PISCATAQUIS COUNTY SHERIFF'S OFFICE

PROTECTION OF ATTORNEY/CLIENT PRIVILEGE

Policy: 30 Effective: 07/20/2026

Division: All Personnel

I. PURPOSE

This policy offers guidance and direction concerning the use of the persons-in-custody telephone system and the confidentiality of attorney-client communications.

II. POLICY

It is the policy of the Piscataquis County Sheriff's Office [PCSO] to protect all confidential attorney-client communications involving persons in custody. Specifically, this includes procedures for listening to recordings of phone calls with persons in custody and steps to address any breaches of attorney-client confidentiality.

III. DEFINITIONS

Communications: Imparting or exchanging information via telephone calls and written communications, such as e-mails, letters, texts, or similar electronic and written communications.

Privileged Communications: Any communications with the person-in-custody's attorney, paralegal, private investigator, legal advocacy groups, or any other person whose communications concern the resident's legal matter(s).

Inmate: An individual who is under arrest and in custody, awaiting trial, or serving a sentence.

IV. PROCEDURES – General

A. Individuals in custody at this agency have the right to communicate confidentially with their attorneys.

B. This right is enshrined in the Maine and United States Constitutions, as well as the Maine Rules of Evidence.

C. Prosecutors, law enforcement, jail, and corrections personnel are not allowed to listen to, record, or read confidential attorney-client communications.

D. Officers wearing body-worn cameras or using audio recording devices must turn them off during privileged attorney-client interactions. Interrogation rooms equipped

with recording devices must include an exception for privileged communications to ensure that legal discussions stay private.

E. Legal documents, case notes, or electronic records in an attorney's possession may not be searched, read, or seized without a valid court order specifically authorizing such action. If legal documents, case notes, or electronic records in an attorney's possession are seized under exceptional circumstances, an independent review must be conducted to determine privilege before police access is granted.

F. When a credible security threat exists, an officer may temporarily delay privileged communication but must seek immediate supervisory approval and document the justification. Any such interruptions should be kept to a minimum.

G. Neither law nor policy prohibits listening to and monitoring non-privileged in-custody calls or reading non-privileged written communications by residents of correctional facilities, as these remain lawful investigative practices.

V. PROCEDURES – In-Person Attorney – Client Meetings

A. PCSO will take reasonable steps to verify the identity and professional standing of individuals claiming to be attorneys before allowing an in-person attorney-client meeting.

B. If an in-person meeting is allowed, law enforcement personnel must offer a private and secure space for the meeting.

C. Audio and video recording by this agency is strictly prohibited during these meetings.

D. Officers shall not attend attorney-client discussions unless explicitly requested by the attorney or client for safety reasons.

VI. PROCEDURES – Attorney-Client Telephone Communications

A. Calls between attorneys and their clients must not be monitored, recorded, or intercepted. Phone logs may be kept for security purposes, but no access is allowed to the content of attorney-client conversations. If phone systems require prior approval for calls, attorney numbers should be pre-approved for direct access.

B. If an agency inadvertently accesses a confidential attorney-client communication, such as a defense attorney calling from a number not flagged in the agency system, the agency must, without revealing the contents of the communication, report the access to the prosecutor handling the case.

VII. PROCEDURES – Listening to In-Custody Calls

A. Before listening to any in-custody calls or reviewing any written communications of a resident, the listener or reader must obtain the name and contact information of the

attorney representing that person and confirm that the communication to be reviewed is not from an attorney.

B. If a prosecutor, law enforcement officer, corrections personnel, or other staff member comes into possession of a privileged communication, the person must:

1. Immediately cease listening to or reading privileged communication and inform a supervisor.

2. Notify the lead prosecutor, who will then inform the Chief of the Criminal Division of the Attorney General's Office or the District Attorney.

3. The listener should determine the date and time of the call, as well as the number dialed.

4. A copy of the recording must be saved on a flash drive or CD/DVD, placed in an envelope, sealed with evidence tape, dated, and initialed by the officer. It should be stored in accordance with this agency's evidence retention policy to ensure its availability. Any other copies of the recording must be removed from the agency's computer system.

5. The lead prosecutor will inform the defense attorney and the appropriate court.

6. The lead prosecutor must query the agency to learn how and why a privileged communication was provided, so that future attorney-client recordings are not shared.

7. The listener must complete the Privileged Communication Record form (Appendix #1) and follow the procedures set forth on the form. A copy of the form will be placed in the agency's case file.

C. All efforts must be made to avoid hearing or reading a privileged communication. If a prosecutor, law enforcement officer, corrections personnel, or other staff member does hear a privileged communication, the law sets forth three potential consequences.

1. If the resident demonstrates that at the time of a telephone call, the agency had constructive or actual notice of the attorney's name and telephone number, and that the telephone call went directly to that number, the facts, communication, and circumstances regarding the telephone call are not admissible in a criminal or post-conviction proceeding. 15 M.R.S. § 714(1)(A). This is in addition to the protection of privileged communications outlined in Rule 502 Me. Rule. Evid. 15 M.R.S. § 714(2).

2. If the individual who listened to a confidential telephone call or viewed confidential communications, and did not immediately discontinue listening or viewing the communication as soon as the person had sufficient information to determine whether the sender or recipient of the communication was, at the time the communication was made, a resident, and the other party was an attorney, the person will be disqualified

from participating in the investigation and from appearing as a witness in a criminal proceeding where the arrestee is a defendant, including any post-conviction proceeding. 15 M.R.S. § 714(1)(B).

3. An individual who listened to an intercepted communication, or listened to a privileged call, and saw or heard information that may be relevant to a pending or anticipated charge against a resident or a defense the resident may assert or may lead to the discovery of evidence is disqualified from participating in the investigation and appearing as a witness in the pending or anticipated criminal hearing, in which the resident is the defendant, including a post-conviction proceeding. 15 M.R.S. §714(1)(C).

These sanctions are intended to be harsh to ensure the confidentiality of attorney-client communications. In sum, before listening to in-custody calls or reviewing a resident's written communications, the listener or reader must take precautions to ensure that the communication is not privileged. Failure to do so could result in sanctions, including disqualification from further participation in the proceedings.

VI. PROCEDURES – Confidential Attorney-Client Legal Correspondence

A. Mail or documents labeled "Legal Mail" must be delivered unopened unless a security inspection is necessary.

B. If an inspection is required, it must be conducted in the presence of the recipient without reading the contents.

C. Any electronic communication between attorneys and clients shall be secure and free from monitoring.

VII. PROCEDURES – Sheriffs and Correctional Facilities

A. To ensure that Sheriffs and correctional facilities have the most current and up-to-date list of attorneys, beginning January 1, 2024, the Maine Commission on Public Defense Services (MCPDS) is required to develop and maintain a registry of attorneys who represent indigent criminal defendants. 4 M.R.S. § 1804(3)(P).

B. The registry will contain attorney names, telephone numbers, and other contact information.

C. Every week, MCPDS is required to transmit a copy of the registry to the Sheriffs and the Department of Corrections

D. On the Monday following the transmission of the list, the Sheriffs and the Department of Corrections are deemed to have constructive notice that communications to and from these attorneys and residents of these facilities are subject to the attorney-client privilege.

E. The jail maintains a regularly updated list of MCPDS attorneys along with privately retained attorneys.

Sheriff Robert Young