

Committee to Ensure Constitutionally Adequate Contact with Counsel

Final Recommendations

1. Vote - 14 in favor and 2 absent.

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.

2. Vote - 13 in favor, 1 opposed and 2 absent.

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 offices, that ensure the absolute confidentiality of attorney-client communications.

3. Vote - 14 in favor and 2 absent.

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.

3a. Vote - 14 in favor and 2 absent.

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.

4. Vote - 11 in favor of majority report and 3 in favor of minority report. 2 absent.

Majority report (11): Require that the Department of Corrections and sheriffs ensure access on a timely basis to private space in jails and correctional facilities for attorney-client meetings and for the review and exchange of case materials.

Minority report (3): Direct the Department of Corrections and sheriffs to work to ensure access on a timely basis to private space in jails and correctional facilities for attorney-client meetings and for the review and exchange of case materials.

4a. Vote – 8 in favor of majority report and 5 in favor of minority report. 1 abstention. 2 absent.

Majority report (8): Require that by 18 months after the effective date of the law, 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 report (5): 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. And direct the Department of Corrections to work to develop for all of their correctional facilities private and secure space for the storage and viewing of case materials, including audio visual materials for incarcerated persons.

5. Vote - 8 in favor, 5 opposed, 1 abstain and 2 absent.

Amend Title 25, Section 2802 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.

6. (Option 1) Vote – 5 in favor, 9 opposed and 2 absent.

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

(Option 2) Vote – 8 in favor, 6 opposed and 2 absent.

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

6a. Vote – 14 in favor and 2 absent.

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

7. Vote - 12 in favor, 1 opposed and 3 absent.

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.

8. Vote - 11 in favor, 2 opposed and 3 absent.

Direct the Department of Corrections to amend the standards for jails requiring 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.

9. Vote - 14 in favor and 2 opposed.

Direct the Maine Judicial Branch to 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.

10. (option 1) Vote – 7 in favor, 6 opposed and 3 absent.

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 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 participation in the investigation or trial. If counsel cannot show actual or constructive notice to the state then the existing structure of laws and remedies remains in place

(option 2) Vote – 8 in favor, 4 opposed, 1 abstain and 3 absent.*

Direct the Joint Standing Committee on Judiciary to consider an exclusionary rule that incorporates an element requiring that intercepted information be substantive and that the Committee consider strengthening title 15, section 712, subsection 2 and 3 by adding language making clear that communications between incarcerated persons and their attorneys are protected.

*five of those members voting "yes" on option 2 expressed a preference for option 1, but would support option 2 in the absence of option 1.