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An Act To Amend Provisions Relating to the Department of Corrections To Clarify Certain Enforcement Powers

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

Sec. 1. 15 MRSA §709, sub-§4-A, as amended by PL 2011, c. 507, §2, is repealed and the following enacted in its place:

4-A. Investigative officer. "Investigative officer" has the same meaning as in Title 34-A, section 1001, subsection 10-A.

Sec. 2. 15 MRSA §710, sub-§1, as amended by PL 1987, c. 680, §2, is further amended to read:

1. Interception, oral communications prohibited. Any person, other than an employee of a communication common carrier as defined in this chapter, a law enforcement officer ~~or~~, an investigative officer ~~as defined in this chapter~~ or another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011, carrying out practices otherwise permitted by this chapter, who intentionally or knowingly intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept; any wire or oral communication is guilty of a Class C crime.

Sec. 3. 15 MRSA §710, sub-§5, as amended by PL 1987, c. 680, §3, is further amended to read:

5. Possession of interception devices prohibited. A person, other than an employee of a communication common carrier as defined in this chapter, a law enforcement officer ~~or~~, an investigative officer ~~as defined in this chapter~~ or another employee of the Department of Corrections authorized to exercise law enforcement powers as described in Title 34-A, section 3011, carrying out practices otherwise permitted by this chapter, who has in ~~his~~that person's possession any device, contrivance, machine or apparatus designed or commonly used for intercepting wire or oral communications ~~defined in this chapter~~, is guilty of a Class C crime.

Sec. 4. 15 MRSA §712, sub-§2, as amended by PL 2011, c. 507, §4, 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~~another employee of the Department of Corrections ~~acting at the direction of an investigative officer~~ authorized to exercise law enforcement powers as described in Title 34-A, section 3011, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related 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. 34-A MRSA §1001, sub-§10-A, as enacted by PL 1997, c. 102, §1, is amended to read:

10-A. Investigative officer. "Investigative officer" means an employee of the department designated by the commissioner as having the authority to conduct investigations of ~~offenses~~crimes 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 and who is certified by the Board of Trustees of the Maine Criminal Justice Academy as a full-time law enforcement officer.

Sec. 6. 34-A MRSA §3011, as amended by PL 2009, c. 142, §16, is further amended to read:

§ 3011. Investigative officers and other law enforcement officers

1. Exercise of law enforcement powers. Investigative officers and other employees of the department who are certified by the Board of Trustees of the Maine Criminal Justice Academy as law enforcement officers may exercise the powers of other law enforcement officers with respect to offenses relating to the security or orderly management of a facility ~~or community program 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, if authorized to exercise these powers by the commissioner. ~~Investigative officers~~These employees may issue administrative subpoenas ~~with respect to offenses relating to the security or orderly management of a facility administered by the department~~, if authorized to exercise these powers by the commissioner and by the Attorney General or the Attorney General's designee. These powers are in addition to any powers the ~~officer~~employees may otherwise have as employees of the department. Internal investigations of employees of the department must be conducted pursuant to any applicable collective bargaining agreement.

2. Working agreement. The commissioner shall negotiate a working agreement with the Department of the Attorney General concerning procedures and respective responsibilities for the exercise of law enforcement powers by investigative officers and other employees pursuant to subsection 1.

Sec. 7. 34-A MRSA §3035, sub-§1, ¶D, as amended by PL 1991, c. 314, §40, is further amended to read:

D. Transportation to work release job sites must be arranged by the commissioner approved by the chief administrative officer.

(1) Clients participating in the work release program ~~must~~may be assessed an equitable share of the cost of the transportation.

(2) Funds received from clients for work release transportation must be placed in the General Fund.

Sec. 8. 34-A MRSA §3040-A, sub-§1, as amended by PL 2005, c. 506, §8, is further amended to read:

1. Payment. Except as provided in subsection 4, if any client ~~under the control~~in the custody of the department dies, ~~leaving on deposit in the department's general client account and telephone call account an amount not exceeding \$1,000~~, and no personal representative of the client's estate is appointed, the chief administrative officer may pay the balance of the deposits in the ~~accounts~~client's general client account and telephone call account, up to a maximum of \$1,000, to the surviving spouse or next of kin in accordance with ~~the Probate Code~~, Title 18-A, sections 2-101 to 2-114, to the funeral director having any bill outstanding for the burial of the decedent or to any other preferred creditor or creditors who may appear to be entitled thereto, and shall deliver personal property in the chief administrative officer's custody to the surviving spouse or next of kin in accordance with ~~the Probate Code~~, Title 18-A, sections 2-101 to 2-114.

SUMMARY

The bill allows employees of the Department of Corrections who are certified by the Board of Trustees of the Maine Criminal Justice Academy as law enforcement officers to exercise the same law enforcement powers as investigative officers. This change allows department employees who have completed the academy's part-time law enforcement officer training to exercise those powers when authorized by the Commissioner of Corrections. The bill amends the laws governing the interception of prisoner wire and oral communications to reflect these changes.

The bill requires transportation to work release job sites to be approved by a correctional facility's chief administrative officer instead of arranged exclusively by the commissioner as in current law.

The bill permits a correctional facility to use the first \$1,000 in any deceased prisoner's facility-administered accounts to pay the funeral director and specified others. Current law allows the facility to make such payments only for those prisoners with no more than \$1,000 in their accounts.