication involved the use of a telephone, the jail or
27 correctional facility had actual or constructive notice at the time that the communication
28 was made of the attorney's telephone number and the communication was made directly to
29 or from that telephone number:

30 A. The contents of the intercepted oral communication or wire communication and the
31 fact and circumstances of the communication are not admissible in a criminal
32 proceeding, including a proceeding under chapter 305-A;

33 B. A person who viewed or listened to the intercepted communication and did not
34 immediately discontinue viewing or listening to the communication as soon as the
35 person had sufficient information to determine that the sender or the recipient of the
36 communication was, at the time the communication was made, a resident in a jail or
37 correctional facility and the other part was an attorney, is disqualified from
38 participating in an investigation of the resident and from appearing as a witness in a
39 criminal proceeding in which the resident is a defendant, including a proceeding under
40 chapter 305-A; and

41 C. A person who viewed or listened to the intercepted communication and saw or heard
42 information that may be relevant to a pending or anticipated charge against the resident
43 or a defense the resident may assert, or may lead to the discovery of that evidence, is

1 disqualified from participating in the investigation of the resident and from appearing
2 as a witness in the pending or anticipated criminal proceeding in which the resident is
3 a defendant, including a subsequent proceeding under chapter 305-A on the pending or
4 anticipated charge.

5 For purposes of this subsection, the inclusion of the attorney's name and telephone number
6 on a list transmitted by the Maine Commission on Indigent Legal Services pursuant to Title
7 4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of
8 Corrections constitutes constructive notice to a jail in the same county as the sheriff's office
9 or to all correctional facilities administered by the Department of Corrections, respectively,
10 beginning on the Monday following the transmission.

11 **2. Application of other law or rule.** This section does not limit the applicability of
12 any other provision of law or of the Maine Rules of Evidence regarding the admissibility
13 or inadmissibility in evidence of attorney-client communications that do not meet the
14 requirements of this section.

15 **Sec. A-6. 25 MRSA §2802, first ¶**, as amended by PL 2019, c. 103, §1, is further
16 amended to read:

17 There is created a board of trustees for the academy consisting of ~~18~~ 19 members as
18 follows: the Commissioner of Public Safety, ex officio, the Attorney General, ex officio,
19 the Game Warden Colonel in the Department of Inland Fisheries and Wildlife, ex officio,
20 the Commissioner of Corrections, ex officio, the Chief of the State Police, ex officio, and
21 the following to be appointed by the Governor: a county sheriff, a chief of a municipal
22 police department, 2 officers of municipal police departments who are not police chiefs, an
23 educator who is not and has never been a sworn member of a law enforcement agency, a
24 criminal prosecutor from one of the offices of the District Attorney, a representative of a
25 federal law enforcement agency, 3 citizens each of whom is not and has never been a sworn
26 member of a law enforcement agency, a municipal official who is not and has never been
27 a sworn member of a law enforcement agency, one nonsupervisory corrections officer
28 representing a state or county correctional facility, one person who is an attorney who
29 represents defendants in criminal cases and one person knowledgeable about public safety
30 who has been recommended to the Governor by the Wabanaki tribal governments of the
31 ~~Aroostook Band of Micmaes~~ Mi'kmaq Nation, the Houlton Band of Maliseet Indians, the
32 Passamaquoddy Tribe at Motahkmikuk, the Passamaquoddy Tribe at Sipayik and the
33 Penobscot Nation. The member appointed by the Governor based on the recommendation
34 of the Wabanaki tribal governments must be recommended by the tribal governments by a
35 process determined by those governments that provides for the board membership to rotate
36 among the tribal governments.

37 **Sec. A-7. 25 MRSA §2803-B, sub-§1, ¶M**, as amended by PL 2021, c. 342, §2,
38 is further amended to read:

39 M. Freedom of access requests. The chief administrative officer of a municipal, county
40 or state law enforcement agency shall certify to the board annually that the agency has
41 adopted a written policy regarding procedures to deal with a freedom of access request
42 and that the chief administrative officer has designated a person who is trained to
43 respond to a request received by the agency pursuant to Title 1, chapter 13; ~~and~~

44 **Sec. A-8. 25 MRSA §2803-B, sub-§1, ¶N**, as enacted by PL 2021, c. 342, §3, is
45 amended to read:

1 N. Unannounced execution of search warrants; and

2 **Sec. A-9. 25 MRSA §2803-B, sub-§1, ¶O** is enacted to read:

3 O. By January 1, 2024, the confidentiality of attorney-client communications, which
4 must include, at a minimum, processes to protect and ensure confidentiality of
5 attorney-client communications and processes to be followed in the event that there is
6 a breach of attorney-client confidentiality.

7 **Sec. A-10. 25 MRSA §2804-C, sub-§2-G** is enacted to read:

8 **2-G. Training regarding confidential attorney-client communications.** Beginning
9 January 1, 2024, the board shall include in the basic law enforcement training program a
10 block of instruction on the confidentiality of attorney-client communications, including the
11 processes that law enforcement agencies use to protect and ensure the confidentiality of
12 attorney-client communications and the processes that law enforcement agencies follow in
13 the event that there is a breach of attorney-client confidentiality.

14 **Sec. A-11. 25 MRSA §2804-D**, as amended by PL 2017, c. 436, §1, is further
15 amended to read:

16 **§2804-D. Basic corrections training**

17 **1. Required.** As a condition to the continued employment of any person as a
18 corrections officer, that person must successfully complete, within the first 12 months of
19 employment, a basic training course as approved by the board. Thereafter, as a condition
20 of continued employment as a corrections officer, the officer must satisfactorily maintain
21 the basic certification. The board, under extenuating and emergency circumstances in
22 individual cases, may extend the 12-month period for not more than 180 days. The board,
23 in individual cases, may waive basic training requirements when the facts indicate that an
24 equivalent course has been successfully completed in another state or federal jurisdiction.
25 A full-time correctional trade instructor must meet the training requirements established
26 under this subsection for corrections officers. Beginning January 1, 2018, the basic training
27 course must include 8 hours of training in how to identify, understand and respond to signs
28 of mental illnesses and substance use disorder that is provided by a trainer who is certified
29 by a nationally recognized organization that provides evidence-based mental health first
30 aid training. Beginning January 1, 2024, the basic training course must include a block of
31 instruction on the confidentiality of attorney-client communications, including the
32 processes that correctional facilities and jails use to protect and ensure the confidentiality
33 of attorney-client communications and the processes that correctional facilities and jails
34 follow in the event that there is a breach of attorney-client confidentiality.

35 **Sec. A-12. 30-A MRSA §291** is enacted to read:

36 **§291. Confidential attorney-client communications**

37 By January 1, 2024, each district attorney shall adopt a written policy for the protection
38 of confidential attorney-client communications by employees and agents of the district
39 attorney's office, which must include, at a minimum, processes to protect and ensure
40 confidentiality of attorney-client communications and processes to be followed in the event
41 that there is a breach of attorney-client confidentiality.

42 **Sec. A-13. 34-A MRSA §1208, sub-§8** is enacted to read:

1 **8. Standards regarding attorney-client communications.** The commissioner shall
2 establish mandatory standards:

3 A. By January 1, 2024, for the protection of confidential attorney-client
4 communications by each county and municipal detention facility. The standards must
5 include, at a minimum:

6 (1) Processes to protect and ensure confidentiality of attorney-client
7 communications, including but not limited to requirements that each facility
8 develop and maintain a registry of the names, telephone numbers and other contact
9 information for attorneys who provide legal services to residents of the facility and
10 that the attorneys' names, telephone numbers and other contact information on the
11 registry are confidential, except that each facility must proactively and by request
12 of the attorney or the attorney's client who is a resident of the facility confirm the
13 registration of an attorney's name, telephone number and other contact information;
14 and

15 (2) Processes to be followed in the event that there is a breach of attorney-client
16 confidentiality; and

17 B. By January 1, 2024, requiring each county and municipal detention facility to
18 designate space within the facility for attorney-client meetings and the exchange of
19 case materials and to make that space available to residents of the facility and their
20 attorneys on a timely basis.

21 **Sec. A-14. 34-A MRSA §1402, sub-§14** is enacted to read:

22 **14. Standards regarding attorney-client communications.** The commissioner shall
23 establish mandatory standards:

24 A. By January 1, 2024, for the protection of confidential attorney-client
25 communications by each correctional facility. The standards must include, at a
26 minimum:

27 (1) Processes to protect and ensure confidentiality of attorney-client
28 communications, including but not limited to requirements that each correctional
29 facility develop and maintain a registry of the names, telephone numbers and other
30 contact information for attorneys who provide legal services to persons who are
31 residents of the correctional facility and that the attorneys' names, telephone
32 numbers and other contact information on the registry are confidential, except that
33 each correctional facility must proactively and by request of the attorney or the
34 attorney's client confirm the registration of an attorney's name, telephone number
35 and other contact information; and

36 (2) Processes to be followed in the event that there is a breach of attorney-client
37 confidentiality; and

38 B. By January 1, 2024, requiring each correctional facility to designate space within
39 the correctional facility for attorney-client meetings and the exchange of case materials
40 and to make that space available to residents of the correctional facility and their
41 attorneys on a timely basis.

42 **PART B**

1 communication was protected, is disqualified from participating in an investigation of the
2 resident and from appearing as a witness in a criminal proceeding in which the resident is
3 a defendant, including a post-conviction review proceeding; and

4 3. A person who viewed or listened to the intercepted communication and saw or heard
5 information that may be relevant to a pending or anticipated charge against the resident or
6 a defense the resident may assert, or that may lead to the discovery of that evidence, is
7 disqualified from participating in an investigation of the resident or appearing as a witness
8 in the pending or anticipated criminal proceeding in which the resident is a defendant,
9 including a subsequent post-conviction review proceeding on the pending or anticipated
10 criminal proceeding.

11 The amendment also removes the requirement that all county jails and correctional
12 facilities designate, within 18 months of the effective date of this legislation, a private and
13 secure space within the jail or correctional facility for residents of the facility to store and
14 view materials, including audiovisual materials, related to criminal proceedings and post-
15 conviction review proceedings involving those residents.

16 **FISCAL NOTE REQUIRED**

17 **(See attached)**