



125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1737

H.P. 1282

House of Representatives, January 4, 2012

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

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered
printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative PLUMMER of Windham.

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

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

3 **1-B. Administration of juvenile criminal justice.** "Administration of juvenile
4 criminal justice" has the same meaning as in section 3308, subsection 7, paragraph A,
5 subparagraph (2).

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

8 **4-A. Investigative officer.** "Investigative officer" means an employee of the
9 Department of Corrections designated by the Commissioner of Corrections as having the
10 authority to conduct investigations of ~~offenses~~ crimes or juvenile crimes relating to the
11 security or orderly management of a facility administered by the department and engage
12 in any other activity that is related to the administration of criminal justice or the
13 administration of juvenile criminal justice.

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

16 **4-B. Jail investigative officer.** "~~County jail~~ Jail investigative officer" means an
17 employee of a ~~county~~ jail designated by the ~~county~~ jail administrator as having the
18 authority to conduct investigations of ~~offenses~~ crimes relating to the security or orderly
19 management of the ~~county~~ jail and engage in any other activity that is related to the
20 administration of criminal justice.

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

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

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

32 B. Notice of the possibility of interception is provided in a way sufficient to make
33 the parties to the communication aware of the possibility of interception, which
34 includes:

- 35 (1) Providing the resident with a written notification statement;
- 36 (2) Posting written notification next to every telephone at the facility that is
37 subject to monitoring; and

1 (3) Informing the recipient of a telephone call from the resident by playing a
2 recorded warning before the recipient accepts the call.

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

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

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

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

13 B. Notice of the possibility of interception is provided in a way sufficient to make
14 the parties to the communication aware of the possibility of interception, which
15 includes:

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

17 (2) Posting written notification next to every telephone at the jail that is subject
18 to monitoring; and

19 (3) Informing the recipient of a telephone call from the resident by playing a
20 recorded warning before the recipient accepts the call.

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

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

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

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

29 **§713. Evidence**

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

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

35 **2. Contents obtained under this chapter.** The contents of an interception of any
36 oral communication or wire communication that has been legally obtained pursuant to
37 section 712, subsection 2 or 3 are admissible in the courts of this State, subject to the

1 Maine Rules of Evidence, if related to the administration of criminal justice or the
2 administration of juvenile criminal justice or the statutory functions of a state agency.

3 **SUMMARY**

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

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

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

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

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