

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Regarding the Interception of Oral or Wire Communications of Residents of State Correctional Facilities and Jails

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

Sec. 1. 15 MRSA §709, sub-§1-B is enacted to read:

1-B. Administration of juvenile criminal justice. "Administration of juvenile criminal justice" has the same meaning as in section 3308, subsection 7, paragraph A, subparagraph (2).

Sec. 2. 15 MRSA §709, sub-§4-A, as amended by PL 1997, c. 361, §1, is further amended to read:

4-A. Investigative officer. "Investigative officer" means an employee of the Department of Corrections designated by the Commissioner of Corrections as having the authority to conduct investigations of offensescrimes or juvenile crimes relating to the security or orderly management of a facility administered by the department and engage in any other activity that is related to the administration of criminal justice or the administration of juvenile criminal justice.

Sec. 3. 15 MRSA §709, sub-§4-B, as enacted by PL 1997, c. 361, §2, is amended to read:

4-B. Jail investigative officer. "County jailJail investigative officer" means an employee of a county jail designated by the county jail administrator as having the authority to conduct investigations of offensescrimes relating to the security or orderly management of the county jail and engage in any other activity that is related to the administration of criminal justice.

Sec. 4. 15 MRSA §712, sub-§2, as amended by PL 2009, c. 93, §1, is further amended to read:

2. Investigative officers. It is not a violation of this chapter for an investigative officer, as defined in this chapter, or for an employee of the Department of Corrections acting at the direction of an investigative officer, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is a necessary incidentrelated to the administration of criminal justice or the administration of juvenile criminal justice, if:

A. Either the sender or receiver of that communication is a person residing in an adult or juvenile correctional facility administered by the Department of Corrections; and

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:

- (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.

This subsection does not authorize any interference with the attorney-client privilege.

Sec. 5. 15 MRSA §712, sub-§3, as enacted by PL 1997, c. 361, §4, is amended to read:

3. Jail investigative officer. It is not a violation of this chapter for a ~~county~~ jail investigative officer, as defined in this chapter, or for a ~~county~~ jail employee acting at the direction of a ~~county~~ jail investigative officer to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is ~~a necessary incident related~~ to the administration of criminal justice if:

A. Either the sender or the receiver of that communication is a person residing in an adult section of the ~~county~~ jail; and

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:

(1) Providing the resident with a written notification statement;

(2) Posting written notification next to every telephone at the jail 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.

This subsection does not authorize any interference with the attorney-client privilege.

Sec. 6. 15 MRSA §712, sub-§4 is enacted to read:

4. Disclosure to another state agency. It is not a violation of this chapter for the contents of an interception of any oral communication or wire communication that has been legally obtained pursuant to subsection 2 or 3 to be disclosed to a state agency if related to the statutory functions of that agency.

Sec. 7. 15 MRSA §713, as amended by PL 1997, c. 361, §5, is repealed and the following enacted in its place:

§ 713. Evidence

The contents of an interception are not admissible in court, except that:

1. Contents obtained under the laws of another jurisdiction. The contents of an interception of any oral communication or wire communication that has been legally obtained under the laws of another jurisdiction in which the interception occurred are admissible in the courts of this State, subject to the Maine Rules of Evidence; and

2. Contents obtained under this chapter. The contents of an interception of any oral communication or wire communication that has been legally obtained pursuant to section 712, subsection 2 or 3 are admissible in the courts of this State, subject to the Maine Rules of Evidence, if related to the administration of criminal justice or the administration of juvenile criminal justice or the statutory functions of a state agency.

SUMMARY

This bill clarifies several aspects of the law regarding the interception of oral and wire communications of residents of state correctional facilities and county and regional jails.

1. The bill resolves a possible conflict regarding the authority of Department of Corrections investigative officers and jail investigative officers by adding to the definitions of those terms language referring to the administration of criminal justice. It also removes the word "county" in referring to jail investigative officers in recognition of the recent establishment of a regional jail, which is not operated by any one county.

2. The bill defines "administration of juvenile criminal justice" to reconcile current law with changes made by Public Law 2009, chapter 93, which allowed the Department of Corrections to intercept phone calls of residents of its juvenile correctional facilities.

3. The bill strikes the term "necessary incident" and replaces it with "related" to avoid an overly strict interpretation of the circumstances under which phone calls may be intercepted, disclosed or used or the contents thereof admitted into court.

4. The bill also provides that the contents of oral and wire communications intercepted by these investigative officers are admissible in court only if related to the administration of criminal justice or the administration of juvenile criminal justice or the statutory functions of a state agency.