

**Testimony in Support of LD 2161,**  
***An Act to Make Technical Corrections to the Maine Juvenile Code, the Maine Criminal Code and the Intelligence and Investigative Record Information Act***  
***January 29, 2024***

Senator Beebe-Center, Representative Salisbury, and Honorable Members of the Joint Standing Committee on Criminal Justice and Public Safety, my name is Laura Yustak. I am the Chair of the Criminal Law Advisory Commission (CLAC), and I am here to testify on behalf of the Commission in support of LD 2161, *An Act to Make Technical Corrections to the Maine Juvenile Code, the Maine Criminal Code and the Intelligence and Investigative Record Information Act*. Many thanks to Representative Salisbury for reporting LD 2161 on behalf of the Commission.

As you know from the testimony you see from CLAC on a variety of criminal law-related bills, CLAC provides input to the committees of jurisdiction on legislative proposals that are within CLAC's purview. In addition to responding to such proposals, we also make recommendations to revise existing laws. At times we recommend changes to make laws more user friendly, update references, or correct technical errors. That's the nature of the bill before you today.

Sections 1 and 2 of LD 2161 affect the Juvenile Code in Title 15. Section 1 is not a change to the law. It reflects what the State Bureau of Identification is doing currently—but that is not apparent from reading that section as it exists, unless you are already familiar with the sealing provisions of the Juvenile Code. This additional language lets the reader know that even public adjudications may be sealed, and that if in fact they are sealed pursuant to section 3308-C, that sealing takes precedence over the general rule.

Section 2 simply corrects a phrase. A juvenile's history is not a "criminal record"—this change substitutes the correct terminology, and strikes the reference to "criminal record."

Section 4 [p 2] is a similarly simple correction, but in Title 17-A, the Criminal Code. Section 853-A, Engaging in prostitution, was repealed last session. This change would add the word "former" to signal that the law is referencing a repealed statute.

Section 3 of the bill would repeal 16 M.R.S. § 805-A(2), because it was apparently enacted in error. I was not present for the work session, and questioned the law after it was enacted, when I noted the potential conflict between new § 805-A(2) and existing § 806 and the expansion of the types of records to which a victim might be entitled; the reference to FOAA, which is not a necessary process for such requests; and the use of “complaint” language, which creates confusion, because it is not within the definition of intelligence and investigative record information. In response to my concerns, MCEDV’s policy counsel, who had been tracking this legislation, was kind enough to review the recorded proceedings, and brought the apparent misunderstanding to the attention of the sponsor and your analyst. The analyst confirmed that the language that was enacted did not reflect the Committee’s motion. The new language should have replaced rather than supplemented the bill.

Because this session’s cloture date had passed, I brought it to CLAC’s attention, and the group agreed to include the correction in this bill. LD 2161 removes the language that should not have been enacted, leaving in place the new language in 16 M.R.S. § 806, which ensures that victims who obtain intelligence and investigative records related to their cases are not charged for those records.

\*CLAC is an advisory body established by the Legislature. 17-A M.R.S. §§ 1351-1357. It consists of 9 members appointed by the Attorney General. Our current members include current defense attorneys, prosecutors, Maine Bar Counsel, and a retired practitioner with experience as defense counsel, prosecutor and in court administration. In addition, three sitting judges and one retired practitioner, appointed by the Chief Justice of the Supreme Judicial Court, and, by statute, the Co-Chairs of the Legislature’s Committee on Criminal Justice and Public Safety serve as consultants. The Supreme Judicial Court’s Criminal Process Manager serves as liaison from the Court to CLAC. CLAC advises the Legislature on matters relating to crimes in the Criminal Code and in other Titles, the Bail and Juvenile Codes, and with respect to other statutes related to criminal justice processes.

**§806. Exceptions subject to reasonable limitations**

Subject to reasonable limitations imposed by a Maine criminal justice agency to protect against the harms described in section 804, this chapter does not preclude dissemination of intelligence and investigative record information confidential under section 804 by a Maine criminal justice agency to: [PL 2013, c. 267, Pt. A, §3 (NEW).]

**1. A government agency responsible for regulating facilities and programs providing care to children or adults.** A government agency or subunit of a government agency in this State or another state that pursuant to statute is responsible for licensing or regulating the programs or facilities that provide care to children or incapacitated or dependent adults if the intelligence and investigative record information concerns the investigation of suspected abuse, neglect or exploitation; [PL 2021, c. 252, §1 (AMD).]

**1-A. A government agency or subunit of a government agency responsible for investigating child or adult abuse.** A government agency or subunit of a government agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children or incapacitated or dependent adults if:

A. The intelligence and investigative record information is being provided in response to a request by that agency or subunit of an agency for records regarding a particular person or persons; and [PL 2021, c. 252, §2 (NEW).]

B. The intelligence and investigative record information relates to alleged or proven conduct that is criminal under Title 17-A, chapters 9, 11, 12, 13, 21, 23, 33, 35, 41, 43 or 45 by a person in paragraph A. [PL 2021, c. 252, §2 (NEW).]

The intelligence and investigative record information obtained pursuant to this subsection may be used only for the purpose for which it was obtained and, as necessary, for administrative or ombudsman office oversight of the agency or subunit of an agency obtaining the information; [PL 2021, c. 252, §2 (NEW).]

**2. A crime victim or that victim's agent or attorney.** A crime victim or that victim's agent or attorney. A Maine criminal justice agency that provides a copy of intelligence and investigative record information under this subsection to the crime victim or that victim's agent or attorney may not charge a fee for providing that information. As used in this subsection, "agent" means a licensed professional investigator, an insurer or an immediate family member, foster parent or guardian if due to death, age or physical or mental disease, disorder or defect the victim cannot realistically act on the victim's own behalf; or [PL 2023, c. 235, §4 (AMD).]

**3. A counselor or advocate.** [PL 2015, c. 411, §1 (RP).]

**4. A counselor or advocate.** A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as defined in section 53-B, subsection 1, paragraph A. A person to whom intelligence and investigative record information is disclosed pursuant to this subsection:

A. May use the information only for planning for the safety of the victim of a sexual assault or domestic or family violence incident to which the information relates; [PL 2015, c. 411, §2 (NEW).]

B. May not further disseminate the information; [PL 2015, c. 411, §2 (NEW).]

C. Shall ensure that physical copies of the information are securely stored and remain confidential; [PL 2015, c. 411, §2 (NEW).]

D. Shall destroy all physical copies of the information within 30 days after their receipt; [PL 2015, c. 411, §2 (NEW).]

E. Shall permit criminal justice agencies providing such information to perform reasonable and appropriate audits to ensure that all physical copies of information obtained pursuant to this subsection are maintained in accordance with this subsection; and [PL 2015, c. 411, §2 (NEW).]

F. Shall indemnify and hold harmless criminal justice agencies providing information pursuant to this subsection with respect to any litigation that may result from the provision of the information to the person. [PL 2015, c. 411, §2 (NEW).]

[PL 2015, c. 411, §2 (NEW).]

#### SECTION HISTORY

PL 2013, c. 267, Pt. A, §3 (NEW). PL 2013, c. 507, §§6, 7 (AMD). PL 2015, c. 411, §§1, 2 (AMD). PL 2021, c. 252, §§1, 2 (AMD). PL 2023, c. 235, §4 (AMD).

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**§805-A. Exceptions**

**1. Dissemination of certain information.** This chapter does not preclude dissemination of intelligence and investigative record information that is confidential under section 804 by a Maine criminal justice agency to:

- A. Another criminal justice agency; [PL 2023, c. 235, §3 (NEW).]
- B. A person or public or private entity as part of the criminal justice agency's administration of criminal justice or the administration of civil justice by the Department of the Attorney General or a district attorney's office; [PL 2023, c. 235, §3 (NEW).]
- C. A person accused of a crime or that person's agent or attorney for trial and sentencing purposes if authorized by:
  - (1) The responsible prosecutorial office or prosecutor; or
  - (2) A court rule, court order or court decision of this State or of the United States.

As used in this subsection, "agent" means a licensed professional investigator, an expert witness or a parent, foster parent or guardian if the accused person has not attained 18 years of age; [PL 2023, c. 235, §3 (NEW).]

D. A federal court, the District Court, Superior Court or Supreme Judicial Court or an equivalent court in another state; [PL 2023, c. 235, §3 (NEW).]

E. A person or public or private entity expressly authorized to receive the intelligence and investigative record information by statute, executive order, court rule, court decision or court order. "Express authorization" means language in the statute, executive order, court rule, court decision or court order that specifically speaks of intelligence and investigative record information or specifically refers to a type of intelligence or investigative record; or [PL 2023, c. 235, §3 (NEW).]

F. The Secretary of State for use in the determination and issuance of a driver's license suspension. [PL 2023, c. 235, §3 (NEW).]

[PL 2023, c. 235, §3 (NEW).]

**2. Record of complaint.** On request to a Maine criminal justice agency under the Freedom of Access Act, a person is entitled to receive one copy of a complaint made by that person. The criminal justice agency may not charge a fee for a copy of a complaint provided under this subsection. [PL 2023, c. 235, §3 (NEW).]

**SECTION HISTORY**

PL 2023, c. 235, §3 (NEW).

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